

Assembly Bill No. 2883

Passed the Assembly August 15, 2016

Chief Clerk of the Assembly

Passed the Senate August 11, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 3351 and 3352 of, and to repeal Section 6354.7 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2883, Committee on Insurance. Workers' compensation: employees.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, within the Department of Industrial Relations, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law defines an employee, for purposes of the laws governing workers' compensation, to include, among other persons, officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Existing law excludes from that definition, among other persons, officers and directors of a private corporation who are the sole shareholders of the corporation and working members of a partnership or limited liability company, as specified, unless they elect to come under the compensation provisions of the laws governing workers' compensation.

This bill would revise those exceptions from the definition of an employee to apply to an officer or member of the board of directors, as specified, if he or she owns at least 15% of the issued and outstanding stock of the corporation, or an individual who is a general partner of a partnership or a managing member of a limited liability company, and that person elects to be excluded by executing a written waiver of his or her rights under the laws governing workers' compensation, stating under penalty of perjury that he or she is a qualifying officer or director, or a qualifying general partner or managing member, as applicable. The bill would specify the effective date of the waivers.

The bill would also make technical and clarifying changes to the provision excluding specified persons from the definition of employee.

The bill would also delete obsolete provisions.

Existing law proscribes the crime of perjury.

By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

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.

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

SECTION 1. Section 3351 of the Labor Code is amended to read:

3351. "Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with subdivision (p) of Section 3352.

(d) Except as provided in subdivision (h) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a

partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with subdivision (q) of Section 3352.

SEC. 2. Section 3352 of the Labor Code is amended to read:

3352. "Employee" excludes the following:

(a) A person defined in subdivision (d) of Section 3351 who is employed by his or her parent, spouse, or child.

(b) A person performing services in return for aid or sustenance only, received from any religious, charitable, or relief organization.

(c) A person holding an appointment as deputy clerk or deputy sheriff appointed for his or her own convenience, and who does not receive compensation from the county or municipal corporation or from the citizens of that county or municipal corporation for his or her services as the deputy. This exclusion is operative only as to employment by the county or municipal corporation and does not deprive that person from recourse against a private person employing him or her for injury occurring in the course of, and arising out of, the employment.

(d) A person performing voluntary services at or for a recreational camp, hut, or lodge operated by a nonprofit organization, exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, of which he or she or a member of his or her family is a member and who does not receive compensation for those services, other than meals, lodging, or transportation.

(e) A person performing voluntary service as a ski patrolman who does not receive compensation for those services, other than meals or lodging or the use of ski tow or ski lift facilities.

(f) A person employed by a ski lift operator to work at a snow ski area who is relieved of, and is not performing any, prescribed duties, while participating in recreational activities on his or her own initiative.

(g) A person, other than a regular employee, participating in sports or athletics who does not receive compensation for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, or other expenses incidental thereto.

(h) A person described in subdivision (d) of Section 3351 whose employment by the employer to be held liable, during the 90 calendar days immediately preceding the date of injury, for injuries

as described in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury, for diseases or injuries as described in Section 5412, comes within either of the following descriptions:

(1) The employment was, or was contracted to be, for less than 52 hours.

(2) The employment was, or was contracted to be, for wages of not more than one hundred dollars (\$100).

(i) A person performing voluntary service for a public agency or a private, nonprofit organization who does not receive remuneration for the services, other than meals, transportation, lodging, or reimbursement for incidental expenses.

(j) A person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by a public agency or private, nonprofit organization, who does not receive remuneration for these services, other than a stipend for each day of service no greater than the amount established by the Department of Human Resources as a per diem expense for employees or officers of the state. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

(k) A student participating as an athlete in amateur sporting events sponsored by a public agency or public or private nonprofit college, university, or school, who does not receive remuneration for the participation, other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

(l) A law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

(m) A law enforcement officer who is regularly employed by the Oregon State Police, the Nevada Department of Motor Vehicles and Public Safety, or the Arizona Department of Public Safety and who is acting as a peace officer in this state pursuant to subdivision (a) of Section 830.39 of the Penal Code.

(n) A person, other than a regular employee, performing services as a sports official for an entity sponsoring an intercollegiate or interscholastic sports event, or any person performing services as a sports official for a public agency, public entity, or a private nonprofit organization, which public agency, public entity, or private nonprofit organization sponsors an amateur sports event. For purposes of this subdivision, “sports official” includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sports event.

(o) A person who is an owner-builder, as defined in subdivision (a) of Section 50692 of the Health and Safety Code, who is participating in a mutual self-help housing program, as defined in Section 50087 of the Health and Safety Code, sponsored by a nonprofit corporation.

(p) An officer or member of the board of directors, as described in subdivision (c) of Section 3351, if he or she owns at least 15 percent of the issued and outstanding stock of the corporation and executes a written waiver of his or her rights under this chapter stating under penalty of perjury that the person is a qualifying officer or director. The waiver shall be effective upon the date of receipt and acceptance by the corporation’s insurance carrier and shall remain effective until the officer or member of the board of directors provides the insurance carrier with a written withdrawal of the waiver.

(q) An individual who is a general partner of a partnership or a managing member of a limited liability company who executes a written waiver of his or her rights under this chapter stating under penalty of perjury that the person is a qualifying general partner or managing member. The waiver shall be effective upon the date of receipt and acceptance by the partnership or limited liability company’s insurance carrier and shall remain effective until the general partner or managing member provides the insurance carrier with a written withdrawal of the waiver.

SEC. 3. Section 6354.7 of the Labor Code, as added by Section 84 of Chapter 6 of the Statutes of 2002, is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

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

Approved _____, 2016

Governor