

AMENDED IN ASSEMBLY APRIL 27, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2850

Introduced by Assembly Member Ridley-Thomas
*(Coauthors: Assembly Members Chu, Dymally, Jerome Horton,
and Koretz)*
(Coauthor: Senator Alarcon)

February 20, 2004

An act to add Chapter 4.7 (commencing with Section 1080) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2850, as amended, Ridley-Thomas. Employment: displaced private security officers.

Existing law provides for a system of labor standards enforcement administered by the Labor Commissioner.

This bill would enact the Private Security Service Assurance Act, which would require contractors and subcontractors, as defined, ~~that~~ *who* are awarded contracts or subcontracts to provide private security services at a particular job site or sites, to retain, for a period of 90 days, certain employees who were employed at that site by the previous contractor or subcontractor. This bill would require that employees retained under the bill's provisions for that 90-day period be offered continued employment if their performance during that 90-day period is satisfactory. This bill would only apply to contracts entered into on or after January 1, 2005. This bill would authorize an employee who was not retained in accordance with the bill's provisions, or his or her agent, to bring an enforcement action in a court of competent

jurisdiction, as specified. This bill would authorize local government agencies to enact ordinances imposing stricter standards or additional enforcement provisions.

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. Chapter 4.7 (commencing with Section 1080) is
2 added to Part 3 of Division 2 of the Labor Code, to read:

3
4 CHAPTER 4.7. PRIVATE SECURITY SERVICE ASSURANCE ACT
5

6 1080. The following definitions ~~shall~~ apply throughout this
7 chapter:

8 (a) "Awarding authority" means any person who awards or
9 otherwise enters into contracts for private security services
10 performed within the State of California, including any
11 subcontracts for private security services.

12 (b) "Contractor" means any person who employs individuals
13 and who enters into a service contract with the awarding authority.

14 (c) "Employee" means any licensed security employee of a
15 contractor or subcontractor and who works at least 15 hours per
16 week and whose primary place of employment is in the State of
17 California under a contract to provide private security services.
18 "Employee" does not include a person who is a managerial,
19 supervisory, or confidential employee, including those employees
20 who would be so defined under the federal Fair Labor Standards
21 Act.

22 (d) "Licensed security officer" means a person registered as a
23 security guard pursuant to Chapter 11.5 (commencing with
24 Section 7580) of Division 3 of the Business and Professions Code.

25 (e) "Person" means any individual, proprietorship,
26 partnership, joint venture, corporation, limited liability company,
27 trust, association, or other entity that may employ individuals or
28 enter into contracts.

29 (f) "Service contract" means any contract that has the
30 principal purpose of providing services through the use of service
31 employees.



1 (g) “Subcontractor” means any person who is not an employee
2 who enters into a contract with a contractor to assist the contractor
3 in performing a service contract.

4 (h) “Successor service contract” means a service contract for
5 the performance of essentially the same services as were
6 previously performed pursuant to a different service contract at the
7 same facility that terminated within the previous 30 days. A
8 service contract entered into more than 30 days after the
9 termination of a predecessor service contract shall be considered
10 a “successor service contract” if its execution was delayed for the
11 purpose of avoiding application of this chapter.

12 1081. (a) (1) If an awarding authority notifies a contractor
13 that the service contract between the awarding authority and the
14 contractor has been terminated or will be terminated, the awarding
15 authority shall indicate in that notification whether a successor
16 service contract has been or will be awarded in its place and, if so,
17 shall identify the name and address of the successor contractor.
18 The terminated contractor shall, within three working days after
19 receiving that notification, provide to the successor contractor
20 identified by the awarding authority, the name, date of hire, and job
21 classification of each employee employed at the site or sites
22 covered by the terminated service contract at the time of the
23 contract termination.

24 (2) If the terminated contractor has not learned the identity of
25 the successor contractor, if any, the terminated contractor shall
26 provide that information to the awarding authority, which shall be
27 responsible for providing that information to the successor
28 contractor as soon as that contractor has been selected.

29 (3) The requirements of this section shall be equally applicable
30 to all subcontractors of a terminated contractor.

31 (b) (1) A successor contractor or successor subcontractor shall
32 retain, for a 90-day transition employment period, employees who
33 have been employed by the terminated contractor or its
34 subcontractors, if any, for the preceding four months or longer at
35 the site or sites covered by the successor service contract unless the
36 successor contractor or successor subcontractor has reasonable
37 and substantiated cause not to hire a particular employee based on
38 that employee’s performance or conduct while working under the
39 terminated contract. This requirement shall be stated by awarding



1 authorities in all initial bid packages that are governed by this
2 chapter.

