

AMENDED IN SENATE JULY 12, 2011
AMENDED IN SENATE JUNE 23, 2011
AMENDED IN ASSEMBLY MAY 27, 2011
AMENDED IN ASSEMBLY MAY 4, 2011
AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 889

**Introduced by Assembly Members Ammiano and V. Manuel Pérez
(Coauthors: Assembly Members Allen, Cedillo, Fuentes, Ma, and
Monning)
(Coauthor: Senator De León)**

February 17, 2011

An act to amend Sections 226, 3351, 3352, 3551, 3708, and 3715 of, to repeal Section 4156 of, and to add Part 4.5 (commencing with Section 1450) to Division 2 of, the Labor Code, relating to domestic work employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 889, as amended, Ammiano. Domestic work employees.

Existing law regulates the wages, hours, and working conditions of any man, woman, and minor employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, except for individuals employed as outside salesmen and individuals participating in specified national service programs. Under existing law, the Industrial Welfare Commission within the Department

of Industrial Relations is authorized to adopt rules, regulations, and orders to ensure that employers comply with those provisions of law.

This bill would specially regulate the wages, hours, and working conditions of domestic work employees, as defined. Specifically, this bill would, among other things, provide a private right of action for a domestic work employee when those regulations are violated by his or her employer; *and* provide an overtime compensation rate for domestic work employees; ~~and require paid vacation for domestic work employees.~~ This bill would also expressly state that the provisions of Wage Order Number 15 of the Industrial Welfare Commission, with specified exceptions, apply to a domestic work employee, but would provide that these new domestic work provisions shall prevail over protections in that order or any other law that afford less protection to a domestic work employee.

Existing law requires an employer to provide its employees with specified information regarding their wages either semimonthly or at the time of each wage payment. Under existing law, this requirement does not apply to employers of persons who engage in specified types of household domestic service.

This bill would delete the exclusion for employers of persons who engage in specified types of household domestic service, thereby requiring those employers to provide the above-described information.

Existing law requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of and in the course of employment. The failure to secure workers' compensation as required by the workers' compensation law is a misdemeanor. Under existing law, employers of persons who engage in specified types of household domestic service and who work less than a specified number of hours are excluded from that definition of employer and are therefore excluded from the requirement to secure the payment of workers' compensation, as specified.

This bill would remove that exclusion and require all domestic work employers, as defined, to secure the payment of workers' compensation and would make conforming changes. By expanding the definition of a crime, this bill would impose a state-mandated local program.

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. The Legislature finds and declares all of the
2 following:
3 (a) As recognized by the State of California in Resolution
4 Chapter 119 of the Statutes of 2010, it is the policy of the state to
5 encourage and protect the rights of domestic work employees.
6 (b) California’s domestic workers, which includes housekeepers,
7 nannies, and caregivers for children, persons with disabilities, and
8 the elderly, work in private households to care for the health, safety,
9 and well-being of the most important aspects of Californians’ lives:
10 their families and homes.
11 (c) Domestic workers play a critical role in California’s
12 economy, working to ensure the health and prosperity of California
13 families and freeing others to participate in the workforce, which
14 is increasingly necessary in these difficult economic times. The
15 labor of domestic workers is central to the ongoing prosperity of
16 the state but, despite the value of their work, domestic workers
17 have not received the same protection under state laws as workers
18 in other industries. Most domestic workers labor to support families
19 and children of their own, and more than half are primary income
20 earners, but two-thirds of domestic workers earn low wages or
21 wages below the poverty line.
22 (d) Because domestic workers care for the most important
23 elements of their employers’ lives, their families and homes, it is
24 in the interest of employees, employers, and the people of the State
25 of California to ensure that the rights of domestic workers are
26 respected, protected, and enforced.
27 (e) The vast majority of domestic workers are women of color
28 and immigrants and are particularly vulnerable to unlawful
29 employment practices and abuses. Domestic workers usually work
30 alone, behind closed doors, and out of the public eye, leaving them
31 isolated, vulnerable to abuse and exploitation, and unable to
32 advocate collectively for better working conditions. Domestic
33 workers often labor under harsh conditions, work long hours for
34 low wages without benefits or job security, and face termination
35 without notice or severance pay, leaving many suddenly without

1 both a job and a home. In the worst cases, domestic workers are
2 verbally and physically abused or sexually assaulted, forced to
3 sleep in conditions unfit for human habitation, and stripped of their
4 privacy and dignity.

