

AMENDED IN ASSEMBLY JUNE 22, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MARCH 27, 2006

SENATE BILL

No. 1428

Introduced by Senator Scott

February 22, 2006

An act to add Section 679 to the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1428, as amended, Scott. Unemployment compensation: employer: motion picture industry.

Existing law requires that the determination of the employer-employee relationship be made pursuant to common-law principles, with specified exceptions. Existing law provides that when an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, as defined, the individual or entity is the employer of the employee who performs the services, provided that certain requirements are satisfied.

This bill would provide that, notwithstanding those provisions, any employing unit that ~~has control of the payment of wages, as specified, to a worker performing services in the motion picture industry~~ is a *motion picture payroll services company*, as defined, shall be treated as an employer of ~~that worker~~ *a motion picture production worker, as defined. This bill would require any person who is operating as a motion picture payroll services company to report that status to the Employment Development Department within 15 days after first*

paying wages to a motion picture production worker, or by January 15, 2007, subject to losing its status as an employer of that motion picture production worker, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 *SECTION 1. Section 679 is added to the Unemployment*
2 *Insurance Code, to read:*

3 679. (a) *Notwithstanding Sections 606.5 and 621, for the*
4 *purposes of this code, "employer" means any employing unit*
5 *that is a motion picture payroll services company who pays the*
6 *wages of a motion picture production worker for services to a*
7 *motion picture production company or an allied motion picture*
8 *services company.*

9 (b) (1) *Any person who is operating as a motion picture*
10 *payroll services company shall file a statement with the*
11 *department that declares its intent to be the employer of motion*
12 *picture production workers, pursuant to this section, within 15*
13 *days after first paying wages to the workers. The director shall*
14 *prescribe the form and manner of the statement.*

15 (2) *Any person who operated as a motion picture payroll*
16 *services company prior to January 1, 2007, shall file the*
17 *statement required by this section by January 15, 2007.*

18 (3) *The director may prevent a motion picture payroll services*
19 *company that fails to file a timely statement, as required by this*
20 *section, from being treated as an employer of motion picture*
21 *production workers.*

22 (c) *For each rating period beginning on or after January 1,*
23 *2007, in which an employer operating as a motion picture*
24 *payroll services company obtains or attempts to obtain a more*
25 *favorable rate of contributions by not reporting under this*
26 *section due to deliberate ignorance, reckless disregard, fraud,*
27 *intent to evade, misrepresentation, or willful nondisclosure, the*
28 *director shall assign the maximum contribution rate plus 2*
29 *percent for each applicable rating period, the current rating*
30 *period, and the subsequent rating period. Contributions paid in*
31 *excess of the maximum rate under this section shall not be*
32 *credited to the employing unit's reserve account.*

1 (d) For purposes of this section, the following definitions
2 apply:

3 (1) “Allied motion picture services company” means any
4 person engaged in an industry closely allied with, and whose
5 work is integral to, a motion picture production company in the
6 development, production, or postproduction of a motion picture,
7 excluding the distribution of the completed motion picture and
8 any activities occurring thereafter, and who hires from the same
9 pool of craft and guild or union workers, actors, or extras as a
10 motion picture production company.

11 (2) “Motion picture” means a motion picture of any type,
12 including a theatrical motion picture, a television production, a
13 television commercial, a music video, or any other type of motion
14 picture regardless of its theme or the technology used in its
15 production or distribution

16 (3) (A) “Motion picture payroll services company” means
17 any employing unit that directly or through its affiliates meets all
18 of the following criteria:

19 (i) Contractually provides the services of motion picture
20 production workers to a motion picture production company or
21 to an allied motion picture production services company.

22 (ii) Is a signatory to a collective bargaining agreement for one
23 or more clients.

24 (iii) Controls the payment of wages to the motion picture
25 production workers and pays those wages from its own account
26 or accounts.

27 (iv) Is contractually obligated to pay wages to the motion
28 picture production workers without regard to payment or
29 reimbursement by the motion picture production company or
30 allied motion picture services company.

31 (v) At least 80 percent of the wages paid by the motion picture
32 payroll services company each calendar year are paid to workers
33 associated with contracts with motion picture production
34 companies.

35 (B) If the director finds that any employing unit is operating as
36 a motion picture payroll services company but is failing to
37 comply with any of the provisions of subparagraph (A) of
38 paragraph (3), the director may preclude the employing unit
39 from being classified as a motion picture payroll services
40 company. Upon the director’s determination, the employing unit

1 *is subject to determination of the employer-employee relationship*
2 *pursuant to Section 606.5.*

3 (4) *“Motion picture production company” means any*
4 *employing unit engaged in the development, production, and*
5 *postproduction of a motion picture, excluding the distribution of*
6 *the completed motion picture and any activities occurring*
7 *thereafter.*

8 (5) *“Motion picture production worker” means an individual*
9 *who provides services to a motion picture production company*
10 *or allied motion picture services company and who, with regard*
11 *to those services, is reported under this part as an employee by*
12 *the motion picture payroll services company. An individual who*
13 *has been reported as an employee by the motion picture payroll*
14 *services company, without regard to the individual’s status as an*
15 *employee or independent contractor, shall be the employee of the*
16 *motion picture payroll services company for the purposes of this*
17 *code throughout the contractual period with the motion picture*
18 *payroll services company.*

19 (6) *“Wages” includes residual payments.*

20 ~~SECTION 1.— Section 679 is added to the Unemployment~~
21 ~~Insurance Code, to read:~~

22 ~~679.— (a) Notwithstanding Sections 606.5 and 621, for~~
23 ~~purposes of this code, “employer” means any employing unit that~~
24 ~~has control of the payment of wages, as described in Section~~
25 ~~3401(d)(1) of the Internal Revenue Code, to a worker in the~~
26 ~~motion picture industry, and the worker shall be treated as the~~
27 ~~employee of that employer.~~

28 ~~(b) For purposes of this section, the “motion picture industry”~~
29 ~~means any industry, business, or establishment operated for the~~
30 ~~purpose of motion picture or television film production.~~