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9:16 AM 11/4/2013

**Introduced by Senator Monning**February 4, 2013

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An act to add Section 1698.9 to the Labor Code, relating to farm labor contractors.

## LEGISLATIVE COUNSEL'S DIGEST

SB 168, as introduced, Monning. Farm labor contractors: successors: wages and penalties.

Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. Under existing law, a person who violates farm labor contractor requirements is guilty of a misdemeanor punishable by specified fines, or imprisonment in the county jail for not more than 6 months, or both.

This bill, in addition, would make a successor to any farm labor contractor that owed wages or penalties to a former employee of the predecessor farm labor contractor, whether the predecessor was a licensee or not, liable for those wages and penalties, if the successor meets one or more specified criteria. By imposing a new requirement on farm labor contractors, the violation of which would be a crime, the 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. Section 1698.9 is added to the Labor Code, to  
2 read:

3 1698.9. A successor to any farm labor contractor that owed  
4 wages or penalties to a former employee of the predecessor farm  
5 labor contractor, whether the predecessor was a licensee under this  
6 chapter or not, is liable for those wages and penalties, if the  
7 successor meets one or more of the following criteria:

8 (a) Uses substantially the same facilities or workforce to offer  
9 substantially the same services as the predecessor farm labor  
10 contractor.

11 (b) Shares in the ownership, management, control of the  
12 workforce, or interrelations of business operations with the  
13 predecessor farm labor contractor.

14 (c) Employs in a managerial capacity any person who directly  
15 or indirectly controlled the wages, hours, or working conditions  
16 of the employees owed wages or penalties by the predecessor farm  
17 labor contractor.

18 (d) Is an immediate family member of any owner, partner,  
19 officer, licensee, or director of the predecessor farm labor  
20 contractor or of any person who had a financial interest in the  
21 predecessor farm labor contractor. As used in this section,  
22 “immediate family member” means a spouse, parent, sibling, child,  
23 uncle, aunt, niece, nephew, or grandparent.

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

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Senate Committee on Labor and Industrial Relations  
Ted W. Lieu, Chair

Date of Hearing: March 13, 2013  
Session

2013-2014 Regular

Consultant: Deanna D. Ping

Fiscal: Yes

Urgency: No

Bill No: SB 168

Author: Monning

As Introduced/Amended: February 4, 2013

SUBJECT

Farm labor contractors: successors: wages and penalties.

KEY ISSUE

Should the legislature hold the successor of a farm labor contractor liable for the predecessor's owed wages or penalties to former employees?

ANALYSIS

Existing law requires that if an employee is found to have been paid less than the minimum wage, that employee must be paid liquidated damages in an amount that is equal to the wages unlawfully unpaid, plus 10 percent interest. (Labor Code §1194.2 and Civil Code § 3289)

Existing law designates a farm labor contractor as any person who, for a fee:

employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person  
recruits, solicits, supplies, or hires workers on behalf of any employer engaged in the growing or producing of farm products  
provides one of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measure their work; or disburses wage payments to these

persons. (Labor Code §1682)

Existing law requires a license issued by the Labor Commissioner before a person can act as a farm labor contractor. (Labor Code §1683)

Existing law states that upon final determination of the Labor Commissioner that a grower, a farm labor contractor, or person acting in the capacity of a farm labor contractor has failed to pay wages to its employees, the grower, farm labor contractor, or person acting in the capacity shall immediately pay those wages. If payment is not made within 30 days the Labor Commissioner shall forward the matter to the local district attorney's office. (Labor Code §1697.3)

Existing law states that a successor to any employer that is engaged in sewing or assembly of garments or car washing and polishing is liable for the predecessor's former employees owed wages and penalties if the successor meets any of the following criteria:

- 1) Uses substantially the same facilities or work force to produce substantially the same products for substantially the same type of customers as the predecessor employer
- 2) Shares in the ownership, management, control of labor relations, or interrelations of business operations with the predecessor employer
- 3) Has in its employ 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
- 4) Is an immediate family member of any owner, partner, officer, or director of the predecessor employer or of any person who has a financial interest in the predecessor employer (Labor Code §2684 and §2066)

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This Bill would hold a successor to any farm labor contractor  
Hearing Date: March 13, 2013 SB 168  
Consultant: Deanna D. Ping Page 2

Senate Committee on Labor and Industrial Relations

business liable for owed wages or penalties to former employees if any of the following criteria is met:

- 1) Uses substantially the same facilities or workforce to

offer substantially the same services as the predecessor

- 2) Shares in the ownership, management or control of the workforce
- 3) Employs in a managerial capacity anyone who directly or indirectly controlled the wages or working conditions of the employees of the predecessor employer
- 4) Is an immediate family member of any owner, partner, officer, licensee or director of the predecessor employer or of any person who had a financial interest in the predecessor employer

#### COMMENTS

#### 1. Succession Provisions in the Garment and Car Wash Industry

In 1999, Assembly Member Steinberg introduced AB 633 - a bill that sought to stunt the growing underground economy's violations of wage and hour, safety, and tax laws. Proponents of the bill argued that employers cheated workers out of billions of dollars in wages owed to them under minimum wage and overtime statute, but current law did not adequately deter and penalize employers for such violations. Proponents specifically targeted the garment manufacturing industry because of the proliferation and poor working conditions of sweatshops. AB 633 included a variety of provisions from providing employees the right to recover civil penalties to establishing successor liability for owed wages and penalties if the successor also engaged in the business of garment manufacturing and meets specified criteria including the use of substantially the same facilities, sharing in the ownership or management, or employing managers from the predecessor employer. The bill passed through both houses and was signed by the Governor that September.

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Consultant: Deanna D. Ping

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Senate Committee on Labor and Industrial Relations

A few years later AB 1688 passed in both houses and was signed by the Governor in 2003. The bill aimed to regulate the employment of workers in the car washing and polishing industry. The bill included required annual registration of employers in the car washing and polishing industry and

failure to register penalties. AB 1688 also included a successor liability provision that was almost identical to AB 633. Proponents of this bill similarly argued that the measure would prevent sweatshop-like conditions in the car wash industry and ensure workers get paid the required wage.

2. Need for this bill?

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SB 168 is modeled after the previous legislation discussed above that signed into law a successor provision for the garment manufacturing and car wash industry in 1999 and 2003 respectively. The measure aims to hold a successor to a licensed or unlicensed farm labor contractor liable for the owed wages or penalties of the predecessor's former employees if they meet specified criteria.

