

AMENDED IN SENATE AUGUST 22, 2014  
AMENDED IN SENATE AUGUST 19, 2014  
AMENDED IN SENATE JULY 1, 2014  
AMENDED IN ASSEMBLY MAY 28, 2014  
AMENDED IN ASSEMBLY MAY 23, 2014  
AMENDED IN ASSEMBLY APRIL 10, 2014  
AMENDED IN ASSEMBLY MARCH 28, 2014  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1897**

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**Introduced by Assembly Member Roger Hernández**

February 19, 2014

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An act to add Section 2810.3 to the Labor Code, relating to private employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, as amended, Roger Hernández. Labor contracting: client liability.

Existing law regulates the terms and conditions of employment and establishes specified obligations of employers to employees. Existing law prohibits a person or entity from entering into a contract for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, if the person or entity knows or should know that the contract or agreement does not include sufficient funds for the contractor to comply with laws or regulations governing the labor or services to be provided.

This bill would require a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for the payment of ~~wages, the obligation to provide a safe work environment, as specified,~~ *wages* and the failure to obtain valid workers’ compensation coverage. *The bill would prohibit a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor.* The bill would define a client employer as a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor contractor, except as specified. The bill would define a labor contractor as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor within the client employer’s usual course of ~~business and~~ *business*. *The bill would except from this the definition of labor contractor specified nonprofit, labor, and motion picture payroll services organizations and 3rd parties engaged in an employee leasing arrangement, as specified.* The bill would specify that it does not prohibit client employers and labor contractors from mutually contracting for otherwise lawful remedies for violations of its provisions by the other party. The bill would require a client employer or labor contractor to provide to a requesting enforcement agency or department, and make available for copying, information within its possession, custody, or control required to verify compliance with applicable state laws. The bill would authorize the Labor Commissioner, the Division of Occupational Safety and Health, and the Employment Development Department to adopt necessary regulations and rules to administer and enforce the bill’s provisions. The bill would provide that waiver of its provisions is contrary to public policy, void, and unenforceable. The bill would prohibit its provisions from being interpreted to impose liability in specified circumstances.

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

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

- 1 SECTION 1. Section 2810.3 is added to the Labor Code, to
- 2 read:
- 3 2810.3. (a) As used in this section:
- 4 (1) (A) “Client employer” means a business entity, regardless
- 5 of its form, that obtains or is provided workers to perform labor

1 within its usual course of business from a labor contractor. “Client  
2 employer” does not include a business entity with a workforce of  
3 less than 25 workers, including those hired directly by the client  
4 employer and those obtained from, or provided by, any labor  
5 contractor, and five or fewer workers supplied by a labor contractor  
6 at any given time. “Client employer” does not include the state or  
7 any political subdivision of the state, including any city, county,  
8 city and county, or special district.

9 (B) “Client employer” does not include any of the following:

10 (i) A business entity with a workforce of less than 25 workers,  
11 including those hired directly by the client employer and those  
12 obtained from, or provided by, any labor contractor.

13 (ii) A business entity with five or fewer workers supplied by a  
14 labor contractor or labor contractors to the client employer at any  
15 given time.

16 (iii) The state or any political subdivision of the state, including  
17 any city, county, city and county, or special district.

18 (2) “Labor” has the same meaning provided by Section 200.

19 (3) “Labor contractor” means an individual or entity that  
20 supplies, either with or without a contract, a client employer with  
21 workers to perform labor within the client employer’s usual course  
22 of business. “Labor contractor” does not include any of the  
23 following:

24 (A) A bona fide nonprofit, community-based organization that  
25 provides services to workers.

26 (B) A bona fide labor organization or apprenticeship program  
27 or hiring hall operated pursuant to a collective bargaining  
28 agreement.

29 (C) A motion picture payroll services company as defined in  
30 subparagraph (A) of paragraph (4) of subdivision (f) of Section  
31 679 of the Unemployment Insurance Code.

32 (D) A third party who is a party to an employee leasing  
33 arrangement, as defined by Rule 4 of Section V of the California  
34 Workers’ Compensation Experience Rating Plan-1995 (Section  
35 2353.1 of Title 10 of the California Code of Regulations), as it  
36 read on January 1, 2014, except those arrangements described in  
37 subrule d of Rule 4 of Section V, if the employee leasing  
38 arrangement contractually obligates the client employer to assume  
39 all civil legal responsibility and civil liability under this act.

1 (4) “Wages” has the same meaning provided by Section 200  
2 and all sums payable to an employee or the state based upon any  
3 failure to pay wages, as provided by law.

4 (5) “Worker” does not include an employee who is exempt from  
5 the payment of an overtime rate of compensation for executive,  
6 administrative, and professional employees pursuant to wage orders  
7 by the Industrial Welfare Commission described in Section 515.

8 (6) “Usual course of business” means the regular and customary  
9 work of a business, performed within or upon the premises or  
10 worksite of the client employer.

