

AMENDED IN ASSEMBLY APRIL 17, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 332

**Introduced by Assembly Member Hall
(Coauthor: Assembly Member Bloom)**

February 13, 2013

An act to add Section 6720 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 332, as amended, Hall. Occupational safety and health: adult films.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime.

This bill would require an employer engaged in the production of an adult film to adopt prescribed practices and procedures to protect employees from exposure to, and infection by, sexually transmitted diseases, including engineering and work practice controls, an exposure control plan, hepatitis B vaccinations, medical monitoring, and information and training on health and safety. The bill would define terms for those purposes. The bill would require the Occupational Safety and Health Standards Board to adopt ~~emergency~~ regulations to implement these provisions by ~~July 1, 2014~~ *January 1, 2015*. Because a violation of the act would be a crime under certain circumstances, the bill would impose a state-mandated local program by creating a new crime.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 6720 is added to the Labor Code, to read:

2 6720. (a) The Legislature finds and declares that the protection
3 of workers in the adult film industry is the responsibility of multiple
4 layers of government, with the department being responsible for
5 worker safety and the county being responsible for protecting the
6 public health. Therefore, this section shall not be construed to
7 prohibit a city, county, or city and county from implementing a
8 local ordinance regulating the adult film ~~industry if the local~~
9 ~~ordinance is consistent with this section~~ *industry, provided that*
10 *nothing in the local ordinance contradicts any provision of this*
11 *section.*

12 (b) For purposes of this section, the following definitions shall
13 apply:

14 (1) "Adult film" means the production of any film, video,
15 multimedia, or other recorded representation of sexual intercourse
16 for the sexual stimulation of the viewer that may involve exposure
17 to bloodborne pathogens or other potentially infectious materials.

18 (2) "Employee" means a person who is an ~~employee,~~
19 ~~independent contractor, or unpaid individual~~ *employee or*
20 *independent contractor*, regardless of whether the person is shown
21 in the adult film, who performs a penetrative sexual act or an act
22 for the sexual stimulation of the viewer that involves exposure to
23 bloodborne pathogens or other potentially infectious materials.

24 (3) "Employer" means a company, partnership, corporation, or
25 individual engaged in the production of an adult film. There shall
26 be a rebuttable presumption that the name on the material for
27 commercial distribution is the employer unless there is evidence
28 to the contrary as demonstrated through contractual or employment
29 records.

1 (4) “Sexually transmitted disease” or “STD” means any infection
2 commonly spread by sexual conduct, including, but not limited
3 to, HIV/AIDS, gonorrhea, syphilis, chlamydia, hepatitis, genital
4 human papillomavirus infection, and genital herpes.

5 (c) An employer shall maintain engineering and work practice
6 controls sufficient to protect employees from exposure to blood
7 and any potentially infectious materials, *in accordance with Section*
8 *5193 of Title 8 of the California Code of Regulations*. Engineering
9 and work practice controls shall include, but are not limited to, the
10 following:

11 (1) Simulation of sex acts using acting, production, and
12 postproduction techniques.

13 (2) Provision of and required use of condoms and other
14 protective barriers whenever acts of vaginal or anal intercourse
15 are filmed.

16 (3) The provision of condom-safe water-based or silicone-based
17 lubricants to facilitate the use of condoms.

18 (4) Plastic and other disposable materials to clean up sets.

19 (5) Sharps containers for disposal of *contaminated sharps*,
20 *including, but not limited to*, any blades, wires, or broken glass.

21 (d) An employer shall maintain an exposure control plan in
22 accordance with Section 5193 of Title 8 of the California Code of
23 Regulations. An employer shall not be required to comply with
24 any provision related to establishing and maintaining a sharps
25 injury log, *or any provision regarding regulated waste*.

26 (e) An employer shall make available the hepatitis B vaccination
27 *and all medical followup required by Section 5193 of Title 8 of*
28 *the California Code of Regulations*, for any employee engaged
29 in the production of adult films, at the employer’s expense.

30 (f) An employer shall designate a custodian of records for
31 purposes of this section. A copy of the original production shall
32 be retained by the custodian of records.

33 (g) An employer shall pay the costs of required medical
34 monitoring such as STD testing and keep confidential employee
35 records.

36 (h) (1) An employer shall adopt, implement, maintain, and
37 update, as required, a written health and safety program ~~that is~~
38 ~~approved by the department and~~ that meets the requirements of
39 the Injury and Illness Prevention Program and the bloodborne

1 pathogens standard, described, respectively, in Sections 3203 and
2 5193 of Title 8 of the California Code of Regulations.

3 (2) An employer shall provide ~~department-approved information~~
4 ~~and training on health and safety to employees at the employer's~~
5 ~~expense. The training program shall be provided a training~~
6 *program* in accordance with Section 5193 of Title 8 of the
7 California Code of Regulations. The training requirements of this
8 subdivision may be satisfied by proof that the employee has
9 received appropriate training at another workplace or from an
10 appropriate third party approved by the department in the prior 12
11 months.

12 (i) ~~By July 1, 2014~~ *January 1, 2015*, the Occupational Safety
13 and Health Standards Board shall adopt ~~emergency~~ regulations to
14 implement this section in accordance with the rulemaking
15 provisions of the Administrative Procedure Act (Chapter 3.5
16 (commencing with Section 11340) of Part 1 of Division 3 of Title
17 2 of the Government Code).

18 (j) This section shall not be construed to require condoms,
19 barriers, or other personal protective equipment to be visible in
20 the final product of an adult film.

21 (k) *The Legislature finds and declares that screening for STDs*
22 *is a critical public health measure and should be employed*
23 *wherever possible, including the adult film industry. Therefore,*
24 *this section shall not be construed to impede or replace STD*
25 *screening of all employees, as defined in paragraph (2) of*
26 *subdivision (b), pursuant to STD screening protocols established*
27 *by the federal Centers for Disease Control and Prevention, the*
28 *State Department of Public Health, and the public health*
29 *department in the county where the filming occurs.*

30 SEC. 2. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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