5 (f) Domestic workers are still excluded from the most basic
6 protections afforded the rest of the labor force under state and
7 federal law, including the rights to fair wages, safe and healthy
8 working conditions, workers' compensation, and protection from
9 discriminatory and abusive treatment. The treatment of domestic
10 workers under federal and state laws has historically reflected
11 stereotypical assumptions about the nature of domestic work,
12 specifically that the relationship between employer and "servant"
13 was "personal," rather than commercial, in character, that
14 employment within a household was not "real" productive work,
15 and that women did not work to support their families.

16 (g) Given the limited legal protections historically provided to
17 domestic workers, and bearing in mind the unique conditions and
18 demands of this private, home-based industry, the Legislature, as
19 an exercise of the police power of the State of California for the
20 protection of the public welfare, prosperity, health, safety, and
21 peace of its people, further finds that domestic workers are entitled
22 to industry-specific protections and labor standards that eliminate
23 discriminatory provisions in the labor laws and guarantee domestic
24 workers basic workplace rights to ensure that domestic workers
25 are treated with equality, respect, and dignity.

26 SEC. 2. Section 226 of the Labor Code is amended to read:

27 226. (a) Every employer shall, semimonthly or at the time of
28 each payment of wages, furnish each of his or her employees,
29 either as a detachable part of the check, draft, or voucher paying
30 the employee's wages, or separately when wages are paid by
31 personal check or cash, an accurate itemized statement in writing
32 showing (1) gross wages earned, (2) total hours worked by the
33 employee, except for any employee whose compensation is solely
34 based on a salary and who is exempt from payment of overtime
35 under subdivision (a) of Section 515 or any applicable order of
36 the Industrial Welfare Commission, (3) the number of piece-rate
37 units earned and any applicable piece rate if the employee is paid
38 on a piece-rate basis, (4) all deductions, provided that all deductions
39 made on written orders of the employee may be aggregated and
40 shown as one item, (5) net wages earned, (6) the inclusive dates

1 of the period for which the employee is paid, (7) the name of the
2 employee and his or her social security number, except that by
3 January 1, 2008, only the last four digits of his or her social security
4 number or an employee identification number other than a social
5 security number may be shown on the itemized statement, (8) the
6 name and address of the legal entity that is the employer, and (9)
7 all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the
9 employee. The deductions made from payments of wages shall be
10 recorded in ink or other indelible form, properly dated, showing
11 the month, day, and year, and a copy of the statement or a record
12 of the deductions shall be kept on file by the employer for at least
13 three years at the place of employment or at a central location
14 within the State of California.

15 (b) An employer that is required by this code or any regulation
16 adopted pursuant to this code to keep the information required by
17 subdivision (a) shall afford current and former employees the right
18 to inspect or copy the records pertaining to that current or former
19 employee, upon reasonable request to the employer. The employer
20 may take reasonable steps to assure the identity of a current or
21 former employee. If the employer provides copies of the records,
22 the actual cost of reproduction may be charged to the current or
23 former employee.

24 (c) An employer who receives a written or oral request to inspect
25 or copy records pursuant to subdivision (b) pertaining to a current
26 or former employee shall comply with the request as soon as
27 practicable, but no later than 21 calendar days from the date of the
28 request. A violation of this subdivision is an infraction.
29 Impossibility of performance, not caused by or a result of a
30 violation of law, shall be an affirmative defense for an employer
31 in any action alleging a violation of this subdivision. An employer
32 may designate the person to whom a request under this subdivision
33 will be made.

34 (d) An employee suffering injury as a result of a knowing and
35 intentional failure by an employer to comply with subdivision (a)
36 is entitled to recover the greater of all actual damages or fifty
37 dollars (\$50) for the initial pay period in which a violation occurs
38 and one hundred dollars (\$100) per employee for each violation
39 in a subsequent pay period, not exceeding an aggregate penalty of

1 four thousand dollars (\$4,000), and is entitled to an award of costs
2 and reasonable attorney’s fees.

3 (e) A failure by an employer to permit a current or former
4 employee to inspect or copy records within the time set forth in
5 subdivision (c) entitles the current or former employee or the Labor
6 Commissioner to recover a seven hundred fifty dollar (\$750)
7 penalty from the employer.