3. California Courts and Successorship Provisions:

In *People ex rel. Harris v. Sunset Care Wash, LLC* (205 Cal. App. 4th, 2012) the plaintiff filed an action against Sunset Car Wash, LLC to recover unpaid wages and penalties owed by the defendant Auto Spa Express, Inc. which had operated a carwash at the same location before being evicted by the property owner. The trial court denied a motion for summary judgment filed by Sunset Carwash and ruled that because it operated at the same location and performed the same services it was considered a successor under Labor Code section 2066. In its decision the Court noted that the Legislature was motivated to enact the Section 2066 provisions by its findings that carwash operators sometimes employed practices that resulted in state labor law violations.

4. Proponent Arguments :

The sponsor of this measure, the California Rural Legal  
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Consultant: Deanna D. Ping

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Senate Committee on Labor and Industrial Relations

Assistance Foundation (CRLA), believes SB 168 would prevent licensed or unlicensed Farm Labor Contractors (FLC) from engaging in wage theft. According to CRLA, there have been numerous instances where employees attempt to recover their unpaid wages and applicable penalties for non-payment of wages through the Labor Commissioner and find that the offending FLC has gone out of business. However, CRLA contends that the FLC has not really gone out of business, but instead reorganized

with family members or former associate and nominally running the business under a different (or new) FLC license and name. The sponsors specifically point out the experience of one family for which CRLA is trying to collect lost wages but the FLC has reorganized no less than six times - each time with a different name and different family member or associate holding the license.

The sponsor also asserts that although several complaints have been filed with the Department of Labor Standards Enforcement (DLSE) about improper FLC licenses being issued to individuals or entities created solely to avoid prior obligations, DLSE has not had a system in place to prevent this problem from occurring. CRLA maintains that a law that makes FLC successors liable for the unpaid wages of FLC predecessors would eliminate the incentive to create false FLC licensees and help ensure that workers are paid what they are owed.

Lastly, CRLA argues that farm workers should be provided with the same protections from fraudulent 'successor' farm labor contractor businesses as the Legislature provided to garment and carwash workers - specifically drawing attention to the California Courts decision to uphold the successorship provisions.

5. Opponent Arguments :

None received.

5. Prior Legislation :

AB 1688 (Goldberg), Chapter 825, Statutes of 2003, enacted  
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Consultant: Deanna D. Ping Page 5

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regulations for the car wash industry including registration and bonding requirements, as well as protections against 'successor' entities avoiding previous judgments for unpaid wages or penalties.

AB 633 (Steinberg), Chapter 554, Statutes of 1999, enacted reforms that increased regulation of garment manufacturers and contractors including a 'successor' provision that is substantively identical to SB 168.

SUPPORT

CA Rural Legal Assistance Foundation (Sponsor)  
California Labor Federation, AFL-CIO  
The Wage Justice Center

OPPOSITION

None on file.

Hearing Date: March 13, 2013  
Consultant: Deanna D. Ping

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Senate Committee on Labor and Industrial Relations

AMENDED IN SENATE APRIL 8, 2013

**SENATE BILL**

**No. 168**

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**Introduced by Senator Monning**

February 4, 2013

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An act to add Section 1698.9 to the Labor Code, relating to farm labor contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 168, as amended, Monning. Farm labor contractors: successors: wages and penalties.

Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. Under existing law, a person who violates farm labor contractor requirements is guilty of a misdemeanor punishable by specified fines, or imprisonment in the county jail for not more than 6 months, or both.

This bill, in addition, would make a *farm labor contractor* successor to any *predecessor* farm labor contractor that owed wages or penalties to a former employee of the predecessor ~~farm labor contractor~~, whether the predecessor was a licensee or not, liable for those wages and penalties, if the successor *farm labor contractor* meets one or more specified criteria. By imposing a new requirement on farm labor ~~contractors~~ *contractor successors*, the violation of which would be a crime, the 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. Section 1698.9 is added to the Labor Code, to  
2 read:

3 1698.9. A *farm labor contractor* successor to any *predecessor*  
4 *farm labor contractor* that owed wages or penalties to a former  
5 employee of the predecessor ~~farm labor contractor~~, whether the  
6 predecessor was a licensee under this chapter or not, is liable for  
7 those wages and penalties, if the successor *farm labor contractor*  
8 meets one or more of the following criteria:

9 (a) Uses substantially the same facilities or workforce to offer  
10 substantially the same services as the predecessor farm labor  
11 contractor.

12 (b) Shares in the ownership, management, control of the  
13 workforce, or interrelations of business operations with the  
14 predecessor farm labor contractor.

15 (c) Employs in a managerial capacity any person who directly  
16 or indirectly controlled the wages, hours, or working conditions  
17 of the employees owed wages or penalties by the predecessor farm  
18 labor contractor.

19 (d) Is an immediate family member of any owner, partner,  
20 officer, licensee, or director of the predecessor farm labor  
21 contractor or of any person who had a financial interest in the  
22 predecessor farm labor contractor. As used in this section,  
23 “immediate family member” means a spouse, parent, sibling, child,  
24 uncle, aunt, niece, nephew, or grandparent.

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

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| SENATE RULES COMMITTEE | SB 168 |  
| Office of Senate Floor Analyses |  
| 1020 N Street, Suite 524 |  
| (916) 651-1520 Fax: (916) |  
327-4478

THIRD READING

Bill No: SB 168  
Author: Monning (D)  
Amended: 4/8/13  
Vote: 21

SENATE LABOR & INDUSTRIAL RELATIONS COMMITTEE : 3-1, 3/13/13  
AYES: Lieu, Leno, Lara  
NOES: Wyland  
NO VOTE RECORDED: Padilla

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Farm labor contractors: successors: wages and penalties

SOURCE : California Rural Legal Assistance Foundation

DIGEST : This bill holds the successor of a farm labor contractor (FLC) liable for the predecessors owed wages or penalties to former employees whether the predecessor was licensed or not, if the successor FLC meets one or more specified criteria.

ANALYSIS : Existing law requires that if an employee is found to have been paid less than the minimum wage, that employee must be paid liquidated damages in an amount that is equal to the wages unlawfully unpaid, plus 10% interest.

Existing law designates a FLC as any person who, for a fee:

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1. Employs workers to render personal services in connection with the production of any farm products to, for, or under

the direction of a third person.

2. Recruits, solicits, supplies, or hires workers on behalf of any employer engaged in the growing or producing of farm products.
3. Provides one of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measure their work; or disburses wage payments to these persons.

Existing law requires a license issued by the Labor Commissioner (Commissioner) before a person can act as a FLC.

Existing law states that upon final determination of the Commissioner that a grower, a FLC, or person acting in the capacity of a FLC has failed to pay wages to its employees, the grower, FLC, or person acting in the capacity shall immediately pay those wages. If payment is not made within 30 days the Commissioner shall forward the matter to the local district attorney's office.

