

Senate Bill No. 313

CHAPTER 640

An act to amend Section 3722 of the Labor Code, relating to workers' compensation, and making an appropriation therefor.

[Approved by Governor November 2, 2009. Filed with
Secretary of State November 2, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 313, DeSaulnier. Workers' compensation: penalty assessments.

Existing law requires every employer, except the state, to secure the payment of workers' compensation. Existing law requires the Director of Industrial Relations to issue and serve on any employer that has failed to secure the payment of workers' compensation a stop order prohibiting the use of employee labor. Under existing law, at the time the stop order is issued and served, the director is required to issue and serve a penalty assessment order requiring the uninsured employer to pay to the director, for deposit into the State Treasury to the credit of the continuously appropriated Uninsured Employers Benefits Trust Fund, the sum of \$1,000 per employee employed at the time the order is issued and served. Existing law provides that in lieu of the aforementioned penalty assessment, at any time that the director determines that an employer has been uninsured for a period in excess of one week during the calendar year preceding the director's determination, the director may issue and serve a penalty assessment order that requires the uninsured employer to pay to the director, for deposit into the State Treasury to the credit of the Uninsured Employers Benefits Trust Fund, the greater of (1) twice the amount the employer would have paid in workers' compensation premiums during the period the employer was uninsured or (2) the sum of \$1,000 per employee employed during the period the employer was uninsured.

This bill would increase the penalty assessment to \$1,500 per employee employed during the period the employer was uninsured. Because the money from the increased penalty assessment is deposited into the continuously appropriated Uninsured Employers Fund, this bill would make an appropriation.

The bill would also clarify that the director is required to issue and serve either of the above-mentioned penalty assessments.

Existing law provides that if the employer is currently insured, or becomes insured during the period during which the above penalty is being determined, the amount an employer would have paid in workers' compensation premiums shall be calculated by prorating the current premium for the number of weeks the employer was uninsured.

Existing law provides that if the employer is uninsured at the time the above penalty is being determined, the amount an employer would have paid in workers' compensation premiums shall be calculated by applying the weekly premium per employee on file with the Insurance Commissioner to the number of weeks the employer was uninsured. Existing law provides that each employee of the uninsured employer shall be assumed to be assigned to the governing classification for that employer as determined by the director after consultation with the Insurance Commissioner. Existing law provides that if the employer contends that the assignment of the governing classification is incorrect, or that any employee should be assigned to a different classification, the employer has the burden to prove that the different classification should be utilized.

This bill would require that, if the employer is currently insured, or becomes insured during the period during which the above penalty is being determined, the amount an employer would have paid in workers' compensation premiums shall be calculated by prorating the current premium for the number of weeks the employer was uninsured within the 3-year period immediately prior to the date the above penalty assessment is issued.

This bill would also provide that if the employer is uninsured at the time the above penalty is being determined, the amount an employer would have paid in workers' compensation premiums shall be the product of the employer's payroll for all periods of time the employer was uninsured within the 3-year period immediately prior to the date the above penalty assessment is issued multiplied by a rate determined in accordance with regulations that may be adopted by the director or, if none have been adopted, the manual rate or rates of the State Compensation Insurance Fund for the employer's governing classification, as determined by the director, pursuant to the standard classification system approved by the Insurance Commissioner. This bill would provide that, unless the amount of the employer's payroll for all periods during which the employer was uninsured within the 3-year period is otherwise proven by a preponderance of evidence, the employer's payroll for each week the employer was uninsured shall be presumed to be the state average weekly wage, as defined, multiplied by the number of persons employed by the employer at the time the penalty assessment is issued.

Appropriation: yes.

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

SECTION 1. Section 3722 of the Labor Code is amended to read:

3722. (a) At the time the stop order is issued and served pursuant to Section 3710.1, the director shall also issue and serve a penalty assessment order requiring the uninsured employer to pay to the director, for deposit in the State Treasury to the credit of the Uninsured Employers Fund, the sum of one thousand five hundred dollars (\$1,500) per employee employed at the time the order is issued and served, as an additional penalty for being

uninsured at that time or issue and serve a penalty assessment order pursuant to subdivision (b).