8 (f) An employee may also bring an action for injunctive relief
9 to ensure compliance with this section, and is entitled to an award
10 of costs and reasonable attorney’s fees.

11 (g) This section does not apply to the state, to any city, county,
12 city and county, district, or to any other governmental entity, except
13 that if the state or a city, county, city and county, district, or other
14 governmental entity furnishes its employees with a check, draft,
15 or voucher paying the employee’s wages, the state or a city, county,
16 city and county, district, or other governmental entity shall, by
17 January 1, 2008, use no more than the last four digits of the
18 employee’s social security number or shall use an employee
19 identification number other than the social security number on the
20 itemized statement provided with the check, draft, or voucher.

21 SEC. 3. Part 4.5 (commencing with Section 1450) is added to
22 Division 2 of the Labor Code, to read:

23
24 PART 4.5. DOMESTIC WORK EMPLOYEES

25
26 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

27
28 1450. This part shall be known and may be cited as the
29 Domestic Work Employee Equality, Fairness, and Dignity Act.

30 1451. As used in this part, the following definitions apply:

31 (a) “Domestic work” means services related to the care of
32 persons in private households or maintenance of private households
33 or their premises. Domestic work occupations include childcare
34 providers, caregivers of sick, convalescing, or elderly persons,
35 house cleaners, housekeepers, maids, and other household
36 occupations.

37 (b) (1) “Domestic work employee” means an individual who
38 performs domestic work and includes live-in domestic work
39 employees and personal attendants.

1 (2) “Domestic work employee” does not include any of the
2 following:

3 (A) Any person who performs services through the In-Home
4 Supportive Services program under Article 7 (commencing with
5 Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare
6 and Institutions Code.

7 (B) Any person who is the parent, grandparent, spouse, sibling,
8 child, or legally adopted child of the domestic work employer.

9 (C) Any person under 18 years of age who is employed as a
10 babysitter for a minor child of the domestic work employer.

11 (D) Any person employed by a licensed health facility, as
12 defined in Section 1250 of the Health and Safety Code.

13 (E) Any person who is employed by, or contracts with, an
14 organization vendored or contracted through a regional center or
15 the State Department of Developmental Services pursuant to the
16 Lanterman Developmental Disabilities Services Act (Division 4.5
17 (commencing with Section 4500) of the Welfare and Institutions
18 Code) and the California Early Intervention Services Act (Title
19 14 (commencing with Section 95000) of the Government Code)
20 to provide services and support for persons with developmental
21 disabilities, as defined in Section 4512 of the Welfare and
22 Institutions Code, when funding for those services is provided
23 through the State Department of Developmental Services.

24 (F) Any person who provides child care and who, pursuant to
25 subdivision (d) or (f) of Section 1596.792 of the Health and Safety
26 Code, is exempt from the licensing requirements of Chapters 3.4
27 (commencing with Section 1596.70), 3.5 (commencing with
28 Section 1596.90), and 3.6 (commencing with Section 1597.30) of
29 Division 2 of the Health and Safety Code, if the parent or guardian
30 of the child to whom child care is provided receives child care and
31 development services pursuant to any program authorized under
32 the Child Care and Development Services Act (Chapter 2
33 (commencing with Section 8200) of Part 6 of Division 1 of Title
34 1 of the Education Code) or the California Work Opportunity and
35 Responsibility to Kids Act (Chapter 2 (commencing with Section
36 11200) of Part 3 of Division 9 of the Welfare and Institutions
37 Code).

38 (c) (1) “Domestic work employer” means a person, including
39 corporate officers or executives, who directly or indirectly, or
40 through an agent or any other person, including through the

1 services of a third-party employer, temporary service, or staffing
2 agency or similar entity, employs or exercises control over the
3 wages, hours, or working conditions of a domestic work employee.

4 (2) “Domestic work employer” does not include any of the
5 following:

6 (A) The State of California or individuals who receive domestic
7 work services through the In-Home Supportive Services program
8 under Article 7 (commencing with Section 12300) of Chapter 3
9 of Part 3 of Division 9 of the Welfare and Institutions Code.

