

ASSEMBLY BILL

No. 2896

Introduced by Committee on Labor and Employment (Assembly Members Roger Hernández (Chair), Chu, Low, McCarty, Patterson, and Thurmond)

March 1, 2016

An act to amend Section 1684 of the Labor Code, relating to private employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2896, as introduced, Committee on Labor and Employment. Farm labor contractors: license: payment.

Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. Existing law requires farm labor contractors to pay license fees to the Labor Commissioner, and continuously appropriates a portion of the fee revenues from the Farmworker Remedial Account for enforcement and verification purposes.

This bill would authorize the Labor Commissioner to accept a credit card charge as a method of payment for those license fees, as provided.

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

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

1 SECTION 1. Section 1684 of the Labor Code is amended to
2 read:

1 1684. (a) The Labor Commissioner shall not issue to any
2 person a license to act as a farm labor contractor, nor shall the
3 Labor Commissioner renew that license, until all of the following
4 conditions are satisfied:

5 (1) The person has executed a written application in a form
6 prescribed by the Labor Commissioner, subscribed and sworn to
7 by the person, and containing all of the following:

8 (A) A statement by the person of all facts required by the Labor
9 Commissioner concerning the applicant's character, competency,
10 responsibility, and the manner and method by which the person
11 proposes to conduct operations as a farm labor contractor if the
12 license is issued.

13 (B) The names and addresses of all persons, except bona fide
14 employees on stated salaries, financially interested, either as
15 partners, associates, or profit sharers, in the proposed operation as
16 a farm labor contractor, together with the amount of their respective
17 interests.

18 (C) A declaration consenting to the designation by a court of
19 the Labor Commissioner as an agent available to accept service
20 of summons in any action against the licensee if the licensee has
21 left the jurisdiction in which the action is commenced or otherwise
22 has become unavailable to accept service.

23 (D) The names and addresses of all persons who in the previous
24 calendar year performed any services described in subdivision (b)
25 of Section 1682 within the scope of his or her employment by the
26 licensee on whose behalf he or she was acting, unless the person
27 was employed as an independent contractor.

28 (2) The Labor Commissioner, after investigation, is satisfied as
29 to the character, competency, and responsibility of the person.

30 (3) (A) The person has deposited with the Labor Commissioner
31 a surety bond in an amount based on the size of the person's annual
32 payroll for all employees, as follows:

33 (i) For payrolls up to five hundred thousand dollars (\$500,000),
34 a twenty-five-thousand-dollar (\$25,000) bond.

35 (ii) For payrolls of five hundred thousand dollars (\$500,000) to
36 two million dollars (\$2,000,000), a fifty-thousand-dollar (\$50,000)
37 bond.

38 (iii) For payrolls greater than two million dollars (\$2,000,000),
39 a seventy-five-thousand-dollar (\$75,000) bond.

1 (B) For purposes of this paragraph, the Labor Commissioner
2 shall require documentation of the size of the person's annual
3 payroll which may include, but is not limited to, information
4 provided by the person to the Employment Development
5 Department, the Franchise Tax Board, the Division of Workers'
6 Compensation, the insurer providing the licensee's workers'
7 compensation insurance, or the Internal Revenue Service.

8 (C) If the contractor has been the subject of a final judgment in
9 a year in an amount equal to or greater than the amount of the bond
10 required, he or she shall be required to deposit an additional bond
11 within 60 days.

12 (D) All bonds required under this chapter shall be payable to
13 the people of the State of California and shall be conditioned upon
14 the farm labor contractor's compliance with all the terms and
15 provisions of this chapter and subdivisions (j) and (k) of Section
16 12940 of, and Sections 12950 and 12950.1 of, the Government
17 Code, and payment of all damages occasioned to any person by
18 failure to do so, or by any violation of this chapter or of subdivision
19 (j) or (k) of Section 12940 of, or of Section 12950 or 12950.1 of,
20 the Government Code, or any violation of Title VII of the Civil
21 Rights Act of 1964 (Public Law 88-352), or false statements or
22 misrepresentations made in the procurement of the license. The
23 bond shall also be payable for interest on wages and for any
24 damages arising from violation of orders of the Industrial Welfare
25 Commission, and for any other monetary relief awarded to an
26 agricultural worker as a result of a violation of this code or of
27 subdivision (j) or (k) of Section 12940 of, or Section 12950 or
28 12950.1 of, the Government Code, or any violation of Title VII
29 of the Civil Rights Act of 1964 (Public Law 88-352).

