

AMENDED IN ASSEMBLY MARCH 26, 2014

AMENDED IN ASSEMBLY MARCH 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1576

Introduced by Assembly Member Hall

January 30, 2014

An act to amend Sections 6319.3 and 6401.7 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1576, 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.

Existing law requires every employer to establish, implement, and maintain an effective injury prevention program. Existing law requires the program to be written, except as specified, and to include certain elements, such as the employer's system for identifying and evaluating workplace hazards and the employer's system for communicating with employees on occupational health and safety matters.

Existing regulations require each employer having an employee with occupational exposure, defined as reasonably anticipated specified contact with blood or other potentially infectious materials that may result from the performance of an employee's duties, to establish, implement, and maintain an effective exposure control plan designed to eliminate or minimize employee exposure. Existing regulations require, under specified circumstances, the employer to provide, at no

cost to the employee, appropriate personal protective equipment that does not permit blood or other potentially infectious materials to pass through to or to reach the employee, as specified.

This bill would additionally require an adult film employer's injury prevention program to include *a log of information for all scenes produced or purchased, including, but not limited to*, documentation that each time an employee performing in an adult film engaged in vaginal or anal intercourse, ~~a protective barrier~~ *personal protective equipment* was used to protect the employee from exposure to bloodborne pathogens and each employee performing in an adult film was tested for sexually transmitted infections *according to specified recommendations* not ~~less~~ *more* than 14 days prior to filming any scene in which the employee engaged in vaginal or anal intercourse and that the employer paid for the test. 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 6319.3 of the Labor Code is amended to
2 read:
3 6319.3. (a) Except as provided in subdivision (b) of this section
4 and subdivision (k) of Section 6401.7, no civil penalty shall be
5 assessed against any new employer in the state for a violation of
6 any standard developed pursuant to subdivision (a) of Section
7 6401.7 for a period of one year after the date the new employer
8 establishes a business in the state.
9 (b) Subdivision (a) shall only apply to an employer who has
10 made a good faith effort to comply with any standard developed
11 pursuant to subdivision (a) of Section 6401.7, but shall not apply
12 if the employer is found to have committed a serious, willful, or
13 repeated violation of that standard, or fails to abate the violation
14 and is assessed a penalty pursuant to Section 6430.

1 SEC. 2. Section 6401.7 of the Labor Code is amended to read:

2 6401.7. (a) Every employer shall establish, implement, and
3 maintain an effective injury prevention program. The program
4 shall be written, except as provided in subdivision (e), and shall
5 include, but not be limited to, the following elements:

6 (1) Identification of the person or persons responsible for
7 implementing the program.

8 (2) The employer's system for identifying and evaluating
9 workplace hazards, including scheduled periodic inspections to
10 identify unsafe conditions and work practices.

11 (3) The employer's methods and procedures for correcting
12 unsafe or unhealthy conditions and work practices in a timely
13 manner.

14 (4) An occupational health and safety training program designed
15 to instruct employees in general safe and healthy work practices
16 and to provide specific instruction with respect to hazards specific
17 to each employee's job assignment.

18 (5) The employer's system for communicating with employees
19 on occupational health and safety matters, including provisions
20 designed to encourage employees to inform the employer of
21 hazards at the worksite without fear of reprisal.

22 (6) The employer's system for ensuring that employees comply
23 with safe and healthy work practices, which may include
24 disciplinary action.

25 (b) The employer shall correct unsafe and unhealthy conditions
26 and work practices in a timely manner based on the severity of the
27 hazard.

28 (c) The employer shall train all employees when the training
29 program is first established, all new employees, and all employees
30 given a new job assignment, and shall train employees whenever
31 new substances, processes, procedures, or equipment are introduced
32 to the workplace and represent a new hazard, and whenever the
33 employer receives notification of a new or previously unrecognized
34 hazard. An employer in the construction industry who is required
35 to be licensed under Chapter 9 (commencing with Section 7000)
36 of Division 3 of the Business and Professions Code may use
37 employee training provided to the employer's employees under a
38 construction industry occupational safety and health training
39 program approved by the division to comply with the requirements
40 of subdivision (a) relating to employee training, and shall only be

1 required to provide training on hazards specific to an employee's
2 job duties.