10 (B) An employment agency that complies with Section
11 1812.5095 of the Civil Code and that operates solely to procure,
12 offer, refer, provide, or attempt to provide work to domestic
13 workers if the relationship between the employment agency and
14 the domestic workers for whom the agency procures, offers, refers,
15 provides, or attempts to provide domestic work is characterized
16 by all of the factors listed in subdivision (b) of Section 1812.5095
17 of the Civil Code and Section 687.2 of the Unemployment
18 Insurance Code.

19 (C) A licensed health facility, as defined in Section 1250 of the
20 Health and Safety Code.

21 (d) “Emergency” means an unpredictable or unavoidable
22 occurrence of a serious nature that occurs unexpectedly requiring
23 immediate action.

24 (e) “Hours worked” means the time during which a domestic
25 work employee is subject to the control of a domestic work
26 employer, and includes all time the domestic work employee is
27 suffered or permitted to work, whether or not required to do so.

28 (f) “Live-in domestic work employee” means a domestic work
29 employee who lives in the establishment where he or she works.

30 (g) “Personal attendant” means a person who performs domestic
31 work related to the supervision, feeding, or dressing of a child or
32 other person who, by reason of advanced age, physical disability,
33 or mental deficiency, needs supervision. Personal attendant
34 includes babysitters. The status of “personal attendant” applies if
35 no significant amount of work other than the foregoing is required.

36 1452. The Division of Labor Standards Enforcement shall
37 enforce this part.

38 1453. (a) Any domestic work employee aggrieved by a
39 violation of this part may bring an administrative action pursuant

1 to Section 98 or may bring a civil action in a court of competent
2 jurisdiction against the domestic work employer violating this part.

3 (b) Upon prevailing, a domestic work employee bringing an
4 action pursuant to this section shall be entitled to any legal or
5 equitable relief as may be appropriate to remedy the violation,
6 including the payment of any back wages unlawfully withheld,
7 the payment of an additional sum as liquidated damages or
8 penalties as specified in this part, reinstatement of employment,
9 interest, or injunctive relief, or any combination of these remedies,
10 as appropriate. A domestic work employee bringing a civil action
11 pursuant to this section shall also be entitled to recover an award
12 of reasonable attorney's fees and costs, including expert witness
13 fees.

14 (c) The rights and remedies specified in this part are cumulative
15 and nonexclusive and are in addition to any other rights or remedies
16 afforded by contract or under other provisions of law. If a provision
17 of Wage Order Number 15 of the Industrial Welfare Commission
18 or any other provision of law affords less protection to a domestic
19 work employee, this part shall prevail.

20 (d) Notwithstanding any provision of this code or Section 340
21 of the Code of Civil Procedure, to commence an action for a
22 violation of this part a domestic work employee shall file an
23 administrative or civil complaint within three years of the violation.
24

25 CHAPTER 2. DOMESTIC WORK EMPLOYEE RIGHTS

26
27 1454. Except where otherwise provided in this chapter, Section
28 510 applies to a domestic work employee.

29 1455. (a) A domestic work employee who is required to be
30 on duty for 24 consecutive hours or more shall have a minimum
31 of eight consecutive hours for uninterrupted sleep, except in an
32 emergency.

33 (b) If a domestic work employee is required to be on duty for
34 24 consecutive hours or more, the domestic work employer and
35 the domestic work employee may agree in writing to exclude a
36 bona fide regularly scheduled sleeping period of not more than
37 eight hours for uninterrupted sleep from hours worked, provided
38 that the domestic work employer otherwise complies with this
39 section and Section 1457. If no written agreement to the contrary

1 is present, the eight hours of sleeping time shall constitute hours
2 worked.

3 (c) There is a rebuttable presumption that a domestic work
4 employee did not receive eight consecutive hours for uninterrupted
5 sleep if he or she is required to be on duty for 24 consecutive hours
6 or more and the domestic work employer does not hire a
7 replacement worker for at least eight consecutive hours in the
8 24-hour work period.

9 (d) A domestic work employer shall pay a sum of fifty dollars
10 (\$50) to the domestic work employee for each day that the domestic
11 employer violates this section.

12 1456. (a) A live-in domestic work employee who is not
13 required to be on duty for 24 consecutive hours or more shall have
14 at least 12 consecutive hours free of duty during each workday of
15 24 hours, of which a minimum of eight consecutive hours are for
16 uninterrupted sleep. A live-in domestic work employee suffered
17 or permitted to work during the 12 consecutive off-duty hours shall
18 be compensated in accordance with Section 510.