11 (b) A client employer shall share with a labor contractor all civil  
12 legal responsibility and civil liability for all workers supplied by  
13 that labor contractor for ~~all~~ both of the following:

14 (1) The payment of wages.

15 ~~(2) The obligation to provide a safe work environment under  
16 the provisions of Division 5 (commencing with Section 6300).~~

17 ~~(3)~~

18 (2) Failure to secure valid workers’ compensation coverage as  
19 required by Section 3700.

20 (c) *A client employer shall not shift to the labor contractor any  
21 legal duties or liabilities under the provisions of Division 5  
22 (commencing with Section 6300) with respect to workers supplied  
23 by the labor contractor.*

24 ~~(e)~~

25 (d) At least 30 days prior to filing a ~~claim~~ *civil action* against a  
26 client employer for violations covered by this section, a worker or  
27 his or her representative shall notify the client employer of  
28 violations under subdivision (b).

29 ~~(d)~~

30 (e) Neither the client employer nor the labor contractor may  
31 take any adverse action against any worker for providing  
32 notification of violations or filing a *claim or civil action*.

33 ~~(e)~~

34 (f) The provisions of ~~subdivision (b)~~ *subdivisions (b) and (c)*  
35 are in addition to, and shall be supplemental of, any other theories  
36 of liability or requirement established by statute or common law.

37 ~~(f)~~

38 (g) This section does not prohibit a client employer from  
39 establishing, exercising, or enforcing by contract any otherwise

1 lawful remedies against a labor contractor for liability created by  
2 acts of a labor contractor.

3 ~~(g)~~

4 (h) This section does not prohibit a labor contractor from  
5 establishing, exercising, or enforcing by contract any otherwise  
6 lawful remedies against a client employer for liability created by  
7 acts of a client employer.

8 ~~(h)~~

9 (i) Upon request by a state enforcement agency or department,  
10 a client employer or a labor contractor shall provide to the agency  
11 or department any information within its possession, custody, or  
12 control required to verify compliance with applicable state laws.  
13 Upon request, these records shall be made available promptly for  
14 inspection, and the state agency or department shall be permitted  
15 to copy them. This subdivision does not require the disclosure of  
16 information that is not otherwise required to be disclosed by  
17 employers upon request by a state enforcement agency or  
18 department.

19 ~~(i)~~

20 (j) The Labor Commissioner may adopt regulations and rules  
21 of practice and procedure necessary to administer and enforce the  
22 provisions of subdivisions (b) and ~~(h)~~ (i) that are under his or her  
23 jurisdiction.

24 ~~(j)~~

25 (k) The Division of Occupational Safety and Health may adopt  
26 regulations and rules of practice and procedure necessary to  
27 administer and enforce the provisions of subdivisions ~~(b)~~ (c) and  
28 ~~(h)~~ (i) that are under its jurisdiction.

29 ~~(k)~~

30 (l) The Employment Development Department may adopt  
31 regulations and rules of practice and procedure necessary to  
32 administer and enforce the provisions of subdivisions (b) and ~~(h)~~  
33 (i) that are under its jurisdiction.

34 ~~(l)~~

35 (m) A waiver of this section is contrary to public policy, and is  
36 void and unenforceable.

37 ~~(m)~~

38 (n) This section shall not be interpreted to impose individual  
39 liability on a homeowner for labor or services received at the home

1 or the owner of a home-based business for labor or services  
2 received at the home.

3 ~~(n)~~

4 (o) This section shall not be interpreted to impose liability on  
5 a client employer for the use of an independent contractor other  
6 than a labor contractor or to change the definition of independent  
7 contractor.

8 ~~(o)~~

9 (p) This section shall not be interpreted to impose liability on  
10 the following:

11 (1) A client employer that is not a motor carrier of property  
12 based solely on the employer’s use of a third-party motor carrier  
13 of property with interstate or intrastate operating authority to ship  
14 or receive freight.

15 (2) A client employer that is a motor carrier of property  
16 subcontracting with, or otherwise engaging, another motor carrier  
17 of property to provide transportation services using its own  
18 employees and commercial motor vehicles, as defined in Section  
19 34601 of the Vehicle Code.

20 (3) A client employer that is a cable operator; as defined by  
21 Section ~~8350~~ 5830 of the Public Utilities Code, *a direct-to-home*  
22 *satellite service provider, or a telephone corporation as defined*  
23 *by Section 234 of the Public Utilities Code, based upon its*  
24 ~~subcontracting~~ *contracting* with a company to build, install,  
25 maintain, or perform repair work utilizing the employees and  
26 vehicles of the ~~subcontractor~~ *contractor* if the name of the  
27 ~~subcontractor~~ *contractor* is visible on employee uniforms and  
28 vehicles.

29 (4) *A motor club holding a certificate of authority issued*  
30 *pursuant to Chapter 2 (commencing with Section 12160) of Part*  
31 *5 of Division 2 of the Insurance Code when it contracts with third*  
32 *parties to provide motor club services utilizing the employees and*  
33 *vehicles of the third-party contractor if the name of the contractor*  
34 *is visible on the contractor’s vehicles.*

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