

Assembly Bill No. 1688

CHAPTER 825

An act to add and repeal Part 8.5 (commencing with Section 2050) of Division 2 of the Labor Code, relating to car washes.

[Approved by Governor October 10, 2003. Filed
with Secretary of State October 11, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1688, Goldberg. Car washes.

Existing law regulates various aspects of workplace and employee safety and health.

This bill would, until January 1, 2007, regulate the industry of car washing and polishing by providing specific recordkeeping requirements that employers of car washers must implement with regard to car washer wages, hours, and working conditions. The bill would require employers of car washers to register with the Labor Commissioner and pay a specified registration fee. Failure to register pursuant to these provisions would be subject to a civil fine of \$100 for each calendar day of violation not to exceed \$10,000. These fines and registration fees would be deposited in the Car Wash Worker Restitution Fund and the Car Wash Worker Fund, which this bill would create, for disbursement by the commissioner, upon appropriation by the Legislature.

The bill would state the intent of the Legislature to require the Labor Commissioner to report on labor law violations and enforcement in the car washing and polishing industry.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California is home to hundreds of full-time car washes that employ tens of thousands of car wash workers.

(b) The work performed by car wash employees is laborious, fast paced, and potentially hazardous.

(c) Car wash employees work long hours and may service hundreds of vehicles on any given workday.

(d) According to various legal advocates, the car wash industry is plagued with labor law violations, including minimum wage, overtime, and rest and meal period violations.



(e) Some car wash employees, commonly known as “propineros,” are not paid a wage by their employers and receive only the tips given by customers.

(f) Some other car wash employees are paid below the minimum wage and not paid at an overtime rate for overtime hours worked.

(g) A number of car wash employees have been harassed, intimidated, and mistreated by their employers because of their immigration status.

(h) As a result of low wages and widespread labor law violations, some car wash employees are forced to work in substandard working conditions.

(i) Existing labor laws and enforcement efforts have failed to remedy these problems.

(j) Therefore, it is the intent of the Legislature, in enacting this act, to establish a system of registration, bonding requirements, and enforcement to impose prompt and effective civil sanctions for the violation of the provisions set forth in this act or any provision of law applicable to the employment of workers in the car washing and polishing industry.

SEC. 2. Part 8.5 (commencing with Section 2050) is added to Division 2 of the Labor Code, to read:

PART 8.5. CAR WASHES

CHAPTER 1. GENERAL PROVISIONS

2050. The enactment of this part is an exercise of the police power of the State of California for the protection for the public welfare, prosperity, health, safety, and peace of its people. The civil penalties provided by this chapter are in addition to any other penalty provided by law.

2051. As used in this part:

(a) “Car washing and polishing” means washing, cleaning, drying, polishing, detailing, servicing, or otherwise providing cosmetic care to vehicles. “Car washing and polishing” does not include motor vehicle repair, as defined in Section 9880.1 of the Business and Professions Code.

(b) (1) “Employer” means any individual, partnership, corporation, limited liability company, joint venture, or association engaged in the business of car washing and polishing that engages any other individual in providing those services.

(2) “Employer” does not include any charitable, youth, service, veteran, or sports group, club, or association that conducts car washing



and polishing on an intermittent basis to raise funds for charitable, education, or religious purposes. “Employer” does not include any licensed vehicle dealer, car rental agency, or automotive repair business that conducts car washing and polishing ancillary to its primary business of selling, leasing, or servicing vehicles. “Employer” does not include any self-service car wash or automated car wash that has employees for cashiering or maintenance purposes only.

(c) “Employee” means any person, including an alien or minor, who renders actual car washing and polishing services in any business for an employer, whether for tips or for wages, and whether wages are calculated by time, piece, task, commission, or other method of calculation, and whether the services are rendered on a commission, concessionaire, or other basis.

(d) “Commissioner” means the Labor Commissioner.

2052. Every employer shall keep accurate records for three years, showing all of the following:

(a) The names and addresses of all employees engaged in rendering actual services for any business of the employer.

(b) The hours worked daily by each employee, including the times the employee begins and ends each work period.