3 (d) The employer shall keep appropriate records of steps taken
4 to implement and maintain the program. An employer in the
5 construction industry who is required to be licensed under Chapter
6 9 (commencing with Section 7000) of Division 3 of the Business
7 and Professions Code may use records relating to employee training
8 provided to the employer in connection with an occupational safety
9 and health training program approved by the division to comply
10 with this subdivision, and shall only be required to keep records
11 of those steps taken to implement and maintain the program with
12 respect to hazards specific to an employee's job duties.

13 (e) (1) The standards board shall adopt a standard setting forth
14 the employer's duties under this section, on or before January 1,
15 1991, consistent with the requirements specified in subdivisions
16 (a), (b), (c), and (d). The standards board, in adopting the standard,
17 shall include substantial compliance criteria for use in evaluating
18 an employer's injury prevention program. The board may adopt
19 less stringent criteria for employers with few employees and for
20 employers in industries with insignificant occupational safety or
21 health hazards.

22 (2) Notwithstanding subdivision (a), for employers with fewer
23 than 20 employees who are in industries that are not on a
24 designated list of high hazard industries and who have a workers'
25 compensation experience modification rate of 1.1 or less, and for
26 any employers with fewer than 20 employees who are in industries
27 that are on a designated list of low hazard industries, the board
28 shall adopt a standard setting forth the employer's duties under
29 this section consistent with the requirements specified in
30 subdivisions (a), (b), and (c), except that the standard shall only
31 require written documentation to the extent of documenting the
32 person or persons responsible for implementing the program
33 pursuant to paragraph (1) of subdivision (a), keeping a record of
34 periodic inspections pursuant to paragraph (2) of subdivision (a),
35 and keeping a record of employee training pursuant to paragraph
36 (4) of subdivision (a). To any extent beyond the specifications of
37 this subdivision, the standard shall not require the employer to
38 keep the records specified in subdivision (d).

39 (3) (A) The division shall establish a list of high hazard
40 industries using the methods prescribed in Section 6314.1 for

1 identifying and targeting employers in high hazard industries. For
2 purposes of this subdivision, the “designated list of high hazard
3 industries” shall be the list established pursuant to this paragraph.

4 (B) For the purpose of implementing this subdivision, the
5 Department of Industrial Relations shall periodically review, and
6 as necessary revise, the list.

7 (4) For the purpose of implementing this subdivision, the
8 Department of Industrial Relations shall also establish a list of low
9 hazard industries, and shall periodically review, and as necessary
10 revise, that list.

11 (f) The standard adopted pursuant to subdivision (e) shall
12 specifically permit employer and employee occupational safety
13 and health committees to be included in the employer’s injury
14 prevention program. The board shall establish criteria for use in
15 evaluating employer and employee occupational safety and health
16 committees. The criteria shall include minimum duties, including
17 the following:

18 (1) Review of the employer’s periodic, scheduled worksite
19 inspections; investigation of causes of incidents resulting in injury,
20 illness, or exposure to hazardous substances; and investigation of
21 any alleged hazardous condition brought to the attention of any
22 committee member. When determined necessary by the committee,
23 the committee may conduct its own inspections and investigations.

24 (2) (A) Upon request from the division, verification of
25 abatement action taken by the employer as specified in division
26 citations.

27 (B) If an employer’s occupational safety and health committee
28 meets the criteria established by the board, it shall be presumed to
29 be in substantial compliance with paragraph (5) of subdivision (a).

30 (g) The division shall adopt regulations specifying the
31 procedures for selecting employee representatives for
32 employer-employee occupational health and safety committees
33 when these procedures are not specified in an applicable collective
34 bargaining agreement. No employee or employee organization
35 shall be held liable for any act or omission in connection with a
36 health and safety committee.

37 (h) The employer’s injury prevention program, as required by
38 this section, shall cover all of the employer’s employees and all
39 other workers who the employer controls or directs and directly
40 supervises on the job to the extent these workers are exposed to

1 worksite and job assignment specific hazards. Nothing in this
2 subdivision shall affect the obligations of a contractor or other
3 employer that controls or directs and directly supervises its own
4 employees on the job.

