

AMENDED IN SENATE JUNE 18, 2014

AMENDED IN ASSEMBLY MAY 14, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY MARCH 26, 2014

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 ~~amend Sections 6319.3 and 6401.7 of~~ *add Section 6401.9* to 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 establishes the Department of Industrial Relations to, among other things, foster, promote, and develop the welfare of the wage earners, to improve their working conditions, and to advance their opportunities for profitable employment.

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 require an adult film employer's exposure control plan to include a log of information for all scenes produced, including, but not limited to, documentation information that each time an employee performing in an adult film engaged in vaginal or anal intercourse, personal protective equipment 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 according to specified recommendations not more than 14 days prior to filming any scene in which the employee engaged in vaginal or anal intercourse, that the employee consented to disclosing to the ~~Department of Industrial Relations~~ *Division of Occupational Safety and Health* that the employee was the subject of an HIV test, and that the employer paid for the test. *This bill also would require an adult film employer's exposure control plan to include any additional information as required by the Division of Occupational Safety and Health.* 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.

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 6401.9 is added to the Labor Code, to*
2 *read:*

3 *6401.9. (a) (1) In addition to the requirements of Section 5193*
4 *of Title 8 of the California Code of Regulations, an adult film*
5 *employer shall include the following information in an exposure*
6 *control plan:*

7 *(A) That each time an employee performing in an adult film*
8 *engaged in vaginal or anal intercourse, personal protective*
9 *equipment was used to protect the employee from exposure to*
10 *bloodborne pathogens. This subparagraph shall not be construed*
11 *to require that the personal protective equipment be visible to the*
12 *consumer in the finished film.*

13 *(B) That each employee performing in an adult film was tested*
14 *for sexually transmitted infections, according to the*
15 *recommendations of the Centers for Disease Control and*
16 *Prevention and the State Department of Public Health current at*
17 *the time the testing takes place, not more than 14 days prior to*
18 *filming any scene in which the employee engaged in vaginal or*
19 *anal intercourse, that the employee consented to disclosing to the*
20 *Division of Occupational Safety and Health that the employee was*
21 *the subject of a human immunodeficiency virus (HIV) test, and*
22 *that the employer paid for the test.*

23 *(C) Any additional information as required by the Division of*
24 *Occupational Safety and Health.*

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

30 *(b) Nothing in this section shall be construed to limit or impede*
31 *any privacy rights or reporting requirements as provided under*
32 *Division 105 of the Health and Safety Code.*

33 *SEC. 2. No reimbursement is required by this act pursuant to*
34 *Section 6 of Article XIII B of the California Constitution because*
35 *the only costs that may be incurred by a local agency or school*
36 *district will be incurred because this act creates a new crime or*
37 *infraction, eliminates a crime or infraction, or changes the penalty*
38 *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.*

4 ~~SECTION 1. Section 6319.3 of the Labor Code is amended to~~
5 ~~read:~~

6 ~~6319.3. (a) Except as provided in subdivision (b) of this section~~
7 ~~and subdivision (k) of Section 6401.7, no civil penalty shall be~~
8 ~~assessed against any new employer in the state for a violation of~~
9 ~~any standard developed pursuant to subdivision (a) of Section~~
10 ~~6401.7 for a period of one year after the date the new employer~~
11 ~~establishes a business in the state.~~

12 ~~(b) Subdivision (a) shall only apply to an employer who has~~
13 ~~made a good faith effort to comply with any standard developed~~
14 ~~pursuant to subdivision (a) of Section 6401.7, but shall not apply~~
15 ~~if the employer is found to have committed a serious, willful, or~~
16 ~~repeated violation of that standard, or fails to abate the violation~~
17 ~~and is assessed a penalty pursuant to Section 6430.~~

18 ~~SEC. 2. Section 6401.7 of the Labor Code is amended to read:~~

19 ~~6401.7. (a) Every employer shall establish, implement, and~~
20 ~~maintain an effective injury prevention program. The program~~
21 ~~shall be written, except as provided in subdivision (c), and shall~~
22 ~~include, but not be limited to, the following elements:~~

23 ~~(1) Identification of the person or persons responsible for~~
24 ~~implementing the program.~~