(c) All gratuities received daily by the employer, whether received directly from the employee or indirectly by deduction from the wages of the employee or otherwise.

(d) The wage and wage rate paid each payroll period.

(e) The age of all minor employees.

(f) Any other conditions of employment.

2053. The Division of Labor Standards and Enforcement shall enforce this chapter. The commissioner may adopt any regulations necessary to carry out the provisions of this chapter.

CHAPTER 2. REGISTRATION

2054. Every employer shall register with the commissioner annually.

2055. The commissioner may not permit any employer to register, nor may the commissioner permit any employer to renew registration until all of the following conditions are satisfied:

(a) The employer has applied for registration to the commissioner by presenting proof of compliance with the local government’s business licensing or regional regulatory requirements.

(b) The employer has obtained a surety bond issued by a surety company admitted to do business in this state. The principal sum of the



bond shall be not less than fifteen thousand dollars (\$15,000). The employer shall file a copy of the bond with the commissioner.

(1) The bond required by this section shall be in favor of, and payable to the people of the State of California and shall be for the benefit of any employee damaged by his or her employer's failure to pay wages, interest on wages, or fringe benefits, or damaged by violation of Section 351 or 353.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send written notice to both the employer and the commissioner, identifying the bond and the date of the cancellation or termination.

(3) An employer may not conduct any business until the employer obtains a new surety bond and files a copy of it with the commissioner.

(c) The employer has documented that a current workers' compensation insurance policy is in effect for the employees.

(d) The employer has paid the fees established pursuant to Section 2059.

2056. When a certificate of registration is originally issued or renewed under this chapter, the commissioner shall provide related and supplemental information to the registrant regarding business administration and applicable labor laws.

2057. Proof of registration shall be by an official Division of Labor Standards Enforcement registration form. Each employer shall post the registration form where it may be read by the employees during the workday.

2058. At least 30 days prior to the expiration of each registrant's registration, the commissioner shall mail a renewal notice to the last known address of the registrant. However, omission of the commissioner to provide the renewal notice in accordance with this subdivision may not excuse a registrant from making timely application for renewal of registration, may not be a defense in any action or proceeding involving failure to renew registration, and may not subject the commissioner to any legal liability.

2059. (a) The commissioner shall collect from employers a registration fee of two hundred fifty dollars (\$250) for each branch location. The commissioner may periodically adjust the registration fee for inflation to ensure that the fee is sufficient to fund all costs to administer and enforce the provisions of this part.

(b) In addition to the fee specified in subdivision (a), each employer shall be assessed an annual fee of fifty dollars (\$50) for each branch location which shall be deposited in the Car Wash Worker Restitution Fund.



2060. No employer may conduct any business without complying with the registration and bond requirements of this chapter.

2061. The commissioner may not approve the registration of any employer until all of the following conditions are satisfied:

(a) The employer has executed a written application, in a form prescribed by the commissioner, subscribed, and sworn by the employer containing the following:

(1) The name of the business entity and, if applicable, its fictitious or “doing business as” name.

(2) The form of the business entity and, if a corporation, all of the following:

(A) The date of incorporation.

(B) The state in which incorporated.

(C) If a foreign corporation, the date the articles of incorporation were filed with the California Secretary of State.

(D) Whether the corporation is in good standing with the Secretary of State.

(3) The federal employer identification number (FEIN) and the state employer identification number (SEIN) of the business.

(4) The business’ address and telephone number and, if applicable, the addresses and telephone numbers of any branch locations.

(5) Whether the application is for a new or renewal registration and, if the application is for a renewal, the prior registration number.

(6) The names, residential addresses, telephone numbers, and Social Security numbers of the following persons:

(A) All corporate officers, if the business entity is a corporation.

(B) All persons exercising management responsibility in the applicant’s office, regardless of form of business entity.

(C) All persons, except bona fide employees on regular salaries, who have a financial interest of 10 percent or more in the business, regardless of the form of business entity, and the actual percent owned by each of those persons.