Existing law states that a successor to any employer that is engaged in sewing or assembly of garments or car washing and polishing is liable for the predecessor's former employees owed wages and penalties if the successor meets any of the following criteria:

1. Uses substantially the same facilities or work force to produce substantially the same products for substantially the same type of customers as the predecessor employer.
2. Shares in the ownership, management, control of labor relations, or interrelations of business operations with the predecessor employer.
3. 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.
4. Is an immediate family member of any owner, partner, officer,

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or director of the predecessor employer or of any person who has a financial interest in the predecessor employer.

This bill holds a successor to any FLC business liable for owed

wages or penalties to former employees if any of the following criteria is met:

1. Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor.
2. Shares in the ownership, management or control of the workforce.
3. Employs in a managerial capacity anyone who directly or indirectly controlled the wages or working conditions of the employees of the predecessor employer.
4. Is an immediate family member of any owner, partner, officer, licensee or director of the predecessor employer or of any person who had a financial interest in the predecessor employer.

Comments

California courts and successorship provisions . In People ex rel. Harris v. Sunset Care Wash, LLC (205 Cal. App. 4th, 2012) the plaintiff filed an action against Sunset Car Wash, LLC to recover unpaid wages and penalties owed by the defendant Auto Spa Express, Inc. which had operated a carwash at the same location before being evicted by the property owner. The trial court denied a motion for summary judgment filed by Sunset Carwash and ruled that because it operated at the same location and performed the same services it was considered a successor under Labor Code Section 2066. In its decision the Court noted that the Legislature was motivated to enact the Section 2066 provisions by its findings that carwash operators sometimes employed practices that resulted in state labor law violations.

Prior Legislation

AB 1688 (Goldberg, Chapter 825, Statutes of 2003) enacted regulations for the car wash industry including registration and bonding requirements, as well as protections against "successor" entities avoiding previous judgments for unpaid wages or

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penalties.

AB 633 (Steinberg, Chapter 554, Statutes of 1999) enacted reforms that increased regulation of garment manufacturers and contractors including a "successor" provision that is substantively identical to this bill.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: Yes

SUPPORT : (Verified 4/15/13)

California Rural Legal Assistance Foundation (source)  
California Communities United Institute  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Labor Federation, AFL-CIO  
California Teamsters Public Affairs Council  
Engineers and Scientists of California  
International Longshore and Warehouse Union  
Professional and Technical Engineers, Local 21  
The Wage Justice Center  
UNITE HERE!  
United Farm Workers  
United Food and Commercial Workers Union, Western States Council  
Utility Workers Union of America, Local 132

OPPOSITION : (Verified 4/15/13)

California Association of Nurseries and Garden Centers  
California Association of Wheat Growers  
California Bean Shippers Association  
California Chamber of Commerce  
California Citrus Mutual  
California Cotton Ginners Association  
California Cotton Growers Association  
California Farm Bureau Federation  
California Grain and Feed Association  
California Grape and Tree Fruit League  
California Pear Growers Association  
California Seed Association  
California State Floral Association  
California Tomato Growers Association  
Civil Justice Association of California

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Construction Employers' Association  
Nisei Farmers League  
Pacific Egg and Poultry Association  
Western Agricultural Processors Association  
Western Growers Association  
Wine Institute

ARGUMENTS IN SUPPORT : The sponsor of this bill, the

California Rural Legal Assistance Foundation (CRLA), believes this bill prevents licensed or unlicensed FLC from engaging in wage theft. According to CRLA, there have been numerous instances where employees attempt to recover their unpaid wages and applicable penalties for non-payment of wages through the Commissioner and find that the offending FLC has gone out of business. However, CRLA contends that the FLC has not really gone out of business, but instead reorganized with family members or former associate and nominally running the business under a different (or new) FLC license and name. The proponents specifically point out the experience of one family for which CRLA is trying to collect lost wages but the FLC has reorganized no less than six times - each time with a different name and different family member or associate holding the license.

The CRLA also asserts that although several complaints have been filed with the Department of Labor Standards Enforcement (DLSE) about improper FLC licenses being issued to individuals or entities created solely to avoid prior obligations, DLSE has not had a system in place to prevent this problem from occurring. CRLA maintains that a law that makes FLC successors liable for the unpaid wages of FLC predecessors would eliminate the incentive to create false FLC licensees and help ensure that workers are paid what they are owed.

Lastly, CRLA argues that farm workers should be provided with the same protections from fraudulent 'successor' FLC businesses as the Legislature provided to garment and carwash workers - specifically drawing attention to the California Courts decision to uphold the successorship provisions.

ARGUMENTS IN OPPOSITION : Opponents argue:

Given the ambiguity of the term "successor," it could unfairly impose wage and hour liability onto entities and individuals who had no control, connection, or ability to

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affect the working conditions and payment of wages to the employees whom are owed.

The imposition of liability on a "bona fide successor," is based upon fundamental fairness. Specifically, prior to holding a successor entity liability for the actions of its predecessor, courts generally look towards (1) the level of continuity between the predecessor and successor and (2) whether the successor had adequate notice of the potential liability. If both of these factors are satisfied, courts

have generally determined that the principles of equity require the successor to satisfy the obligations of the predecessor. *Steinbech v. Hubbard*, 51 F.3d 843, 845-846 (9th Cir. 1994). Likewise, if one or both of the factors are not satisfied, the successor is generally not held liable for the actions of the predecessor.

Absent such a fundamental analysis of the relationship between the predecessor and successor, an innocent and unaware entity or individual could be unfairly strapped with the liability of a prior bad actor. Specifically, unless the term "successor" in SB 168 is adequately defined to mirror the common law definition of "bona fide successor," a subsequent employer in the same line of business as the predecessor could be liable for the wage and hour violations of the predecessor simply because the subsequent employer hired one of the predecessor's employees. This provision alone would completely discourage a subsequent employer from hiring any of the predecessor's workers. Moreover, the principles of equity certainly require a stronger connection between the predecessor and subsequent employer, other than the hiring of one employee or even a familial connection, before imposing the liability onto the successor.

PQ:k 4/15/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

Date of Hearing: June 26, 2013

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT  
Roger Hernández, Chair  
SB 168 (Monning) - As Amended: April 8, 2013

SENATE VOTE : 21-11

SUBJECT : Farm labor contractors: successors.