19 (b) A live-in domestic work employee shall not be required to
20 work more than five days in any one workweek without a day off
21 of not less than 24 consecutive hours, except in an emergency. A
22 live-in domestic work employee who is suffered or permitted to
23 work in excess of five workdays in any workweek shall be
24 compensated in accordance with Section 510.

25 (c) A domestic work employer shall pay a sum of fifty dollars
26 (\$50) to the domestic work employee for each day that the domestic
27 work employer violates this section.

28 1457. Live-in domestic work employees and domestic work
29 employees who work 24 consecutive hours or more shall be
30 provided sleeping accommodations that are adequate, decent, and
31 sanitary according to usual customary standards. Domestic work
32 employees shall not be required to share a bed.

33 1458. Except as otherwise provided in this part, the provisions
34 of Industrial Welfare Commission Wage Order Number 15, except
35 Section 6, shall apply to a domestic work employee.

36 1460. (a) A domestic work employer shall permit a domestic
37 work employee who works five hours or more to choose the food
38 he or she eats and to prepare his or her own meals. A domestic
39 work employer shall permit a domestic work employee to use the

1 job site's kitchen facilities and kitchen appliances without charge
2 or deduction from pay.

3 (b) If a domestic work employer and the domestic work
4 employee agree that the domestic work employer will provide
5 meals and the domestic work employer wishes to offset the costs
6 of those meals pursuant to Industrial Welfare Commission Wage
7 Order Number 15, the domestic work employee may request and
8 receive specific food items for those meals.

9 (c) A domestic work employer who violates this section shall
10 pay a sum of fifty dollars (\$50) to each domestic work employee
11 for each day that he or she violated this section.

12 ~~1461. (a) (1) A domestic work employee shall accrue paid~~
13 ~~vacation benefits at the rate of not less than one hour per every 30~~
14 ~~hours worked, beginning at the commencement of employment or~~
15 ~~the operative date of this provision, whichever occurs first. A~~
16 ~~domestic work employer shall permit a domestic work employee~~
17 ~~to use accrued paid vacation after one year of service. One year~~
18 ~~of service is completed on the 365th calendar day of employment.~~

19 ~~(2) Unused accrued paid vacation benefits shall carry over from~~
20 ~~year to year. However, a domestic work employer may limit a~~
21 ~~domestic work employee's use of accrued paid vacation as follows:~~

22 ~~(A) After the first year of service, a domestic work employee~~
23 ~~may use 40 hours or five days of paid vacation in each calendar~~
24 ~~year, whichever is greater.~~

25 ~~(B) After the fifth year of service, a domestic work employee~~
26 ~~may use 80 hours or 10 days of paid vacation in each calendar~~
27 ~~year, whichever is greater.~~

28 ~~(C) After the tenth year of service, a domestic work employee~~
29 ~~may use 120 hours or 15 days of paid vacation in each calendar~~
30 ~~year, whichever is greater.~~

31 ~~(b) A domestic work employer shall not require, as a condition~~
32 ~~of taking paid vacation, that the domestic work employee search~~
33 ~~for or find a replacement worker to cover the hours during which~~
34 ~~the domestic work employee is on paid vacation leave.~~

35 ~~(e) (1) A domestic work employee aggrieved by a violation of~~
36 ~~this section shall be entitled to all of the following:~~

37 ~~(A) The amount of any paid vacation unlawfully withheld.~~

38 ~~(B) A penalty of two hundred fifty dollars (\$250).~~

39 ~~(C) Appropriate equitable relief.~~

1 ~~(2) A domestic work employee is not aggrieved by a violation~~
 2 ~~of this section if the domestic work employer can demonstrate that~~
 3 ~~it denied a request to use paid vacation because of an emergency~~
 4 ~~and provided another opportunity for the domestic work employee~~
 5 ~~to take vacation time within three months of the date the domestic~~
 6 ~~work employee originally requested to use paid vacation.~~

7 ~~(d) Upon request, a domestic work employer shall provide to a~~
 8 ~~domestic work employee an annual statement indicating the amount~~
 9 ~~and periods of accrued vacation.~~

10 SEC. 4. Section 3351 of the Labor Code is amended to read:

11 3351. "Employee" means every person in the service of an
 12 employer under any appointment or contract of hire or
 13 apprenticeship, express or implied, oral or written, whether lawfully
 14 or unlawfully employed, and includes:

15 (a) Aliens and minors.

