AMENDED IN ASSEMBLY SEPTEMBER 14, 1995

AMENDED IN ASSEMBLY AUGUST 29, 1995

AMENDED IN ASSEMBLY JULY 15, 1995

AMENDED IN SENATE MAY 30, 1995

AMENDED IN SENATE APRIL 24, 1995

SENATE BILL No. 1221

Introduced by Senator Calderon
(Coauthors: Senators Ayala, Costa, Haynes, Johannessen, and Monteith)
(Coauthors: Assembly Members Aguiar, Bordonaro, Bowler, Cunneen, Harvey, Rainey, and Woods)

February 24, 1995

An act to ~~amend Section 2601~~ *repeal Section 3371 of, and to repeal and add Section 3370 of, the Labor Code, to amend Sections 2601 and 5069* of the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 1221, as amended, Calderon. Prisoners: civil rights.

(1) Under existing law, a person sentenced to imprisonment in a state prison may during that period of confinement be deprived of only those rights as is reasonably related to legitimate penological interests. Existing law additionally enumerates certain civil rights of a state prisoner, including, among others, the right to inherit, own, sell, or convey real or personal property and to purchase, receive,

and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office.

This bill would delete from those enumerated civil rights of a state prisoner, the right to have personal visits, to marry, to create a power of appointment, to make a will, and to receive specified benefits. The bill also would provide that a state prisoner is otherwise entitled only to those rights established by the California and the United States Constitutions.

(2) Existing law requires each inmate in a state penal or correctional institution to be entitled to receive workers' compensation benefits for injury or death arising out of, and in the course of, assigned employment, under certain conditions. Existing law requires the Department of Corrections to furnish a list of qualified workers' compensation attorneys to an inmate if the issues are complex or if the inmate so requests.

This bill would repeal those provisions and would specify that inmates in state or local facilities are not entitled to workers' compensation benefits for injury or death arising out of, or in the course of, either paid or volunteer assigned employment. The bill would make a conforming change to provisions regarding inmate rehabilitation benefits.

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

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

SECTION 1. *Section 3370 of the Labor Code is repealed.*

~~3370. (a) Each inmate of a state penal or correctional institution shall be entitled to the workers' compensation benefits provided by this division for injury arising out of and in the course of assigned employment and for the death of the inmate if the injury proximately causes death, subject to all of the following conditions:~~

~~(1) The inmate was not injured as the result of an assault in which the inmate was the initial aggressor, or as the result of the intentional act of the inmate injuring himself or herself.~~

~~(2) The inmate shall not be entitled to any temporary disability indemnity benefits while incarcerated in a state prison.~~

~~(3) No benefits shall be paid to an inmate while he or she is incarcerated. The period of benefit payment shall instead commence upon release from incarceration. If an inmate who has been released from incarceration, and has been receiving benefits under this section, is reincarcerated in a city or county jail, or state penal or correctional institution, the benefits shall cease immediately upon the inmate's reincarceration and shall not be paid for the duration of the reincarceration.~~

~~(4) This section shall not be construed to provide for the payment to an inmate, upon release from incarceration, of temporary disability benefits which were not paid due to the prohibition of paragraph (2).~~

~~(5) In determining temporary and permanent disability indemnity benefits for the inmate, the average weekly earnings shall be taken at not more than the minimum amount set forth in Section 4453.~~

~~(6) Where a dispute exists respecting an inmate's rights to the workers' compensation benefits provided herein, the inmate may file an application with the appeals board to resolve the dispute. The application may be filed at any time during the inmate's incarceration.~~

~~(7) After release or discharge from a correctional institution, the former inmate shall have one year in which to file an original application with the appeals board, unless the time of injury is such that it would allow more time under Section 5804 of the Labor Code.~~

~~(8) The percentage of disability to total disability shall be determined as for the occupation of a laborer of like age by applying the schedule for the determination of the percentages of permanent disabilities prepared and adopted by the administrative director.~~

~~(9) This division shall be the exclusive remedy against the state for injuries occurring while engaged in assigned work or work under contract. Nothing in this division shall affect any right or remedy of an injured inmate for injuries not compensated by this division.~~

~~(b) The Department of Corrections shall present to each inmate of a state penal or correctional institution, prior to his or her first assignment to work at the institution, a printed statement of his or her rights under this division, and a description of procedures to be followed in filing for benefits under this section. The statement shall be approved by the administrative director and be posted in a conspicuous place at each place where an inmate works.~~

~~(c) Notwithstanding any other provision of this division, the Department of Corrections shall have medical control over treatment provided an injured inmate while incarcerated in a state prison, except, that in serious cases, the inmate is entitled, upon request, to the services of a consulting physician.~~