SUMMARY : Establishes successor liability for farm labor contractors (FLCs) as specified. Specifically, this bill provides that a FLC successor to any predecessor FLC that owed wages or penalties (regardless of whether the predecessor FLC was licensed or not) is liable for those wages and penalties if the successor FLC meets one or more of the following criteria:

- 1)The FLC uses substantially the same facilities or workforce to offer substantially the same services as the predecessor FLC.
- 2)The FLC shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor FLC.
- 3)The FLC employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the employees owed wages or penalties by the predecessor FLC.
- 4)The FLC is an immediate family member of any owner, partner, officer, licensee, or director of the predecessor FLC or of any person who had a financial interest in the predecessor FLC.

EXISTING LAW requires FLCs to be licensed by the Labor Commissioner and to comply with specified employment laws.

FISCAL EFFECT : According to the Senate Appropriations Committee pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS : This bill seeks to hold a successor to a licensed or unlicensed FLC liable for the owed wages or penalties of the predecessor's former employees if they meet specified criteria. This legislation is patterned after similar successor liability provisions applicable to the garment manufacturing and car wash

industries.

Related Successor Provisions in the Garment Manufacturing and Car Wash Industries

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In 1999, then-Assemblymember Steinberg introduced AB 633 - a bill that sought to stunt the growing underground economy's violations of wage and hour, safety, and tax laws. Proponents of the bill argued that employers cheated workers out of billions of dollars in wages owed to them under minimum wage and overtime statute, but current law did not adequately deter and penalize employers for such violations. Proponents specifically targeted the garment manufacturing industry because of the proliferation and poor working conditions of sweatshops. AB 633 included a variety of provisions from providing employees the right to recover civil penalties to establishing successor liability for owed wages and penalties if the successor also engaged in the business of garment manufacturing and meets specified criteria including the use of substantially the same facilities, sharing in the ownership or management, or employing managers from the predecessor employer. The bill passed through both houses and was signed by the Governor that September.

A few years later AB 1688 passed in both houses and was signed by the Governor in 2003. The bill aimed to regulate the employment of workers in the car washing and polishing industry. The bill included required annual registration of employers in the car washing and polishing industry and failure to register penalties. AB 1688 also included a successor liability provision that was almost identical to AB 633. Proponents of this bill similarly argued that the measure would prevent sweatshop-like conditions in the car wash industry and ensure workers get paid the required wage.

Specifically, the provisions of existing law state that a successor to any employer that is engaged in garment manufacturing or car washing and polishing is liable for the predecessor's former employees owed wages and penalties if the successor meets any of the following criteria:

- 1) Uses substantially the same facilities or work force to produce substantially the same products for substantially the same type of customers as the predecessor employer.
- 2) Shares in the ownership, management, control of labor

relations, or interrelations of business operations with the predecessor employer.

- 3) Has in its employ 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.
- 4) Is an immediate family member of any owner, partner, officer, or director of the predecessor employer or of any person who has a financial interest in the predecessor employer.

#### Recent Successorship Case in the Car Wash Context

The sponsor of this bill notes that in *People ex rel. Harris v. Sunset Care Wash, LLC* (205 Cal. App. 4th, 2012) the plaintiff filed an action against Sunset Car Wash, LLC to recover unpaid wages and penalties owed by the defendant Auto Spa Express, Inc. which had operated a carwash at the same location before being evicted by the property owner. The trial court denied a motion for summary judgment filed by Sunset Carwash and ruled that because it operated at the same location and performed the same services it was considered a successor under Labor Code section 2066. In its decision the Court noted that the Legislature was motivated to enact the Section 2066 provisions by its findings that carwash operators sometimes employed practices that resulted in state labor law violations.

The court also held that the imposition of liability against a successor who operates at the same location as a predecessor car wash employer does not constitute a violation of due process. Specifically, the court stated:

"In the context of the car wash industry, section 2066 provides the necessary notice of the potential for successor liability for labor law violations. Any entity commencing business in the industry is presumptively aware of the requirements of [the law]? Presumptively aware of the potential for liability, a person or entity considering commencing a car washing business is placed on notice in section 2066 of the liability potential and may protect itself by the exercise of due diligence, indemnity agreements, or insurance."

However, opponents of this bill point to the Sunset Car Wash

case as an example of how this bill may result in unintended consequences. Opponents contend that in that case, a subsequent car wash employer was found to constitute a successor after the prior operator was evicted merely because they used substantially the same facilities and offered substantially the same services as the predecessor car wash. Opponents contend that this bill, because it utilizes an essentially similar factor, could impose successor liability on an FLC merely because they use substantially the same workforce as a predecessor FLC (see further discussion in committee staff comment, below).

ARGUMENTS IN SUPPORT :

The sponsor of this measure, the California Rural Legal Assistance Foundation (CRLA), believes that this bill would prevent licensed or unlicensed FLCs from engaging in wage theft. According to CRLA, there have been numerous instances where employees attempt to recover their unpaid wages and applicable penalties for non-payment of wages through the Labor Commissioner and find that the offending FLC has gone out of business. However, CRLA contends that the FLC has not really gone out of business, but instead reorganized with family members or former associate and nominally running the business under a different (or new) FLC license and name. The sponsors specifically point out the experience of one family for which CRLA is trying to collect lost wages but the FLC has reorganized no less than six times - each time with a different name and different family member or associate holding the license.

The sponsor also asserts that although several complaints have been filed with the Department of Labor Standards Enforcement (DLSE) about improper FLC licenses being issued to individuals or entities created solely to avoid prior obligations, DLSE has not had a system in place to prevent this problem from occurring. CRLA maintains that a law that makes FLC successors liable for the unpaid wages of FLC predecessors would eliminate the incentive to create false FLC licensees and help ensure that workers are paid what they are owed.

Finally, CRLA argues that farm workers should be provided with

the same protections from fraudulent 'successor' farm labor contractor businesses as the Legislature provided to garment and carwash workers.

ARGUMENTS IN OPPOSITION :

Opponents, including the California Chamber of Commerce, oppose this bill and argue that given the ambiguity of the term "successor," the bill could unfairly impose wage and hour liability on entities and individuals who had no control, connection, or ability to affect the working conditions and payment of wages to the employees whom are owed. They contend that the common law definition of a "bona fide successor" requires a stronger connection between the predecessor and subsequent employer before imposing liability onto the successor.

A coalition of agricultural employers opposes this bill, stating the following:

"We applaud the sponsor, California Rural Legal Assistance, for tackling a chronic problem where a FLC's license is revoked and a new license is issued to an immediate family member with a significant workforce or financial interest in the preceding FLC's license. The law needs to be changed to preclude a 'bad operator' from skirting around the law's intent by simply substituting the name of the predecessor FLC licensee with that of another owner, partner, or immediate family member who was and remains active running the FLC's business.