25 ~~(2) The employer's system for identifying and evaluating~~
26 ~~workplace hazards, including scheduled periodic inspections to~~
27 ~~identify unsafe conditions and work practices.~~

28 ~~(3) The employer's methods and procedures for correcting~~
29 ~~unsafe or unhealthy conditions and work practices in a timely~~
30 ~~manner.~~

31 ~~(4) An occupational health and safety training program designed~~
32 ~~to instruct employees in general safe and healthy work practices~~
33 ~~and to provide specific instruction with respect to hazards specific~~
34 ~~to each employee's job assignment.~~

35 ~~(5) The employer's system for communicating with employees~~
36 ~~on occupational health and safety matters, including provisions~~
37 ~~designed to encourage employees to inform the employer of~~
38 ~~hazards at the worksite without fear of reprisal.~~

1 ~~(6) The employer's system for ensuring that employees comply~~
2 ~~with safe and healthy work practices, which may include~~
3 ~~disciplinary action.~~

4 ~~(b) The employer shall correct unsafe and unhealthy conditions~~
5 ~~and work practices in a timely manner based on the severity of the~~
6 ~~hazard.~~

7 ~~(c) The employer shall train all employees when the training~~
8 ~~program is first established, all new employees, and all employees~~
9 ~~given a new job assignment, and shall train employees whenever~~
10 ~~new substances, processes, procedures, or equipment are introduced~~
11 ~~to the workplace and represent a new hazard, and whenever the~~
12 ~~employer receives notification of a new or previously unrecognized~~
13 ~~hazard. An employer in the construction industry who is required~~
14 ~~to be licensed under Chapter 9 (commencing with Section 7000)~~
15 ~~of Division 3 of the Business and Professions Code may use~~
16 ~~employee training provided to the employer's employees under a~~
17 ~~construction industry occupational safety and health training~~
18 ~~program approved by the division to comply with the requirements~~
19 ~~of subdivision (a) relating to employee training, and shall only be~~
20 ~~required to provide training on hazards specific to an employee's~~
21 ~~job duties.~~

22 ~~(d) The employer shall keep appropriate records of steps taken~~
23 ~~to implement and maintain the program. An employer in the~~
24 ~~construction industry who is required to be licensed under Chapter~~
25 ~~9 (commencing with Section 7000) of Division 3 of the Business~~
26 ~~and Professions Code may use records relating to employee training~~
27 ~~provided to the employer in connection with an occupational safety~~
28 ~~and health training program approved by the division to comply~~
29 ~~with this subdivision, and shall only be required to keep records~~
30 ~~of those steps taken to implement and maintain the program with~~
31 ~~respect to hazards specific to an employee's job duties.~~

32 ~~(e) (1) The standards board shall adopt a standard setting forth~~
33 ~~the employer's duties under this section, on or before January 1,~~
34 ~~1991, consistent with the requirements specified in subdivisions~~
35 ~~(a), (b), (c), and (d). The standards board, in adopting the standard,~~
36 ~~shall include substantial compliance criteria for use in evaluating~~
37 ~~an employer's injury prevention program. The board may adopt~~
38 ~~less stringent criteria for employers with few employees and for~~
39 ~~employers in industries with insignificant occupational safety or~~
40 ~~health hazards.~~

1 ~~(2) Notwithstanding subdivision (a), for employers with fewer~~
2 ~~than 20 employees who are in industries that are not on a~~
3 ~~designated list of high hazard industries and who have a workers'~~
4 ~~compensation experience modification rate of 1.1 or less, and for~~
5 ~~any employers with fewer than 20 employees who are in industries~~
6 ~~that are on a designated list of low hazard industries, the board~~
7 ~~shall adopt a standard setting forth the employer's duties under~~
8 ~~this section consistent with the requirements specified in~~
9 ~~subdivisions (a), (b), and (c), except that the standard shall only~~
10 ~~require written documentation to the extent of documenting the~~
11 ~~person or persons responsible for implementing the program~~
12 ~~pursuant to paragraph (1) of subdivision (a), keeping a record of~~
13 ~~periodic inspections pursuant to paragraph (2) of subdivision (a),~~
14 ~~and keeping a record of employee training pursuant to paragraph~~
15 ~~(4) of subdivision (a). To any extent beyond the specifications of~~
16 ~~this subdivision, the standard shall not require the employer to~~
17 ~~keep the records specified in subdivision (d).~~