16 (b) All elected and appointed paid public officers.

17 (c) All officers and members of boards of directors of
 18 quasi-public or private corporations while rendering actual service
 19 for the corporations for pay; provided that, where the officers and
 20 directors of the private corporation are the sole shareholders
 21 thereof, the corporation and the officers and directors shall come
 22 under the compensation provisions of this division only by election
 23 as provided in subdivision (a) of Section 4151.

24 (d) A person employed by the owner or occupant of a residential
 25 dwelling whose duties are incidental to the ownership,
 26 maintenance, or use of the dwelling, including the care and
 27 supervision of children, persons of advanced age, or persons with
 28 physical or mental disabilities, or whose duties are personal and
 29 not in the course of the trade, business, profession, or occupation
 30 of the owner or occupant.

31 (e) All persons incarcerated in a state penal or correctional
 32 institution while engaged in assigned work or employment or
 33 engaged in work performed under contract.

34 (f) All working members of a partnership or limited liability
 35 company receiving wages irrespective of profits from the
 36 partnership or limited liability company, provided that where the
 37 working members of the partnership or limited liability company
 38 are general partners or managers, the partnership or limited liability
 39 company and the partners or managers shall come under the
 40 compensation provisions of this division only by election as

1 provided in subdivision (a) of Section 4151. If a private corporation
2 is a general partner or manager, “working members of a partnership
3 or limited liability company” shall include the corporation and the
4 officers and directors of the corporation, provided that the officers
5 and directors are the sole shareholders of the corporation. If a
6 limited liability company is a partner or member, “working
7 members of the partnership or limited liability company” shall
8 include the managers of the limited liability company.

9 (g) For the purposes of subdivisions (c) and (f), the persons
10 holding the power to revoke a trust as to shares of a private
11 corporation or as to general partnership or limited liability company
12 interests held in the trust, shall be deemed to be the shareholders
13 of the private corporation, or the general partners of the partnership,
14 or the managers of the limited liability company.

15 SEC. 5. Section 3352 of the Labor Code is amended to read:

16 3352. “Employee” excludes the following:

17 (a) Any person defined in subdivision (d) of Section 3351 who
18 is employed by his or her parent, spouse, or child.

19 (b) Any person performing services in return for aid or
20 sustenance only, received from any religious, charitable, or relief
21 organization.

22 (c) Any person holding an appointment as deputy clerk or deputy
23 sheriff appointed for his or her own convenience, and who receives
24 no compensation from the county or municipal corporation or from
25 the citizens thereof for his or her services as the deputy. This
26 exclusion is operative only as to employment by the county or
27 municipal corporation and does not deprive any person so
28 deputized from recourse against a private person employing him
29 or her for injury occurring in the course of and arising out of the
30 employment.

31 (d) Any person performing voluntary services at or for a
32 recreational camp, hut, or lodge operated by a nonprofit
33 organization, exempt from federal income tax under Section 501
34 of the Internal Revenue Code, of which he or she or a member of
35 his or her family is a member and who receives no compensation
36 for those services other than meals, lodging, or transportation.

37 (e) Any person performing voluntary service as a ski patrolman
38 who receives no compensation for those services other than meals
39 or lodging or the use of ski tow or ski lift facilities.

1 (f) Any person employed by a ski lift operator to work at a snow
2 ski area who is relieved of and not performing any prescribed
3 duties, while participating in recreational activities on his or her
4 own initiative.

5 (g) Any person, other than a regular employee, participating in
6 sports or athletics who receives no compensation for the
7 participation other than the use of athletic equipment, uniforms,
8 transportation, travel, meals, lodgings, or other expenses incidental
9 thereto.

10 (h) Any person performing voluntary service for a public agency
11 or a private, nonprofit organization who receives no remuneration
12 for the services other than meals, transportation, lodging, or
13 reimbursement for incidental expenses.

14 (i) Any person, other than a regular employee, performing
15 officiating services relating to amateur sporting events sponsored
16 by any public agency or private, nonprofit organization, who
17 receives no remuneration for these services other than a stipend
18 for each day of service no greater than the amount established by
19 the Department of Personnel Administration as a per diem expense
20 for employees or officers of the state. The stipend shall be
21 presumed to cover incidental expenses involved in officiating,
22 including, but not limited to, meals, transportation, lodging, rule
23 books and courses, uniforms, and appropriate equipment.

