

**Assembly Bill No. 2850**

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Passed the Assembly    May 17, 2004

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*Chief Clerk of the Assembly*

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Passed the Senate    August 24, 2004

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2004, at \_\_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

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, 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, 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.

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

SECTION 1. Chapter 4.7 (commencing with Section 1080) is added to Part 3 of Division 2 of the Labor Code, to read:

## CHAPTER 4.7. PRIVATE SECURITY SERVICE ASSURANCE ACT

1080. The following definitions apply throughout this chapter:

(a) "Awarding authority" means any person who awards or otherwise enters into contracts for private security services



performed within the State of California, including any subcontracts for private security services.

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

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

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

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

(f) “Service contract” means any contract that has the principal purpose of providing services through the use of service employees.

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

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

1081. (a) (1) If an awarding authority notifies a contractor that the service contract between the awarding authority and the contractor has been terminated or will be terminated, the awarding authority shall indicate in that notification whether a successor service contract has been or will be awarded in its place and, if so, shall identify the name and address of the successor contractor. The terminated contractor shall, within three working days after



receiving that notification, provide to the successor contractor identified by the awarding authority, the name, date of hire, and job classification of each employee employed at the site or sites covered by the terminated service contract at the time of the contract termination.

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

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

(b) (1) A successor contractor or successor subcontractor shall retain, for a 90-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding four months or longer at the site or sites covered by the successor service contract unless the successor contractor or successor subcontractor has reasonable and substantiated cause not to hire a particular employee based on that employee's performance or conduct while working under the terminated contract. This requirement shall be stated by awarding authorities in all initial bid packages that are governed by this chapter.

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

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



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

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

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

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

1082. (a) An employee, who was not offered employment or who has been discharged in violation of this chapter by a successor contractor or successor subcontractor, or an agent of the employee may bring an action against a successor contractor or successor subcontractor in any superior court of the State of California



having jurisdiction over the successor contractor or successor subcontractor. Upon finding a violation of this chapter, the court shall award backpay, including the value of benefits, for each day during which the violation has occurred and continues to occur. The amount of backpay shall be calculated as the greater of either of the following:

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

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

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

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

(d) In the absence of a claim by an employee that he or she was terminated in violation of this chapter, an employee may not maintain a cause of action under this chapter solely for the failure of an employer to provide a written performance evaluation.

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

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

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

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

1085. If any provision or provisions of this chapter or any application thereof is held invalid, that invalidity shall not affect



any other provisions or applications of this chapter that can be given effect notwithstanding that invalidity.



Approved \_\_\_\_\_, 2004

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*Governor*