3 (2) The successor contractor or successor subcontractor shall
4 make a written offer of employment to each employee, as required
5 by this section, in the employee's primary language or another
6 language in which the employee is literate. That offer shall state
7 the time within which the employee must accept that offer, but in
8 no case may that time be less than 10 days. Nothing in this section
9 requires the successor contractor or successor subcontractor to pay
10 the same wages or offer the same benefits as were provided by the
11 prior contractor or prior subcontractor.

12 (3) If at any time the successor contractor or successor
13 subcontractor determines that fewer employees are needed to
14 perform services under the successor service contract or successor
15 subcontract than were required by the terminated contractor under
16 the terminated contract or terminated subcontract, the successor
17 contractor or successor subcontractor shall retain employees by
18 seniority within the job classification.

19 (c) The successor contractor or successor subcontractor, upon
20 commencing service under the successor service contract, shall
21 provide a list of its employees and a list of employees of its
22 subcontractors providing services at the site or sites covered under
23 that contract to the awarding authority. These lists shall indicate
24 which of these employees were employed at the site or sites by the
25 terminated contractor or terminated subcontractor. The successor
26 contractor or successor subcontractor shall also provide a list of
27 any of the terminated contractor's employees who were not
28 retained either by the successor contractor or successor
29 subcontractor, stating the reason these employees were not
30 retained.

31 (d) During the 90-day transition employment period, the
32 successor contractor or successor subcontractor shall maintain a
33 preferential hiring list of eligible covered employees not retained
34 by the successor contractor or successor subcontractor from which
35 the successor contractor or successor subcontractor shall hire
36 additional employees until such time as all of the terminated
37 contractor's or terminated subcontractor's employees have been
38 offered employment with the successor contractor or successor
39 subcontractor.



1 (e) During the initial 90-day transition employment period, the
2 successor contractor or successor subcontractor shall not
3 discharge without cause an employee retained pursuant to this
4 chapter. Cause shall be based only on the performance or conduct
5 of the particular employee.

6 (f) At the end of the 90-day transition employment period, a
7 successor contractor or successor subcontractor shall provide a
8 written performance evaluation to each employee retained
9 pursuant to this chapter. If the employee's performance during that
10 90-day period is satisfactory, the successor contractor or successor
11 subcontractor shall offer the employee continued employment.
12 Any employment after the 90-day transition employment period
13 shall be at-will employment under which the employee may be
14 terminated without cause.

15 1082. (a) An employee, who was not offered employment or
16 who has been discharged in violation of this chapter by a successor
17 contractor or successor subcontractor, or an agent of the employee
18 may bring an action against a successor contractor or successor
19 subcontractor in any superior court of the State of California
20 having jurisdiction over the successor contractor or successor
21 subcontractor. Upon finding a violation of this chapter, the court
22 shall award backpay, including the value of benefits, for each day
23 during which the violation has occurred and continues to occur.
24 The amount of backpay shall be calculated as the greater of either
25 of the following:

26 (1) The average regular rate of pay received by the employee
27 during the last three years of the employee's employment in the
28 same occupation classification multiplied by the average hours
29 worked during the last three years of the employee's employment.

30 (2) The final regular rate of pay received by the employee at the
31 time of termination of the predecessor contract multiplied by the
32 number of hours usually worked by the employee.

33 (b) The court may order a preliminary or permanent injunction
34 to stop the continued violation of this chapter.

35 (c) If the employee is the prevailing party in the legal action, the
36 court shall award the employee reasonable attorney's fees and
37 costs as part of the costs recoverable.

38 (d) In the absence of a claim by an employee that he or she was
39 terminated in violation of this chapter, an employee may not



1 maintain a cause of action under this chapter solely for the failure
2 of an employer to provide a written performance evaluation.

3 1083. (a) This chapter applies only to contracts entered into
4 on or after January 1, 2005.

5 (b) Except for the obligations specified in subdivisions (a) and
6 (b) of Section 1081, nothing in this chapter changes or increases
7 the relationship or duties of a property owner or an awarding
8 authority, or their agents, with respect to contractors,
9 subcontractors, or their employees.

10 (c) Nothing in this chapter limits the right of a property owner
11 or an awarding authority to terminate a service contract or to
12 replace a contractor with another contractor or with the property
13 owner's or awarding authority's own employees.

14 1084. Nothing in this chapter shall prohibit a local
15 government agency from enacting ordinances relating to displaced
16 private security officers that impose greater standards than, or
17 establish additional enforcement provisions to, those prescribed
18 by this chapter.

19 1085. If any provision or provisions of this chapter or any
20 application thereof is held invalid, that invalidity shall not affect
21 any other provisions or applications of this chapter that can be
22 given effect notwithstanding that invalidity.