At the same time, we are very concerned about the unintended consequences that could arise if the language in [this bill] were to become law. This bill is modeled after current law to protect employees working at a car wash. Unfortunately, the courts have interpreted existing law in a manner that could negatively impact our industry if [this bill] continues with its cut and paste approach. Specifically, the courts have found that any one of the factors included in [this bill] is sufficient to find a subsequent party a successor. This finding does not

support the common law definition of successor. We believe this issue can be rectified and have shared amendments with

the author and the sponsor with the hope of reaching an agreement.

Unfortunately, until the language is resolved we must take an opposed position."

In addition, the Construction Employers' Association states that, although this bill is limited to the agriculture industry, they are concerned about the precedent this bill sets and potential future application to the construction industry.

COMMITTEE STAFF COMMENT :

The sponsor of this bill argues that the legislation is patterned after similar successor liability provisions applicable to the garment manufacturing and car wash industries. However, agricultural employers contend that there are unique dynamics in the agriculture industry that make application of the same factors problematic.

This debate has largely focused on the first of the four factors, which reads:

"Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor farm labor contractor."

Opponents argue that agriculture is different from the garment or car wash industries because the very nature of the agriculture industry is dynamic and workers may be employed by different FLCs for different crops during the same harvest season. For example, a crew of employees may work for one FLC harvesting one particular crop for one particular grower. However, when that crop is harvested, the entire crew (or a substantial majority thereof) may go on to work for a different FLC on a different crop (perhaps for a different grower). Opponents contend that in this example, the second FLC might be found liable under the bill merely because they used "substantially the same workforce" as the predecessor FLC. Opponents contend that this would impose liability where there was not a true successor relationship or any nefarious intent to avoid obligations of the law.

The sponsor and opponents have been in discussions about these issues, but at the time of preparation of this analysis had not yet reached an agreement on proposed amendments to address these

concerns. The parties may wish to continue discussing ways to enact meaningful successorship provisions to address admittedly problematic actors in this industry without creating unintended consequences for legitimate FLC employers.

REGISTERED SUPPORT / OPPOSITION :

Support

California Catholic Conference, Inc.  
California Communities United Institute  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Labor Federation, AFL-CIO  
California Rural Legal Assistance Foundation (sponsor)  
California Teamsters Public Affairs Council  
Engineers and Scientists of California  
International Longshore and Warehouse Union  
Numerous Individuals  
Professional and Technical Engineers, Local 21  
The Wage Justice Center  
UNITE HERE!  
United Farm Workers  
United Food and Commercial Workers Union, Western States Council  
Utility Workers Union of America, Local 132

Opposition

Agricultural Council of California  
California Association of Nurseries and Garden Centers  
California Association of Wheat Growers  
California Bean Shippers Association  
California Chamber of Commerce  
California Citrus Mutual  
California Cotton Ginners Association  
California Cotton Growers Association  
California Farm Bureau Federation  
California Grain and Feed Association  
California Grape and Tree Fruit League  
California Pear Growers Association  
California Seed Association  
California State Floral Association

California Tomato Growers Association  
Civil Justice Association of California  
Construction Employers' Association  
Nisei Farmers League

Pacific Egg and Poultry Association  
Western Agricultural Processors Association  
Western Growers Association  
Wine Institute

Analysis Prepared by : Ben Ebbink / L. & E. / (916) 319-2091

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE APRIL 8, 2013

**SENATE BILL**

**No. 168**

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**Introduced by Senator Monning**

February 4, 2013

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An act to add Section 1698.9 to the Labor Code, relating to farm labor contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 168, as amended, Monning. Farm labor contractors: successors: wages and penalties.

Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. Under existing law, a person who violates farm labor contractor requirements is guilty of a misdemeanor punishable by specified fines, or imprisonment in the county jail for not more than 6 months, or both.

This bill, in addition, would make a farm labor contractor successor to any predecessor farm labor contractor that owed wages or penalties to a former employee of the predecessor, whether the predecessor was a licensee or not, liable for those wages and penalties, if the successor farm labor contractor meets one or more specified criteria. By imposing a new requirement on farm labor contractor successors, the violation of which would be a crime, the 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. Section 1698.9 is added to the Labor Code, to  
 2 read:  
 3 1698.9. A farm labor contractor successor to any predecessor  
 4 farm labor contractor that owed wages or penalties to a former  
 5 employee of the predecessor, whether the predecessor was a  
 6 licensee under this chapter or not, is liable for those wages and  
 7 penalties, if the successor farm labor contractor meets one or more  
 8 of the following criteria:  
 9 (a) Uses substantially the same facilities or workforce to offer  
 10 substantially the same services as the predecessor farm labor  
 11 contractor. *A farm labor contractor that has operated with a valid*  
 12 *license for at least the preceding three years shall have an*  
 13 *affirmative defense to liability under this subdivision for using*  
 14 *substantially the same workforce, if all of the following apply:*  
 15 (1) *The individuals in the workforce were not referred or*  
 16 *supplied for employment by the predecessor farm labor contractor*  
 17 *to the licensed farm labor contractor asserting this defense.*  
 18 (2) *The licensed farm labor contractor asserting the defense*  
 19 *has not had any interest in, or connection with, the operation,*  
 20 *ownership, management, or control of the business of the*  
 21 *predecessor farm labor contractor within the preceding three*  
 22 *years.*  
 23 (3) *The licensed farm labor contractor asserting the defense*  
 24 *has not been determined to have violated any provision of the*  
 25 *Labor Code within the preceding three years.*  
 26 (b) Shares in the ownership, management, control of the  
 27 workforce, or interrelations of business operations with the  
 28 predecessor farm labor contractor.  
 29 (c) Employs in a managerial capacity any person who directly  
 30 or indirectly controlled the wages, hours, or working conditions  
 31 of the employees owed wages or penalties by the predecessor farm  
 32 labor contractor.

1 (d) Is an immediate family member of any owner, partner,  
2 officer, licensee, or director of the predecessor farm labor  
3 contractor or of any person who had a financial interest in the  
4 predecessor farm labor contractor. As used in this section,  
5 “immediate family member” means a spouse, parent, sibling, child,  
6 uncle, aunt, niece, nephew, or grandparent.