~~(d) Paragraphs (2), (3), and (4) of subdivision (a) shall also be applicable to an inmate of a state penal or correctional institution who would otherwise be entitled to receive workers' compensation benefits based on an injury sustained prior to his or her incarceration. However, temporary and permanent disability benefits which, except for this subdivision, would otherwise be payable to an inmate during incarceration based on an injury sustained prior to incarceration shall be paid to the dependents of the inmate. If the inmate has no dependents, the temporary disability benefits which, except for this subdivision, would otherwise be payable during the inmate's incarceration shall be paid to the State Treasury to the credit of the Uninsured Employers Fund, and the permanent disability benefits which would otherwise be payable during the inmate's incarceration shall be held in trust for the inmate by the Department of Corrections during the period of incarceration.~~

~~For purposes of this subdivision, ''dependents'' means the inmate's spouse or children, including an inmate's former spouse due to divorce and the inmate's children from that marriage.~~

~~(e) Notwithstanding any other provision of this division, an employee who is an inmate, as defined in subdivision (e) of Section 3351 who is eligible for~~

~~vocational rehabilitation services as defined in Section 4635 shall only be eligible for direct placement services.~~

SEC. 1.5. Section 3370 is added to the Labor Code, to read:

3370. An inmate of a state or local penal or correctional institution is not entitled to workers' compensation benefits for injury or death arising out of, and in the course of, assigned employment, including employment performed as a volunteer pursuant to Section 3363.5, 3363.6, or 3365.

SEC. 1.6. Section 3371 of the Labor Code is repealed.

~~3371. If the issues are complex or if the inmate applicant requests, the Department of Corrections shall furnish a list of qualified workers' compensation attorneys to permit the inmate applicant to choose an attorney to represent him or her before the appeals board.~~

SEC. 1.7. Section 2601 of the Penal Code is amended to read:

2601. (a) Except as provided in subdivision (b), each person described in Section 2600 is entitled only to those rights established by the California Constitution and the United States Constitution. Furthermore, any other activities permitted to any inmate beyond those required constitutionally shall be subject to rules established by the Director of Corrections who may grant privileges and specify allowable conduct for the inmates on a group or individual basis.

(b) Subject only to the provisions of that section, each person described in Section 2600 shall have the following civil rights:

(1) Except as provided in Section 2225 of the Civil Code, to inherit, own, sell, or convey real or personal property, including all written and artistic material produced or created by that person during the period of imprisonment. However, to the extent authorized in Section 2600, the Department of Corrections may restrict or prohibit sales or conveyances that are made for business purposes.

(2) (A) To purchase, receive, and read any and all newspapers, periodicals, and books accepted for

distribution by the United States Post Office. Pursuant to this section, prison authorities may exclude any of the following matter:

(i) Obscene publications or writings, and mail containing information concerning where, how, or from whom this matter may be obtained.

(ii) Any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence.

(iii) Any matter concerning gambling or a lottery.

(B) Nothing in this section shall be construed as limiting the right of prison authorities to do the following:

(i) Open and inspect any and all packages received by an inmate.

(ii) Establish reasonable restrictions as to the number of newspapers, magazines, and books that the inmate may have in his or her cell or elsewhere in the prison at one time.

(3) To initiate civil actions, subject to a three dollar ($3) filing fee to be collected by the Department of Corrections, and subject to Title 3a (commencing with Section 391) of the Code of Civil Procedure.

(4) To correspond, confidentially, with any member of the State Bar or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband.

~~(5) To receive all benefits provided for in Sections 3370 and 3371 of the Labor Code.~~

SEC. 1.8. Section 5069 of the Penal Code is amended to read:

5069. (a) The administrative director of the Division of Industrial Accidents shall formulate procedures for the selection and orderly referral of injured inmates of state penal or correctional institutions who may be benefited by rehabilitation services and retrained for other positions upon release from incarceration. The State Department of Rehabilitation shall cooperate in both designing and monitoring results of rehabilitation programs for the disabled inmates. The primary purpose of this section is to rehabilitate injured inmates in order

that they might engage in suitable and gainful employment upon their release.

(b) The director shall notify the injured inmate of the availability of rehabilitation services in those cases where there is continuing disability of 28 days and beyond. A copy of such notification shall be forwarded to the State Department of Rehabilitation.

(c) The initiation of a rehabilitation plan shall be the responsibility of the director.

(d) Upon establishment of a rehabilitation plan, the injured inmate shall cooperate in carrying it out.

(e) The injured inmate shall receive such medical and vocational rehabilitative services as may be reasonably necessary to restore him to suitable employment.

~~(f) The injured inmate's rehabilitation benefit is an additional benefit and shall not be converted to or replace any workmen's compensation benefit available to him.~~

SEC. 2. The Legislature finds and declares that the provision of any privileges to inmates in the state prison may be granted pursuant to prison rules or regulations promulgated for that purpose.

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