(b) At any time that the director determines that an employer has been uninsured for a period in excess of one week during the calendar year preceding the determination, the director shall issue and serve a penalty assessment order requiring the uninsured employer to pay to the director, for deposit in the State Treasury to the credit of the Uninsured Employers Fund, the greater of (1) twice the amount the employer would have paid in workers' compensation premiums during the period the employer was uninsured, determined according to subdivision (c), or (2) the sum of one thousand five hundred dollars (\$1,500) per employee employed during the period the employer was uninsured. A penalty assessment issued and served by the director pursuant to this subdivision shall be in lieu of, and not in addition to, any other penalty issued and served by the director pursuant to subdivision (a).

(c) If the employer is currently insured, or becomes insured during the period during which the penalty under subdivision (b) is being determined, the amount an employer would have paid in workers' compensation premiums shall be calculated by prorating the current premium for the number of weeks the employer was uninsured within the three-year period immediately prior to the date the penalty assessment is issued. If the employer is uninsured at the time the penalty under subdivision (b) is being determined, the amount an employer would have paid in workers' compensation premiums shall be the product of the employer's payroll for all periods of time the employer was uninsured within the three-year period immediately prior to the date the penalty assessment is issued multiplied by a rate determined in accordance with regulations that may be adopted by the director or, if none has been adopted, the manual rate or rates of the State Compensation Insurance Fund for the employer's governing classification pursuant to the standard classification system approved by the Insurance Commissioner. The classification shall be determined by the director or the director's designee at the time the penalty assessment is issued on the basis of any information available to the director regarding the employer's operations. Unless the amount of the employer's payroll for all periods during which the employer was uninsured within the three-year period is otherwise proven by a preponderance of evidence, the employer's payroll for each week the employer was uninsured shall be presumed to be the state average weekly wage multiplied by the number of persons employed by the employer at the time the penalty assessment is issued. For purposes of this subdivision, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance as reported by the United States Department of Labor for California for the 12-month period ending March 31 of the calendar year preceding the year in which the penalty assessment order is issued.

(d) If upon the filing of a claim for compensation under this division the Workers' Compensation Appeals Board finds that any employer has not secured the payment of compensation as required by this division and finds

the claim either noncompensable or compensable, the appeals board shall mail a copy of their findings to the uninsured employer and the director, together with a direction to the uninsured employer to file a verified statement pursuant to subdivision (e).

After the time for any appeal has expired and the adjudication of the claim has become final, the uninsured employer shall be assessed and pay as a penalty either of the following:

(1) In noncompensable cases, two thousand dollars (\$2,000) per each employee employed at the time of the claimed injury.

(2) In compensable cases, ten thousand dollars (\$10,000) per each employee employed on the date of the injury.

(e) In order to establish the number of employees the uninsured employer had on the date of the claimed injury in noncompensable cases and on the date of injury in compensable cases, the employer shall submit to the director within 10 days after service of findings, awards, and orders of the Workers' Compensation Appeals Board a verified statement of the number of employees in his or her employ on the date of injury. If the employer fails to submit to the director this verified statement or if the director disputes the accuracy of the number of employees reported by the employer, the director shall use any information regarding the number of employees as the director may have or otherwise obtains.

(f) Except for penalties assessed under subdivision (b), the maximum amount of penalties which may be assessed pursuant to this section is one hundred thousand dollars (\$100,000). Payment shall be transmitted to the director for deposit in the State Treasury to the credit of the Uninsured Employers Fund.

(g) (1) The Workers' Compensation Appeals Board may provide for a summary hearing on the sole issue of compensation coverage to effect the provisions of this section.

(2) In the event a claim is settled by the director pursuant to subdivision (e) of Section 3715 by means of a compromise and release or stipulations with request for award, the appeals board may also provide for a summary hearing on the issue of compensability.