24 (j) Any student participating as an athlete in amateur sporting
25 events sponsored by any public agency, public or private nonprofit
26 college, university, or school, who receives no remuneration for
27 the participation other than the use of athletic equipment, uniforms,
28 transportation, travel, meals, lodgings, scholarships, grants-in-aid,
29 or other expenses incidental thereto.

30 (k) Any law enforcement officer who is regularly employed by
31 a local or state law enforcement agency in an adjoining state and
32 who is deputized to work under the supervision of a California
33 peace officer pursuant to paragraph (4) of subdivision (a) of Section
34 832.6 of the Penal Code.

35 (l) Any law enforcement officer who is regularly employed by
36 the Oregon State Police, the Nevada Department of Motor Vehicles
37 and Public Safety, or the Arizona Department of Public Safety and
38 who is acting as a peace officer in this state pursuant to subdivision
39 (a) of Section 830.39 of the Penal Code.

1 (m) Any person, other than a regular employee, performing
2 services as a sports official for an entity sponsoring an
3 intercollegiate or interscholastic sports event, or any person
4 performing services as a sports official for a public agency, public
5 entity, or a private nonprofit organization, which public agency,
6 public entity, or private nonprofit organization sponsors an amateur
7 sports event. For purposes of this subdivision, “sports official”
8 includes an umpire, referee, judge, scorekeeper, timekeeper, or
9 other person who is a neutral participant in a sports event.

10 (n) Any person who is an owner-builder, as defined in
11 subdivision (a) of Section 50692 of the Health and Safety Code,
12 who is participating in a mutual self-help housing program, as
13 defined in Section 50087 of the Health and Safety Code, sponsored
14 by a nonprofit corporation.

15 SEC. 6. Section 3551 of the Labor Code is amended to read:

16 3551. (a) Every employer subject to the compensation
17 provisions of this code shall give every new employee, either at
18 the time the employee is hired or by the end of the first pay period,
19 written notice of the information contained in Section 3550. The
20 content of the notice required by this section shall be prescribed
21 by the administrative director after consultation with the
22 Commission on Health and Safety and Workers’ Compensation.

23 (b) The notice required by this section shall be easily
24 understandable and available in both English and Spanish. In
25 addition to the information contained in Section 3550, the content
26 of the notice required by this section shall include:

27 (1) Generally, how to obtain appropriate medical care for a job
28 injury.

29 (2) The role and function of the primary treating physician.

30 (3) A form that the employee may use as an optional method
31 for notifying the employer of the name of the employee’s “personal
32 physician,” as defined by Section 4600, or “personal chiropractor,”
33 as defined by Section 4601.

34 (c) The content of the notice required by this section shall be
35 made available to employers and insurers by the administrative
36 director. Insurers shall provide this notice to each of their
37 policyholders, with advice concerning the requirements of this
38 section and the penalties for a failure to provide this notice to all
39 employees.

40 SEC. 7. Section 3708 of the Labor Code is amended to read:

1 3708. In such action it is presumed that the injury to the
2 employee was a direct result and grew out of the negligence of the
3 employer, and the burden of proof is upon the employer, to rebut
4 the presumption of negligence. It is not a defense to the employer
5 that the employee was guilty of contributory negligence, or
6 assumed the risk of the hazard complained of, or that the injury
7 was caused by the negligence of a fellow servant. No contract or
8 regulation shall restore to the employer any of the foregoing
9 defenses.

10 SEC. 8. Section 3715 of the Labor Code is amended to read:

11 3715. (a) Any employee whose employer has failed to secure
12 the payment of compensation as required by this division, or his
13 or her dependents in case death has ensued, may, in addition to
14 proceeding against his or her employer by civil action in the courts
15 as provided in Section 3706, file his or her application with the
16 appeals board for compensation and the appeals board shall hear
17 and determine the application for compensation in like manner as
18 in other claims and shall make the award to the claimant as he or
19 she would be entitled to receive if the employer had secured the
20 payment of compensation as required, and the employer shall pay
21 the award in the manner and amount fixed thereby or shall furnish
22 to the appeals board a bond, in any amount and with any sureties
23 as the appeals board requires, to pay the employee the award in
24 the manner and amount fixed thereby.

