

AMENDED IN SENATE AUGUST 2, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2896

**Introduced by ~~Committee on Labor and Employment~~ (Assembly
Members ~~Assembly Member 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 amended, ~~Committee on Labor and Employment~~ *Roger Hernández*. 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:

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

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

(1) The person has executed a written application in a form prescribed by the Labor Commissioner, subscribed and sworn to by the person, ~~and containing~~ *that contains* all of the following:

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

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

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

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

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

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

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

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

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

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

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

17 (D) All bonds required under this chapter shall be payable to
18 the people of the State of California and shall be conditioned upon
19 the farm labor contractor's compliance with all the terms and
20 provisions of this chapter and subdivisions (j) and (k) of Section
21 12940 of, and Sections 12950 and 12950.1 of, the Government
22 Code, and payment of all damages occasioned to any person by
23 failure to do so, or by any violation of this chapter or of subdivision
24 (j) or (k) of Section 12940 of, or of Section 12950 or 12950.1 of,
25 the Government Code, or any violation of Title VII of the Civil
26 Rights Act of 1964 (Public Law 88-352), or false statements or
27 misrepresentations made in the procurement of the license. The
28 bond shall also be payable for interest on wages and for any
29 damages arising from violation of orders of the Industrial Welfare
30 Commission, and for any other monetary relief awarded to an
31 agricultural worker as a result of a violation of this code or of
32 subdivision (j) or (k) of Section 12940 of, or Section 12950 or
33 12950.1 of, the Government Code, or any violation of Title VII
34 of the Civil Rights Act of 1964 (Public Law 88-352).

35 (4) (A) The person has paid to the Labor Commissioner a
36 license fee of five hundred dollars (\$500) plus a filing fee of ten
37 dollars (\$10). However, when a timely application for renewal is
38 filed, the ten-dollar (\$10) filing fee is not required. The license fee
39 shall increase by one hundred dollars (\$100), to six hundred dollars
40 (\$600), on January 1, 2015. The amount attributable to this increase

1 shall be expended by the Labor Commissioner to fund the Farm
2 Labor Contractor Enforcement Unit and the Farm Labor Contractor
3 License Verification Unit. Notwithstanding Section 1698, no
4 portion of that increase shall be credited to the General Fund. The
5 Labor Commissioner shall deposit one hundred fifty dollars (\$150)
6 of each licensee's annual license fee into the Farmworker Remedial
7 Account. Funds from this account shall be disbursed by the Labor
8 Commissioner only to persons determined by the Labor
9 Commissioner to have been damaged by any licensee if the damage
10 exceeds the amount of the licensee's bond or the surety fails to
11 pay the full amount of the licensee's bond, or to persons determined
12 by the Labor Commissioner to have been damaged by an
13 unlicensed farm labor contractor. In making these determinations,
14 the Labor Commissioner shall disburse funds from the Farmworker
15 Remedial Account to satisfy claims against farm labor contractors
16 or unlicensed farm labor contractors, which shall also include
17 interest on wages and any damages arising from the violation of
18 orders of the Industrial Welfare Commission, for any other
19 monetary relief awarded to an agricultural worker as a result of a
20 violation of this code, and for all damages arising from any
21 violation of subdivision (j) or (k) of Section 12940 of, or of Section
22 12950 or 12950.1 of, the Government Code, or any violation of
23 Title VII of the Civil Rights Act of 1964 (Public Law 88-352).
24 The Labor Commissioner may disburse funds from the Farmworker
25 Remedial Account to farm labor contractors, for payment of
26 farmworkers, when a contractor is unable to pay farmworkers due
27 to the failure of a grower or packer to pay the contractor. Any
28 disbursed funds subsequently recovered by the Labor
29 Commissioner pursuant to Section 1693, or otherwise, shall be
30 returned to the Farmworker Remedial Account.

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

39 (5) The person has taken a written examination that demonstrates
40 an essential degree of knowledge of the current laws and

1 administrative regulations concerning farm labor contractors as
2 the Labor Commissioner deems necessary for the safety and
3 protection of farmers, farmworkers, and the public, including the
4 identification and prevention of sexual harassment in the
5 workplace. To successfully complete the examinations, the person
6 must correctly answer at least 85 percent of the questions posed.
7 The examination period shall not exceed four hours. The
8 examination may only be taken a maximum of three times in a
9 calendar year. The examinations shall include a demonstration of
10 knowledge of the current laws and regulations regarding wages,
11 hours, and working conditions, penalties, employee housing and
12 transportation, collective bargaining, field sanitation, and safe
13 work practices related to pesticide use, including all of the
14 following subjects:

15 (A) Field reentry regulations.