7 SEC. 2. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.

O

Date of Hearing: August 14, 2013

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Mike Gatto, Chair

SB 168 (Monning) - As Amended: August 5, 2013

Policy Committee: Labor and  
Employment Vote: 5-2

Urgency: No State Mandated Local Program:  
Yes Reimbursable: No

SUMMARY

This bill specifies a farm labor contractor (FLC) successor to any predecessor FLC that owed wages or penalties to a former employee of the predecessor is liable for those wages and penalties, if the successor FLC meets one or more of the following criteria:

- 1) Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor FLC. Further affords an affirmative defense of liability to an FLC that has operated with a valid license for at least the previous three years, provided the FLC meets specified conditions.
- 2) Shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor FLC.
- 3) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the employees owed wages or penalties by the predecessor FLC.
- 4) Is an immediate family member of any owner, partner, officer, licensee, or director of the predecessor FLC, or of any person who had a financial interest in the predecessor FLC. Defines immediate family member as a spouse, parent, sibling, child, uncle, aunt, niece, nephew, or grandparent.

FISCAL EFFECT

Minor, absorbable costs to the Department of Industrial Relations to implement this measure.

COMMENTS

1)Purpose . According to a July 2010 Insure the Uninsured report brief, California employed approximately 80,000 farmworkers (44% of the nation's farmworkers). The report further states an estimated 37% of this workforce is employed by FLCs.

Current law governing the car wash and garment industries establishes a successor liability provision, which states a successor employer in these two industries is liable for the predecessor's former employees owed wages and penalties, if the successor employer meets specified conditions. This bill establishes the same provisions for FLCs.

According to the California Rural Legal Assistance Foundation (CRLAF), sponsor of this bill, "SB 168 is a response to continued wage theft in the agricultural underground economy. It creates a farm labor contractor successor liability statute that is similar to existing successor liability provisions that protect garment workers and carwasheros, and it is designed to ensure that wages and penalties stolen from farm workers can be recovered from fraudulently created phony successor businesses."

2)Existing law defines an FLC as any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person. Statute also delineates an FLC as an entity that recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and for a fee, provides one or more of the following services: furnishes lodging or transportation for workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to these persons.

Generally, under federal and state law, the FLC is considered to be the employer of farm laborers, and is responsible for the prompt payment of wages and compliance with applicable local, state, and federal laws or regulations. Statute prohibits a person from acting as an FLC until he or she is issued a license from the state's Labor Commissioner.

SENATE THIRD READING  
SB 168 (Monning)  
As Amended August 5, 2013  
Majority vote

SENATE VOTE :21-11

LABOR & EMPLOYMENT 5-2                      APPROPRIATIONS 12-5

Ayes:	Roger Hernández, Alejo, Chau, Gomez, Holden	Ayes:	Gatto, Bocanegra, Bradford, Ian Calderon, Campos, Eggman, Gomez, Hall, Holden, Pan, Quirk, Weber
Nays:	Morrell, Gorell	Nays:	Harkey, Bigelow, Donnelly, Linder, Wagner

SUMMARY : Establishes successor liability for farm labor contractors (FLCs) as specified. Specifically, this bill :

- 1) Provides that a FLC successor to any predecessor FLC that owed wages or penalties (regardless of whether the predecessor FLC was licensed or not) is liable for those wages and penalties if the successor FLC meets one or more of the following criteria:
  - a) The FLC uses substantially the same facilities or workforce to offer substantially the same services as the predecessor FLC.
  - b) The FLC shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor FLC.
  - c) The FLC employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the employees owed wages or penalties by the predecessor FLC.
  - d) The FLC is an immediate family member of any owner,

partner, officer, licensee, or director of the predecessor FLC or of any person who had a financial interest in the predecessor FLC.

- 2) Provides that an FLC that has operated with a valid license for at least the preceding three years shall have an affirmative defense to liability for using substantially the same workforce, if all of the following apply:
- a) The individuals in the workforce were not referred or supplied for employment by the predecessor FLC.
  - b) The licensed FLC asserting the defense has not had any interest in, or connection with, the operation, ownership, management, or control of the business of the predecessor FLC within the preceding three years.
  - c) The licensed FLC asserting the defense has not been determined to have violated any provision of the Labor Code within the preceding three years.

EXISTING LAW requires FLCs to be licensed by the Labor Commissioner and to comply with specified employment laws.

FISCAL EFFECT : According to the Assembly Appropriations Committee, this bill will result in minor and absorbable costs to the Department of Industrial Relations.

COMMENTS : This bill seeks to hold a successor to a licensed or unlicensed FLC liable for the owed wages or penalties of the predecessor's former employees if they meet specified criteria. This legislation is patterned after similar successor liability provisions applicable to the garment manufacturing and car wash industries.

The sponsor of this measure, the California Rural Legal Assistance Foundation (CRLA), believes that this bill would prevent licensed or unlicensed FLCs from engaging in wage theft. According to CRLA, there have been numerous instances where employees attempt to recover their unpaid wages and applicable penalties for non-payment of wages through the Labor Commissioner and find that the offending FLC has gone out of business. However,

CRLA contends that the FLC has not really gone out of business, but instead reorganized with family members or former associate and nominally running the business under a different (or new) FLC license and name. The sponsors specifically point out the experience of one family for which CRLA is trying to collect lost wages but the FLC has reorganized no less than six times - each time with a different name and different family member or associate holding the license.

Opponents, including the California Chamber of Commerce, oppose this bill and argue that given the ambiguity of the term "successor," the bill could unfairly impose wage and hour liability on entities and individuals who had no control, connection, or ability to affect the working conditions and payment of wages to the employees whom are owed. They contend that the common law definition of a "bona fide successor" requires a stronger connection between the predecessor and subsequent employer before imposing liability onto the successor.

Analysis Prepared by : Ben Ebbink / L. & E. / (916) 319-2091

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SENATE RULES COMMITTEE	SB 168
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	
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UNFINISHED BUSINESS

Bill No: SB 168  
Author: Monning (D)  
Amended: 8/5/13  
Vote: 21

SENATE LABOR & INDUSTRIAL RELATIONS COMMITTEE : 3-1, 3/13/13  
AYES: Lieu, Leno, Lara  
NOES: Wyland  
NO VOTE RECORDED: Padilla

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 21-11, 4/18/13  
AYES: Beall, Block, Calderon, Corbett, Correa, De León,  
DeSaulnier, Evans, Hancock, Hernandez, Hill, Jackson, Lara,  
Leno, Lieu, Liu, Monning, Price, Roth, Steinberg, Yee  
NOES: Anderson, Berryhill, Cannella, Emmerson, Fuller, Gaines,  
Huff, Knight, Nielsen, Walters, Wyland  
NO VOTE RECORDED: Galgiani, Hueso, Padilla, Pavley, Wolk,  
Wright, Vacancy, Vacancy

ASSEMBLY FLOOR : 49-25, 8/26/13 - See last page for vote

SUBJECT : Farm labor contractors: successors: wages and  
penalties

SOURCE : California Rural Legal Assistance Foundation

DIGEST : This bill holds the successor of a farm labor  
contractor (FLC) liable for the predecessor's owed wages or  
CONTINUED

licensed or not, if the successor FLC meets one or more specified criteria.