25 (b) (1) In any claim in which it is alleged that the employer has
26 failed to secure the payment of compensation, the director, only
27 for purposes of this section and Section 3720, shall determine, on
28 the basis of the evidence available to him or her, whether the
29 employer was prima facie illegally uninsured. A finding that the
30 employer was prima facie illegally uninsured shall be made when
31 the director determines that there is sufficient evidence to constitute
32 a prima facie case that the employer employed an employee on
33 the date of the alleged injury and had failed to secure the payment
34 of compensation, and that the employee was injured arising out
35 of, and occurring in the course of, the employment.

36 (2) Failure of the employer to furnish within 10 days the written
37 statement in response to a written demand for a written statement
38 prescribed in Section 3711, addressed to the employer at its address
39 as shown on the official address record of the appeals board, shall

1 constitute in itself sufficient evidence for a prima facie case that
2 the employer failed to secure the payment of compensation.

3 (3) A written denial by the insurer named in the statement
4 furnished by the employer as prescribed in Section 3711, that the
5 employer was so insured as claimed, or the nonexistence of a valid
6 certificate of consent to self-insure for the time of the claimed
7 injury, if the statement furnished by the employer claims the
8 employer was self-insured, shall constitute in itself sufficient
9 evidence for a prima facie case that the employer had failed to
10 secure the payment of compensation.

11 (4) The nonexistence of a record of the employer's insurance
12 with the Workers' Compensation Insurance Rating Bureau shall
13 constitute in itself sufficient evidence for a prima facie case that
14 the employer failed to secure the payment of compensation.

15 (5) The un rebutted written declaration under penalty of perjury
16 by the injured employee, or applicant other than the employee,
17 that the employee was employed by the employer at the time of
18 the injury, and that he or she was injured in the course of his or
19 her employment, shall constitute, in itself, sufficient evidence for
20 a prima facie case that the employer employed the employee at
21 the time of the injury, and that the employee was injured arising
22 out of, and occurring in the course of, the employment.

23 (c) (1) When the director determines that an employer was
24 prima facie illegally uninsured, the director shall mail a written
25 notice of the determination to the employer at his or her address
26 as shown on the official address record of the appeals board, and
27 to any other more recent address the director may possess. The
28 notice shall advise the employer of its right to appeal the finding,
29 and that a lien may be placed against the employer's and any parent
30 corporation's property, or the property of substantial shareholders
31 of a corporate employer as defined by Section 3717.

32 (2) Any employer aggrieved by a finding of the director that it
33 was prima facie illegally uninsured may appeal the finding by
34 filing a petition before the appeals board. The petition shall be
35 filed within 20 days after the finding is issued. The appeals board
36 shall hold a hearing on the petition within 20 days after the petition
37 is filed with the appeals board. The appeals board shall have
38 exclusive jurisdiction to determine appeals of the findings by the
39 director, and no court of this state has jurisdiction to review, annul,
40 or suspend the findings or the liens created thereunder, except as

1 provided by Article 2 (commencing with Section 5950) of Chapter
2 7 of Part 4 of Division 4.

3 (d) (1) Any claim brought against an employer under this
4 section may be resolved by the director by compromise and release
5 or stipulated findings and award as long as the appeals board has
6 acquired jurisdiction over the employer and the employer has been
7 given notice and an opportunity to object.

8 (2) Notice may be given by service on the employer of an
9 appeals board notice of intention to approve the compromise and
10 release or stipulated findings and award. The employer shall have
11 20 days after service of the notice of intention to file an objection
12 with the appeals board and show good cause therefor.

13 (3) If the employer objects, the appeals board shall determine
14 if there is good cause for the objection.

15 (4) If the appeals board finds good cause for the objection, the
16 director may proceed with the compromise and release or stipulated
17 findings and award if doing so best serves the interest of the
18 Uninsured Employers Fund, but shall have no cause of action
19 against the employer under Section 3717 unless the appeals board
20 case is tried to its conclusion and the employer is found liable.

21 (5) If the appeals board does not find good cause for the
22 objection, and the compromise and release or stipulated findings
23 and award is approved, the Uninsured Employers Fund shall have
24 a cause of action against the employer pursuant to Section 3717.

25 (e) The director may adopt regulations to implement and
26 interpret the procedures provided for in this section.

27 SEC. 9. Section 4156 of the Labor Code is repealed.

28 SEC. 10. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

O