16 (B) Worker pesticide safety training.

17 (C) Employer responsibility for safe working conditions.

18 (D) Symptoms and appropriate treatment of pesticide poisoning.

19 (6) The person has registered as a farm labor contractor pursuant
20 to the federal Migrant and Seasonal Agricultural Worker Protection
21 Act (29 U.S.C. Sec. 1801 et seq.), when registration is required
22 pursuant to federal law, and that information is provided by the
23 person to the Labor Commissioner.

24 (7) Each of the person's employees has registered as a farm
25 labor contractor employee pursuant to the federal Migrant and
26 Seasonal Agricultural Worker Protection Act (29 U.S.C. Sec. 1801
27 et seq.) if that registration is required pursuant to federal law, and
28 that information is provided by the person to the Labor
29 Commissioner.

30 (8) (A) The person has executed a written statement, that has
31 been provided to the Labor Commissioner, attesting that the
32 person's supervisory employees, including any supervisor,
33 crewleader, mayordomo, foreperson, or other employee whose
34 duties include the supervision, direction, or control of agricultural
35 employees, have been trained at least once for at least two hours
36 each calendar year in the prevention of sexual harassment in the
37 workplace, and that all new nonsupervisory employees, including
38 agricultural employees, have been trained at the time of hire, and
39 that all nonsupervisory employees, including agricultural
40 employees, have been trained at least once every two years in

1 identifying, preventing, and reporting sexual harassment in the
2 workplace.

3 (B) Sexual harassment prevention training shall consist of
4 training administered by a licensee or appropriate designee of the
5 licensee.

6 (C) Sexual harassment prevention training shall include, at a
7 minimum, components of the following as consistent with Section
8 12950 of the Government Code:

9 (i) The illegality of sexual harassment.

10 (ii) The definition of sexual harassment under applicable state
11 and federal law.

12 (iii) A description of sexual harassment, utilizing examples.

13 (iv) The internal complaint process of the employer available
14 to the employee.

15 (v) The legal remedies and complaint process available through
16 the Department of Fair Employment and Housing.

17 (vi) Directions for how to contact the Department of Fair
18 Employment and Housing.

19 (vii) The protection against retaliation provided under current
20 law.

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

26 (E) At the conclusion of the training, the trainer shall provide
27 the employee with a copy of the Department of Fair Employment
28 and Housing's pamphlet DFEH-185, and a record of the training
29 on a form provided by the Labor Commissioner that includes the
30 name of the trainer and the date of the training.

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

34 (b) The Labor Commissioner shall consult with the Director of
35 Pesticide Regulation, the Department of the California Highway
36 Patrol, the Department of Housing and Community Development,
37 the Employment Development Department, the Department of
38 Fair Employment and Housing, the Department of Food and
39 Agriculture, the Department of Motor Vehicles, and the Division
40 of Occupational Safety and Health in preparing the examination

1 required by paragraph (5) of subdivision (a) and the appropriate
2 educational materials pertaining to the matters included in the
3 examination, and may charge a fee of not more than two hundred
4 dollars (\$200) to cover the cost of administration of the
5 examination.

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

13 (d) The Labor Commissioner may renew a license without
14 requiring the applicant for renewal to take the examination
15 specified in paragraph (5) of subdivision (a) if the Labor
16 Commissioner finds that the applicant meets all of the following
17 criteria:

18 (1) Has satisfactorily completed the examination during the
19 immediately preceding two years.

20 (2) Has not during the preceding year been found to be in
21 violation of any applicable laws or regulations including, but not
22 limited to, Division 7 (commencing with Section 12501) of the
23 Food and Agricultural Code, subdivisions (j) and (k) of Section
24 12940 of, and Section 12950 or 12950.1 of, the Government Code,
25 Part 1 (commencing with Section 17000) of Division 13 of the
26 Health and Safety Code, Division 2 (commencing with Section
27 200), Division 4 (commencing with Section 3200), and Division
28 5 (commencing with Section 6300) of this code, and Chapter 1
29 (commencing with Section 12500) of Division 6 of the Vehicle
30 Code.

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

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

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