18 ~~(3) (A) The division shall establish a list of high hazard~~
19 ~~industries using the methods prescribed in Section 6314.1 for~~
20 ~~identifying and targeting employers in high hazard industries. For~~
21 ~~purposes of this subdivision, the "designated list of high hazard~~
22 ~~industries" shall be the list established pursuant to this paragraph.~~

23 ~~(B) For the purpose of implementing this subdivision, the~~
24 ~~Department of Industrial Relations shall periodically review, and~~
25 ~~as necessary revise, the list.~~

26 ~~(4) For the purpose of implementing this subdivision, the~~
27 ~~Department of Industrial Relations shall also establish a list of low~~
28 ~~hazard industries, and shall periodically review, and as necessary~~
29 ~~revise, that list.~~

30 ~~(f) The standard adopted pursuant to subdivision (e) shall~~
31 ~~specifically permit employer and employee occupational safety~~
32 ~~and health committees to be included in the employer's injury~~
33 ~~prevention program. The board shall establish criteria for use in~~
34 ~~evaluating employer and employee occupational safety and health~~
35 ~~committees. The criteria shall include minimum duties, including~~
36 ~~the following:~~

37 ~~(1) Review of the employer's periodic, scheduled worksite~~
38 ~~inspections; investigation of causes of incidents resulting in injury,~~
39 ~~illness, or exposure to hazardous substances; and investigation of~~
40 ~~any alleged hazardous condition brought to the attention of any~~

1 committee member. When determined necessary by the committee,
2 the committee may conduct its own inspections and investigations.

3 ~~(2) (A) Upon request from the division, verification of~~
4 ~~abatement action taken by the employer as specified in division~~
5 ~~citations.~~

6 ~~(B) If an employer's occupational safety and health committee~~
7 ~~meets the criteria established by the board, it shall be presumed to~~
8 ~~be in substantial compliance with paragraph (5) of subdivision (a).~~

9 ~~(g) The division shall adopt regulations specifying the~~
10 ~~procedures for selecting employee representatives for~~
11 ~~employer-employee occupational health and safety committees~~
12 ~~when these procedures are not specified in an applicable collective~~
13 ~~bargaining agreement. No employee or employee organization~~
14 ~~shall be held liable for any act or omission in connection with a~~
15 ~~health and safety committee.~~

16 ~~(h) The employer's injury prevention program, as required by~~
17 ~~this section, shall cover all of the employer's employees and all~~
18 ~~other workers who the employer controls or directs and directly~~
19 ~~supervises on the job to the extent these workers are exposed to~~
20 ~~worksite and job assignment specific hazards. Nothing in this~~
21 ~~subdivision shall affect the obligations of a contractor or other~~
22 ~~employer that controls or directs and directly supervises its own~~
23 ~~employees on the job.~~

24 ~~(i) (1) An adult film employer's exposure control plan shall~~
25 ~~include a log of information for all scenes produced, including,~~
26 ~~but not limited to, documentation that:~~

27 ~~(A) Each time an employee performing in an adult film engaged~~
28 ~~in vaginal or anal intercourse, personal protective equipment was~~
29 ~~used to protect the employee from exposure to bloodborne~~
30 ~~pathogens. This paragraph shall not be construed to require that~~
31 ~~the personal protective equipment be visible to the consumer in~~
32 ~~the finished film.~~

33 ~~(B) Each employee performing in an adult film was tested for~~
34 ~~sexually transmitted infections, according to the recommendations~~
35 ~~of the Centers for Disease Control and Prevention and the State~~
36 ~~Department of Public Health current at the time the testing takes~~
37 ~~place, not more than 14 days prior to filming any scene in which~~
38 ~~the employee engaged in vaginal or anal intercourse, that the~~
39 ~~employee consented to disclosing to the Department of Industrial~~
40 ~~Relations that the employee was the subject of a human~~

1 immunodeficiency virus (HIV) test, and that the employer paid
2 for the test.