Assembly Amendments add language which provides that a FLC that has operated with a valid license for at least the preceding three years shall have an affirmative defense to liability for using substantially the same workforce, if it meets certain criteria.

ANALYSIS : Existing law requires that if an employee is found to have been paid less than the minimum wage, that employee must be paid liquidated damages in an amount that is equal to the wages unlawfully unpaid, plus 10% interest.

Existing law designates a FLC as any person who, for a fee:

1. Employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person.
2. Recruits, solicits, supplies, or hires workers on behalf of any employer engaged in the growing or producing of farm products.
3. Provides one of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measure their work; or disburses wage payments to these persons.

Existing law requires a license issued by the Labor Commissioner (Commissioner) before a person can act as a FLC.

Existing law states that upon final determination of the Commissioner that a grower, a FLC, or person acting in the capacity of a FLC has failed to pay wages to its employees, the grower, FLC, or person acting in the capacity shall immediately pay those wages. If payment is not made within 30 days the Commissioner shall forward the matter to the local district attorney's office.

Existing law states that a successor to any employer that is engaged in sewing or assembly of garments or car washing and

CONTINUED

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polishing is liable for the predecessor's former employees owed wages and penalties if the successor meets any of the following criteria:

1. Uses substantially the same facilities or work force to produce substantially the same products for substantially the same type of customers as the predecessor employer.
2. Shares in the ownership, management, control of labor relations, or interrelations of business operations with the predecessor employer.
3. 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.
4. Is an immediate family member of any owner, partner, officer, or director of the predecessor employer or of any person who has a financial interest in the predecessor employer.

This bill holds a successor to any FLC business liable for owed wages or penalties to former employees if any of the following criteria is met:

1. Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor FLC.
2. Shares in the ownership, management or control of the workforce or interrelations of business operation with the predecessor FLC.
3. Employs in a managerial capacity anyone who directly or indirectly controlled the wages or working conditions of the employees owed wages or penalties by the predecessor FLC.
4. Is an immediate family member of any owner, partner, officer, licensee or director of the predecessor FLC or of any person who had a financial interest in the predecessor FLC.

This bill provides that an FLC that has operated with a valid license for at least the preceding three years shall have an affirmative defense to liability for using substantially the same workforce, if all of the following apply:

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Page

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1. The individuals in the workforce were not referred or supplied for employment by the predecessor FLC.
2. The licensed FLC asserting the defense has not had any interest in, or connection with, the operation, ownership,

management, or control of the business of the predecessor FLC within the preceding three years.

3. The licensed FLC asserting the defense has not been determined to have violated any provision of the Labor Code within the preceding three years.

Comments

California courts and successorship provisions . In People ex rel. Harris v. Sunset Care Wash, LLC (205 Cal. App. 4th, 2012) the plaintiff filed an action against Sunset Car Wash, LLC to recover unpaid wages and penalties owed by the defendant Auto Spa Express, Inc. which had operated a carwash at the same location before being evicted by the property owner. The trial court denied a motion for summary judgment filed by Sunset Carwash and ruled that because it operated at the same location and performed the same services it was considered a successor under Labor Code Section 2066. In its decision the Court noted that the Legislature was motivated to enact the Section 2066 provisions by its findings that carwash operators sometimes employed practices that resulted in state labor law violations.

Prior Legislation

AB 1688 (Goldberg, Chapter 825, Statutes of 2003) enacted regulations for the car wash industry including registration and bonding requirements, as well as protections against "successor" entities avoiding previous judgments for unpaid wages or penalties.

AB 633 (Steinberg, Chapter 554, Statutes of 1999) enacted reforms that increased regulation of garment manufacturers and contractors including a "successor" provision that is substantively identical to this bill.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: Yes

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According to the Assembly Appropriations Committee, this bill will result in minor and absorbable costs to the Department of Industrial Relations.

SUPPORT : (Verified 8/27/13)

California Rural Legal Assistance Foundation (source)

California Communities United Institute  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Labor Federation, AFL-CIO  
California Teamsters Public Affairs Council  
Engineers and Scientists of California  
International Longshore and Warehouse Union  
Professional and Technical Engineers, Local 21  
The Wage Justice Center  
UNITE HERE!  
United Farm Workers  
United Food and Commercial Workers Union, Western States Council  
Utility Workers Union of America, Local 132

OPPOSITION : (Verified 8/27/13)

California Association of Wheat Growers  
California Bean Shippers Association  
California Chamber of Commerce  
California Grain and Feed Association  
California Grape and Tree Fruit League  
California Pear Growers Association  
California Seed Association  
California State Floral Association  
Construction Employers' Association  
Pacific Egg and Poultry Association

ARGUMENTS IN SUPPORT : The sponsor of this bill, the California Rural Legal Assistance Foundation (CRLA), believes this bill prevents licensed or unlicensed FLC from engaging in wage theft. According to CRLA, there have been numerous instances where employees attempt to recover their unpaid wages and applicable penalties for non-payment of wages through the Commissioner and find that the offending FLC has gone out of business. However, CRLA contends that the FLC has not really gone out of business, but instead reorganized with family members or former associate and nominally running the business

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under a different (or new) FLC license and name. The proponents specifically point out the experience of one family for which CRLA is trying to collect lost wages but the FLC has reorganized no less than six times - each time with a different name and different family member or associate holding the license.

The CRLA also asserts that although several complaints have been filed with the Department of Labor Standards Enforcement (DLSE) about improper FLC licenses being issued to individuals or

entities created solely to avoid prior obligations, DLSE has not had a system in place to prevent this problem from occurring. CRLA maintains that a law that makes FLC successors liable for the unpaid wages of FLC predecessors would eliminate the incentive to create false FLC licensees and help ensure that workers are paid what they are owed.

Lastly, CRLA argues that farm workers should be provided with the same protections from fraudulent 'successor' FLC businesses as the Legislature provided to garment and carwash workers - specifically drawing attention to the California Courts decision to uphold the successorship provisions.

ARGUMENTS IN OPPOSITION : Opponents argue:

Given the ambiguity of the term "successor," it could unfairly impose wage and hour liability onto entities and individuals who had no control, connection, or ability to affect the working conditions and payment of wages to the employees whom are owed.