30 (4) (A) The person has paid to the Labor Commissioner a license
31 fee of five hundred dollars (\$500) plus a filing fee of ten dollars
32 (\$10). However, when a timely application for renewal is filed,
33 the ten-dollar (\$10) filing fee is not required. The license fee shall
34 increase by one hundred dollars (\$100), to six hundred dollars
35 (\$600), on January 1, 2015. The amount attributable to this increase
36 shall be expended by the Labor Commissioner to fund the Farm
37 Labor Contractor Enforcement Unit and the Farm Labor Contractor
38 License Verification Unit. Notwithstanding Section 1698, no
39 portion of that increase shall be credited to the General Fund. The
40 Labor Commissioner shall deposit one hundred fifty dollars (\$150)

1 of each licensee's annual license fee into the Farmworker Remedial
2 Account. Funds from this account shall be disbursed by the Labor
3 Commissioner only to persons determined by the Labor
4 Commissioner to have been damaged by any licensee if the damage
5 exceeds the amount of the licensee's bond or the surety fails to
6 pay the full amount of the licensee's bond, or to persons determined
7 by the Labor Commissioner to have been damaged by an
8 unlicensed farm labor contractor. In making these determinations,
9 the Labor Commissioner shall disburse funds from the Farmworker
10 Remedial Account to satisfy claims against farm labor contractors
11 or unlicensed farm labor contractors, which shall also include
12 interest on wages and any damages arising from the violation of
13 orders of the Industrial Welfare Commission, for any other
14 monetary relief awarded to an agricultural worker as a result of a
15 violation of this code, and for all damages arising from any
16 violation of subdivision (j) or (k) of Section 12940 of, or of Section
17 12950 or 12950.1 of, the Government Code, or any violation of
18 Title VII of the Civil Rights Act of 1964 (Public Law 88-352).
19 The Labor Commissioner may disburse funds from the Farmworker
20 Remedial Account to farm labor contractors, for payment of
21 farmworkers, when a contractor is unable to pay farmworkers due
22 to the failure of a grower or packer to pay the contractor. Any
23 disbursed funds subsequently recovered by the Labor
24 Commissioner pursuant to Section 1693, or otherwise, shall be
25 returned to the Farmworker Remedial Account.

26 *(B) The Labor Commissioner may accept a credit card charge*
27 *as a method of payment for the license fees described in*
28 *subparagraph (A). Any contract executed by the Labor*
29 *Commissioner with credit card issuers or draft purchasers shall*
30 *be consistent with Section 6159 of the Government Code. The*
31 *terms "credit card" and "draft purchaser" shall have the same*
32 *meaning as those terms are defined in Section 6159 of the*
33 *Government Code.*

34 (5) The person has taken a written examination that demonstrates
35 an essential degree of knowledge of the current laws and
36 administrative regulations concerning farm labor contractors as
37 the Labor Commissioner deems necessary for the safety and
38 protection of farmers, farmworkers, and the public, including the
39 identification and prevention of sexual harassment in the
40 workplace. To successfully complete the examinations, the person

1 must correctly answer at least 85 percent of the questions posed.
2 The examination period shall not exceed four hours. The
3 examination may only be taken a maximum of three times in a
4 calendar year. The examinations shall include a demonstration of
5 knowledge of the current laws and regulations regarding wages,
6 hours, and working conditions, penalties, employee housing and
7 transportation, collective bargaining, field sanitation, and safe
8 work practices related to pesticide use, including all of the
9 following subjects:

- 10 (A) Field reentry regulations.
11 (B) Worker pesticide safety training.
12 (C) Employer responsibility for safe working conditions.
13 (D) Symptoms and appropriate treatment of pesticide poisoning.
14 (6) The person has registered as a farm labor contractor pursuant
15 to the federal Migrant and Seasonal Agricultural Worker Protection
16 Act (29 U.S.C. Sec. 1801 et seq.), when registration is required
17 pursuant to federal law, and that information is provided by the
18 person to the Labor Commissioner.
19 (7) Each of the person's employees has registered as a farm
20 labor contractor employee pursuant to the federal Migrant and
21 Seasonal Agricultural Worker Protection Act (29 U.S.C. Sec. 1801
22 et seq.) if that registration is required pursuant to federal law, and
23 that information is provided by the person to the Labor
24 Commissioner.
25 (8) (A) The person has executed a written statement, that has
26 been provided to the Labor Commissioner, attesting that the
27 person's supervisory employees, including any supervisor,
28 crewleader, mayordomo, foreperson, or other employee whose
29 duties include the supervision, direction, or control of agricultural
30 employees, have been trained at least once for at least two hours
31 each calendar year in the prevention of sexual harassment in the
32 workplace, and that all new nonsupervisory employees, including
33 agricultural employees, have been trained at the time of hire, and
34 that all nonsupervisory employees, including agricultural
35 employees, have been trained at least once every two years in
36 identifying, preventing, and reporting sexual harassment in the
37 workplace.
38 (B) Sexual harassment prevention training shall consist of
39 training administered by a licensee or appropriate designee of the
40 licensee.

1 (C) Sexual harassment prevention training shall include, at a
2 minimum, components of the following as consistent with Section
3 12950 of the Government Code:

- 4 (i) The illegality of sexual harassment.
- 5 (ii) The definition of sexual harassment under applicable state
6 and federal law.
- 7 (iii) A description of sexual harassment, utilizing examples.
- 8 (iv) The internal complaint process of the employer available
9 to the employee.
- 10 (v) The legal remedies and complaint process available through
11 the Department of Fair Employment and Housing.
- 12 (vi) Directions for how to contact the Department of Fair
13 Employment and Housing.
- 14 (vii) The protection against retaliation provided under current
15 law.

16 (D) The trainer may use the text of the Department of Fair
17 Employment and Housing's pamphlet DFEH-185, "Sexual
18 Harassment" as a guide to training, or may use other written
19 material or other training resources covering the information
20 required in subparagraph (C).

21 (E) At the conclusion of the training, the trainer shall provide
22 the employee with a copy of the Department of Fair Employment
23 and Housing's pamphlet DFEH-185, and a record of the training
24 on a form provided by the Labor Commissioner that includes the
25 name of the trainer and the date of the training.

26 (F) The licensee shall keep a record with the names of all
27 employees who have received sexual harassment training for a
28 period of three years.

29 (b) The Labor Commissioner shall consult with the Director of
30 Pesticide Regulation, the Department of the California Highway
31 Patrol, the Department of Housing and Community Development,
32 the Employment Development Department, the Department of
33 Fair Employment and Housing, the Department of Food and
34 Agriculture, the Department of Motor Vehicles, and the Division
35 of Occupational Safety and Health in preparing the examination
36 required by paragraph (5) of subdivision (a) and the appropriate
37 educational materials pertaining to the matters included in the
38 examination, and may charge a fee of not more than two hundred
39 dollars (\$200) to cover the cost of administration of the
40 examination.

1 (c) The person shall also enroll and participate in at least nine
2 hours of relevant educational classes each year. The classes shall
3 include at least one hour of sexual harassment prevention training.
4 The classes shall be chosen from a list of approved classes prepared
5 by the Labor Commissioner, in consultation with the persons and
6 entities listed in subdivision (b) and county agricultural
7 commissioners.

8 (d) The Labor Commissioner may renew a license without
9 requiring the applicant for renewal to take the examination
10 specified in paragraph (5) of subdivision (a) if the Labor
11 Commissioner finds that the applicant meets all of the following
12 criteria:

13 (1) Has satisfactorily completed the examination during the
14 immediately preceding two years.

15 (2) Has not during the preceding year been found to be in
16 violation of any applicable laws or regulations including, but not
17 limited to, Division 7 (commencing with Section 12501) of the
18 Food and Agricultural Code, subdivisions (j) and (k) of Section
19 12940 of, and Section 12950 or 12950.1 of, the Government Code,
20 Part 1 (commencing with Section 17000) of Division 13 of the
21 Health and Safety Code, Division 2 (commencing with Section
22 200), Division 4 (commencing with Section 3200), and Division
23 5 (commencing with Section 6300) of this code, and Chapter 1
24 (commencing with Section 12500) of Division 6 of the Vehicle
25 Code.

26 (3) Has, for each year since the license was obtained, enrolled
27 and participated in at least eight hours of relevant, educational
28 classes, chosen from a list of approved classes prepared by the
29 Labor Commissioner.

30 (4) Has complied with all other requirements of this section.