(7) The policy number, effective date, expiration date, and name and address of the carrier of the applicant business’ current workers’ compensation coverage.

(8) Whether any persons named in response to subparagraphs (A), (B), or (C) of subparagraph (6) of this section presently:

(A) Owe any unpaid wages.

(B) Have unpaid judgments outstanding.

(C) Have any liens or suits pending in court against himself or herself.

(D) Owe payroll taxes, or personal, partnership, or corporate income taxes, Social Security taxes, or disability insurance.



An applicant who answers affirmatively to any item described in paragraph (8) shall provide, as part of the application, additional information on the unpaid amounts, including the name and address of the party owed, the amount owed, and any existing payment arrangements.

(9) Whether any persons named in response to subparagraphs (A), (B), or (C) of paragraph (6) of this section have ever been cited or assessed any penalty for violating any provision of the Labor Code.

An applicant who answers affirmatively to any item described in paragraph (9) shall provide additional information, as part of the application, on the date, nature of citation, amount of penalties assessed for each citation, and the disposition of the citation, if any. The application shall describe any appeal filed. If the citation was not appealed, or if it was upheld on appeal, the applicant shall state whether the penalty assessment was paid.

(b) The employer has paid a registration fee to the commissioner pursuant to subdivision (d) of Section 2055.

2062. The commissioner may not register or renew the registration of an employer in any of the following circumstances:

(a) The employer has not fully satisfied any final judgment for unpaid wages due to an employee or former employee of a business for which the employer is required to register under this chapter.

(b) The employer has failed to remit the proper amount of contributions required by the Unemployment Insurance Code or the Employment Development Department had made an assessment for those unpaid contributions against the employer that has become final and the employer has not fully paid the amount of delinquency for those unpaid contributions.

(c) The employer has failed to remit the amount of Social Security and Medicare tax contributions required by the Federal Insurance Contributions Act (FICA) to the Internal Revenue Service and the employer has not fully paid the amount or delinquency for those unpaid contributions.

2063. On the Web site of the Department of Industrial Relations the Labor Commissioner shall post a list of registered car washing and polishing businesses, including the name, address, registration number, and effective dates of registration.

2064. An employer who fails to register pursuant to Section 2054 is subject to a civil fine of one hundred dollars (\$100) for each calendar day, not to exceed ten thousand dollars (\$10,000), the employer conducts car washing and polishing while unregistered.

2065. (a) (1) The Car Wash Worker Restitution Fund is established in the State Treasury. Fifty dollars (\$50) of each registrant's annual



registration fee required pursuant to Section 2059 shall be deposited into this fund. In addition, 50 percent of the fines collected pursuant to Section 2064 shall be deposited into the fund.

(2) Moneys from the fund shall be disbursed, upon appropriation by the Legislature, by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and penalties and other related damages by any employer, to ensure the payment of wages and penalties and other related damages. Any disbursed funds subsequently recovered by the commissioner shall be returned to the fund.

(3) The Department of Industrial Relations may establish through regulation any procedures necessary to carry out the provisions of this section.

(b) The Car Wash Worker Fund is established in the State Treasury. Upon appropriation by the Legislature, the remainder of the registrant's annual registration fee collected pursuant to Section 2059 shall be applied to costs incurred by the commissioner in administering the provisions of this part and enforcement and investigation of the car washing and polishing industry.

CHAPTER 3. SUCCESSORSHIP

2066. A successor to any employer that is engaged in car washing and polishing that owed wages and penalties to the predecessor's former employee or employees is liable for those wages and penalties if the successor meets any of the following criteria:

(a) Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor employer.

(b) Shares in the ownership, management, control of the labor relations, or interrelations of business operations with the predecessor employer.

(c) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer.

(d) Is an immediate family member of any owner, partner, officer, or director of the predecessor employer of any person who had a financial interest in the predecessor employer.

CHAPTER 4. OPERATION

2067. This part shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.



SEC. 3. It is the intent of the Legislature to instruct the Labor Commissioner, prior to January 1, 2007, to study and report to the Legislature on the status of labor law violations and enforcement in the car washing and polishing industry.

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