The imposition of liability on a "bona fide successor," is based upon fundamental fairness. Specifically, prior to holding a successor entity liability for the actions of its predecessor, courts generally look towards (1) the level of continuity between the predecessor and successor and (2) whether the successor had adequate notice of the potential liability. If both of these factors are satisfied, courts have generally determined that the principles of equity require the successor to satisfy the obligations of the predecessor. *Steinbech v. Hubbard*, 51 F.3d 843, 845-846 (9th Cir. 1994). Likewise, if one or both of the factors are not satisfied, the successor is generally not held liable for the actions of the predecessor.

CONTINUED

Absent such a fundamental analysis of the relationship between the predecessor and successor, an innocent and unaware entity or individual could be unfairly strapped with the liability of a prior bad actor. Specifically, unless the term "successor" in SB 168 is adequately defined to mirror the common law definition of "bona fide successor," a subsequent employer in the same line of business as the predecessor could be liable for the wage and hour violations of the predecessor simply because the subsequent employer hired one of the predecessor's employees. This provision alone would completely discourage a subsequent employer from

hiring any of the predecessor's workers. Moreover, the principles of equity certainly require a stronger connection between the predecessor and subsequent employer, other than the hiring of one employee or even a familial connection, before imposing the liability onto the successor.

ASSEMBLY FLOOR : 49-25, 8/26/13

AYES: Alejo, Ammiano, Atkins, Bloom, Bocanegra, Bonilla, Bonta, Bradford, Buchanan, Ian Calderon, Campos, Chau, Chesbro, Cooley, Daly, Dickinson, Eggman, Fong, Fox, Frazier, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gray, Hall, Roger Hernández, Holden, Jones-Sawyer, Levine, Lowenthal, Mitchell, Mullin, Nazarian, Pan, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Skinner, Stone, Ting, Weber, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Achadjian, Allen, Bigelow, Chávez, Conway, Dahle, Donnelly, Beth Gaines, Gorell, Grove, Hagman, Harkey, Jones, Linder, Logue, Maienschein, Mansoor, Melendez, Morrell, Nestande, Olsen, Patterson, Wagner, Waldron, Wilk

NO VOTE RECORDED: Brown, Medina, Muratsuchi, Salas, Vacancy, Vacancy

PQ:k 8/28/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

**Senate Bill No. 168**

\_\_\_\_\_

Passed the Senate August 30, 2013

\_\_\_\_\_

*Secretary of the Senate*

\_\_\_\_\_

Passed the Assembly August 26, 2013

\_\_\_\_\_

*Chief Clerk of the Assembly*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_

*Private Secretary of the Governor*

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

An act to add Section 1698.9 to the Labor Code, relating to farm labor contractors.

## LEGISLATIVE COUNSEL'S DIGEST

SB 168, Monning. Farm labor contractors: successors: wages and penalties.

Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. Under existing law, a person who violates farm labor contractor requirements is guilty of a misdemeanor punishable by specified fines, or imprisonment in the county jail for not more than 6 months, or both.

This bill, in addition, would make a farm labor contractor successor to any predecessor farm labor contractor that owed wages or penalties to a former employee of the predecessor, whether the predecessor was a licensee or not, liable for those wages and penalties, if the successor farm labor contractor meets one or more specified criteria. By imposing a new requirement on farm labor contractor successors, the violation of which would be a crime, the 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.

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

SECTION 1. Section 1698.9 is added to the Labor Code, to read:

1698.9. A farm labor contractor successor to any predecessor farm labor contractor that owed wages or penalties to a former employee of the predecessor, whether the predecessor was a licensee under this chapter or not, is liable for those wages and

penalties, if the successor farm labor contractor meets one or more of the following criteria:

(a) Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor farm labor contractor. A farm labor contractor that has operated with a valid license for at least the preceding three years shall have an affirmative defense to liability under this subdivision for using substantially the same workforce, if all of the following apply:

(1) The individuals in the workforce were not referred or supplied for employment by the predecessor farm labor contractor to the licensed farm labor contractor asserting this defense.

(2) The licensed farm labor contractor asserting the defense has not had any interest in, or connection with, the operation, ownership, management, or control of the business of the predecessor farm labor contractor within the preceding three years.

(3) The licensed farm labor contractor asserting the defense has not been determined to have violated any provision of the Labor Code within the preceding three years.

(b) Shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor farm labor contractor.

(c) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the employees owed wages or penalties by the predecessor farm labor contractor.

(d) Is an immediate family member of any owner, partner, officer, licensee, or director of the predecessor farm labor contractor or of any person who had a financial interest in the predecessor farm labor contractor. As used in this section, “immediate family member” means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, or grandparent.

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

Approved \_\_\_\_\_, 2013

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*Governor*

## Senate Bill No. 168

### CHAPTER 715

An act to add Section 1698.9 to the Labor Code, relating to farm labor contractors.

[Approved by Governor October 10, 2013. Filed with  
Secretary of State October 10, 2013.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 168, Monning. Farm labor contractors: successors: wages and penalties.

Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. Under existing law, a person who violates farm labor contractor requirements is guilty of a misdemeanor punishable by specified fines, or imprisonment in the county jail for not more than 6 months, or both.

This bill, in addition, would make a farm labor contractor successor to any predecessor farm labor contractor that owed wages or penalties to a former employee of the predecessor, whether the predecessor was a licensee or not, liable for those wages and penalties, if the successor farm labor contractor meets one or more specified criteria. By imposing a new requirement on farm labor contractor successors, the violation of which would be a crime, the 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.

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

SECTION 1. Section 1698.9 is added to the Labor Code, to read:

1698.9. A farm labor contractor successor to any predecessor farm labor contractor that owed wages or penalties to a former employee of the predecessor, whether the predecessor was a licensee under this chapter or not, is liable for those wages and penalties, if the successor farm labor contractor meets one or more of the following criteria:

(a) Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor farm labor contractor. A farm labor contractor that has operated with a valid license for at least the preceding three years shall have an affirmative defense to liability under

this subdivision for using substantially the same workforce, if all of the following apply:

(1) The individuals in the workforce were not referred or supplied for employment by the predecessor farm labor contractor to the licensed farm labor contractor asserting this defense.

(2) The licensed farm labor contractor asserting the defense has not had any interest in, or connection with, the operation, ownership, management, or control of the business of the predecessor farm labor contractor within the preceding three years.

(3) The licensed farm labor contractor asserting the defense has not been determined to have violated any provision of the Labor Code within the preceding three years.

(b) Shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor farm labor contractor.

(c) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the employees owed wages or penalties by the predecessor farm labor contractor.

(d) Is an immediate family member of any owner, partner, officer, licensee, or director of the predecessor farm labor contractor or of any person who had a financial interest in the predecessor farm labor contractor. As used in this section, "immediate family member" means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, or grandparent.

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