5 (i) (1) An adult film employer's injury prevention program
6 shall include *a log of information for all scenes produced or*
7 *purchased, including, but not limited to, documentation that:*

8 (A) Each time an employee performing in an adult film engaged
9 in vaginal or anal intercourse, ~~a condom or other protective barrier~~
10 *personal protective equipment* was used to protect the employee
11 from exposure to bloodborne pathogens. This paragraph shall not
12 be construed to require that the ~~condom or other protective barrier~~
13 *personal protective equipment* be visible to the consumer in the
14 finished film.

15 (B) Each employee performing in an adult film was tested for
16 sexually transmitted infections, ~~including, but not limited to, HIV,~~
17 *according to the recommendations of the Centers for Disease*
18 *Control and Prevention and the State Department of Public Health*
19 *current at the time the testing takes place, not less more than 14*
20 *days prior to filming any scene in which the employee engaged in*
21 *vaginal or anal intercourse and that the employer paid for the test.*

22 (2) For the purposes of this subdivision, "adult film" means any
23 commercial film, video, multimedia, or other recorded
24 representation during the production of which performers actually
25 engage in sexual intercourse, including oral, vaginal, or anal
26 penetration.

27 (j) When a contractor supplies its employee to a state agency
28 employer on a temporary basis, the state agency employer may
29 assess a fee upon the contractor to reimburse the state agency for
30 the additional costs, if any, of including the contract employee
31 within the state agency's injury prevention program.

32 (k) (1) The division shall prepare a Model Injury and Illness
33 Prevention Program for Non-High-Hazard Employment, and shall
34 make copies of the model program prepared pursuant to this
35 subdivision available to employers, upon request, for posting in
36 the workplace. An employer who adopts and implements the model
37 program prepared by the division pursuant to this paragraph in
38 good faith shall not be assessed a civil penalty for the first citation
39 for a violation of this section issued after the employer's adoption
40 and implementation of the model program.

(2) For purposes of this subdivision, the division shall establish a list of non-high-hazard industries in California. These industries, identified by their Standard Industrial Classification Codes, as published by the United States Office of Management and Budget in the Manual of Standard Industrial Classification Codes, 1987 Edition, are apparel and accessory stores (Code 56), eating and drinking places (Code 58), miscellaneous retail (Code 59), finance, insurance, and real estate (Codes 60–67), personal services (Code 72), business services (Code 73), motion pictures (Code 78) except motion picture production and allied services (Code 781), legal services (Code 81), educational services (Code 82), social services (Code 83), museums, art galleries, and botanical and zoological gardens (Code 84), membership organizations (Code 86), engineering, accounting, research, management, and related services (Code 87), private households (Code 88), and miscellaneous services (Code 89). To further identify industries that may be included on the list, the division shall also consider data from a rating organization, as defined in Section 11750.1 of the Insurance Code, and all other appropriate information. The list shall be established by June 30, 1994, and shall be reviewed, and as necessary revised, biennially.

(3) The division shall prepare a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, and shall determine which industries have historically utilized seasonal or intermittent employees. An employer in an industry determined by the division to have historically utilized seasonal or intermittent employees shall be deemed to have complied with the requirements of subdivision (a) with respect to a written injury prevention program if the employer adopts the model program prepared by the division pursuant to this paragraph and complies with any instructions relating thereto.

(l) With respect to any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement, subdivision (d) shall not apply.

(m) Every workers' compensation insurer shall conduct a review, including a written report as specified below, of the injury and illness prevention program (IIPP) of each of its insureds with an experience modification of 2.0 or greater within six months of

1 the commencement of the initial insurance policy term. The review
2 shall determine whether the insured has implemented all of the
3 required components of the IIPP, and evaluate their effectiveness.
4 The training component of the IIPP shall be evaluated to determine
5 whether training is provided to line employees, supervisors, and
6 upper level management, and effectively imparts the information
7 and skills each of these groups needs to ensure that all of the
8 insured's specific health and safety issues are fully addressed by
9 the insured. The reviewer shall prepare a detailed written report
10 specifying the findings of the review and all recommended changes
11 deemed necessary to make the IIPP effective. The reviewer shall
12 be or work under the direction of a licensed California professional
13 engineer, certified safety professional, or a certified industrial
14 hygienist.

15 SEC. 3 No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.