3 (2) For the purposes of this subdivision, “adult film” means any
4 commercial film, video, multimedia, or other recorded
5 representation made or distributed for financial gain during the
6 production of which performers actually engage in sexual
7 intercourse, including oral, vaginal, or anal penetration.

8 (j) When a contractor supplies its employee to a state agency
9 employer on a temporary basis, the state agency employer may
10 assess a fee upon the contractor to reimburse the state agency for
11 the additional costs, if any, of including the contract employee
12 within the state agency’s injury prevention program.

13 (k) (1) The division shall prepare a Model Injury and Illness
14 Prevention Program for Non-High-Hazard Employment, and shall
15 make copies of the model program prepared pursuant to this
16 subdivision available to employers, upon request, for posting in
17 the workplace. An employer who adopts and implements the model
18 program prepared by the division pursuant to this paragraph in
19 good faith shall not be assessed a civil penalty for the first citation
20 for a violation of this section issued after the employer’s adoption
21 and implementation of the model program.

22 (2) For purposes of this subdivision, the division shall establish
23 a list of non-high-hazard industries in California. These industries,
24 identified by their Standard Industrial Classification Codes, as
25 published by the United States Office of Management and Budget
26 in the Manual of Standard Industrial Classification Codes, 1987
27 Edition, are apparel and accessory stores (Code 56), eating and
28 drinking places (Code 58), miscellaneous retail (Code 59), finance,
29 insurance, and real estate (Codes 60–67), personal services (Code
30 72), business services (Code 73), motion pictures (Code 78) except
31 motion picture production and allied services (Code 781), legal
32 services (Code 81), educational services (Code 82), social services
33 (Code 83), museums, art galleries, and botanical and zoological
34 gardens (Code 84), membership organizations (Code 86),
35 engineering, accounting, research, management, and related
36 services (Code 87), private households (Code 88), and
37 miscellaneous services (Code 89). To further identify industries
38 that may be included on the list, the division shall also consider
39 data from a rating organization, as defined in Section 11750.1 of
40 the Insurance Code, and all other appropriate information. The list

1 shall be established by June 30, 1994, and shall be reviewed, and
2 as necessary revised, biennially.

3 ~~(3) The division shall prepare a Model Injury and Illness
4 Prevention Program for Employers in Industries with Intermittent
5 Employment, and shall determine which industries have historically
6 utilized seasonal or intermittent employees. An employer in an
7 industry determined by the division to have historically utilized
8 seasonal or intermittent employees shall be deemed to have
9 complied with the requirements of subdivision (a) with respect to
10 a written injury prevention program if the employer adopts the
11 model program prepared by the division pursuant to this paragraph
12 and complies with any instructions relating thereto.~~

13 ~~(l) With respect to any county, city, city and county, or district,
14 or any public or quasi-public corporation or public agency therein,
15 including any public entity, other than a state agency, that is a
16 member of, or created by, a joint powers agreement, subdivision
17 (d) shall not apply.~~

18 ~~(m) Every workers' compensation insurer shall conduct a
19 review, including a written report as specified below, of the injury
20 and illness prevention program (HPP) of each of its insureds with
21 an experience modification of 2.0 or greater within six months of
22 the commencement of the initial insurance policy term. The review
23 shall determine whether the insured has implemented all of the
24 required components of the HPP, and evaluate their effectiveness.
25 The training component of the HPP shall be evaluated to determine
26 whether training is provided to line employees, supervisors, and
27 upper level management, and effectively imparts the information
28 and skills each of these groups needs to ensure that all of the
29 insured's specific health and safety issues are fully addressed by
30 the insured. The reviewer shall prepare a detailed written report
31 specifying the findings of the review and all recommended changes
32 deemed necessary to make the HPP effective. The reviewer shall
33 be or work under the direction of a licensed California professional
34 engineer, certified safety professional, or a certified industrial
35 hygienist.~~

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

1 ~~for a crime or infraction, within the meaning of Section 17556 of~~
2 ~~the Government Code, or changes the definition of a crime within~~
3 ~~the meaning of Section 6 of Article XIII B of the California~~
4 ~~Constitution.~~

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