

Senate Bill No. 189

CHAPTER 770

An act to amend Sections 3364, 3706.5, and 4156 of, and to amend, repeal, and add Sections 3351 and 3352 of, the Labor Code, relating to workers' compensation.

[Approved by Governor October 13, 2017. Filed with
Secretary of State October 13, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 189, Bradford. Workers' compensation: definition of employee.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, within the Department of Industrial Relations, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law defines an employee, for purposes of the laws governing workers' compensation, to include, among other persons, officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Existing law excludes from that definition an officer or member of the board of directors of a quasi-public or private corporation, as specified, who owns at least 15% of the issued and outstanding stock and executes a written waiver of his or her rights under the laws governing workers' compensation, stating under penalty of perjury that he or she is a qualifying officer or director.

This bill would expand the scope of the exception from the definition of an employee to apply to an officer or member of the board of directors of a quasi-public or private corporation, except as specified, who owns at least 10% of the issued and outstanding stock, or 1% of the issued and outstanding stock of the corporation if that officer's or member's parent, grandparent, sibling, spouse, or child owns at least 10% of the issued and outstanding stock of the corporation and that officer or member is covered by a health care service plan or a health insurance policy, and executes a written waiver, as described above. The bill would expand the scope of the exception to apply to an owner of a professional corporation, as defined, who is a practitioner rendering the professional services for which the professional corporation is organized, and who executes a document, in writing and under penalty of perjury, both waiving his or her rights under the laws governing workers' compensation, and stating that he or she is covered by a health insurance policy or a health care service plan. The bill would expand the scope of the exception to include an officer or member of the board of directors of a cooperative corporation, as specified. The bill would also expand the definition of an employee to specifically include a person who holds the power to revoke a trust, with respect to shares of a private

corporation held in trust or general partnership or limited liability company interests held in trust, and would authorize that person to also elect to be excluded from the requirement to obtain workers' compensation coverage, as specified. The bill would provide that an insurance carrier, insurance agent, or insurance broker is not required to investigate, verify, or confirm the accuracy of the facts contained in the waiver. The bill would make other changes relating to the execution and acceptance of waivers.

The changes made by the bill would take effect on July 1, 2018, except as specified.

By expanding the scope of the crime of perjury, 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 3351 of the Labor Code is amended to read:

3351. "Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

- (a) Aliens and minors.
- (b) All elected and appointed paid public officers.
- (c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with paragraph (16) of subdivision (a) of Section 3352.
- (d) Except as provided in paragraph (8) of subdivision (a) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.
- (e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.
- (f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with paragraph (17) of subdivision (a) of Section 3352.

(g) This section shall remain in effect only until July 1, 2018, and as of that date is repealed.

SEC. 2. Section 3351 is added to the Labor Code, to read:

3351. "Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

- (a) Aliens and minors.
- (b) All elected and appointed paid public officers.
- (c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with paragraph (16), (18), or (19) of subdivision (a) of Section 3352.
- (d) Except as provided in paragraph (8) of subdivision (a) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.
- (e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.
- (f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with paragraph (17) of subdivision (a) of Section 3352.
- (g) A person who holds the power to revoke a trust, with respect to shares of a private corporation held in trust or general partnership or limited liability company interests held in trust. To the extent that this person is deemed to be an employee described in subdivision (c) or (f), as applicable, the person may also elect to be excluded from coverage as described in subdivision (c) or (f), as applicable, if that person otherwise meets the criteria for exclusion, as described in Section 3352.

(h) This section shall become operative on July 1, 2018.

SEC. 3. Section 3352 of the Labor Code is amended to read:

3352. (a) "Employee" excludes the following:

- (1) A person defined in subdivision (d) of Section 3351 who is employed by his or her parent, spouse, or child.
- (2) A person performing services in return for aid or sustenance only, received from any religious, charitable, or relief organization.
- (3) A person holding an appointment as deputy clerk or deputy sheriff appointed for his or her own convenience, and who does not receive compensation from the county or municipal corporation or from the citizens of that county or municipal corporation for his or her services as the deputy.

This exclusion is operative only as to employment by the county or municipal corporation and does not deprive that person of recourse against a private person employing him or her for injury occurring in the course of, and arising out of, the employment.

(4) A person performing voluntary services at or for a recreational camp, hut, or lodge operated by a nonprofit organization, exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, of which he or she or a member of his or her family is a member and who does not receive compensation for those services, other than meals, lodging, or transportation.

(5) A person performing voluntary service as a ski patrolman who does not receive compensation for those services, other than meals or lodging or the use of ski tow or ski lift facilities.

(6) A person employed by a ski lift operator to work at a snow ski area who is relieved of, and is not performing any, prescribed duties, while participating in recreational activities on his or her own initiative.

(7) A person, other than a regular employee, participating in sports or athletics who does not receive compensation for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, or other expenses incidental thereto.

(8) A person described in subdivision (d) of Section 3351 whose employment by the employer to be held liable, during the 90 calendar days immediately preceding the date of injury, for injuries as described in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury, for diseases or injuries as described in Section 5412, comes within either of the following descriptions:

(A) The employment was, or was contracted to be, for less than 52 hours.

(B) The employment was, or was contracted to be, for wages of not more than one hundred dollars (\$100).

(9) A person performing voluntary service for a public agency or a private, nonprofit organization who does not receive remuneration for the services, other than meals, transportation, lodging, or reimbursement for incidental expenses.

(10) A person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by a public agency or private, nonprofit organization, who does not receive remuneration for these services, other than a stipend for each day of service no greater than the amount established by the Department of Human Resources as a per diem expense for employees or officers of the state. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

(11) A student participating as an athlete in amateur sporting events sponsored by a public agency or public or private nonprofit college, university, or school, who does not receive remuneration for the participation, other than the use of athletic equipment, uniforms, transportation, travel,

meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

(12) A law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

(13) A law enforcement officer who is regularly employed by the Oregon State Police, the Nevada Department of Public Safety, or the Arizona Department of Public Safety and who is acting as a peace officer in this state pursuant to subdivision (a) of Section 830.39 of the Penal Code.

(14) A person, other than a regular employee, performing services as a sports official for an entity sponsoring an intercollegiate or interscholastic sports event, or any person performing services as a sports official for a public agency, public entity, or a private nonprofit organization, which public agency, public entity, or private nonprofit organization sponsors an amateur sports event. For purposes of this subdivision, “sports official” includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sports event.

(15) A person who is an owner-builder, as defined in subdivision (a) of Section 50692 of the Health and Safety Code, who is participating in a mutual self-help housing program, as defined in Section 50087 of the Health and Safety Code, sponsored by a nonprofit corporation.

(16) (A) An officer or member of the board of directors, as described in subdivision (c) of Section 3351, if he or she owns at least 15 percent of the issued and outstanding stock of the corporation and executes a written waiver of his or her rights under this chapter stating under penalty of perjury that the person is a qualifying officer or director. The waiver shall be effective upon the date of receipt and acceptance by the corporation’s insurance carrier and shall remain effective until the officer or member of the board of directors provides the insurance carrier with a written withdrawal of the waiver.

(B) A written waiver that is executed pursuant to this paragraph, including, but not limited to, a written waiver that was executed prior to January 1, 2017, and is accepted by the insurance carrier on or before December 31, 2017, may be deemed to be accepted by the insurance carrier as of January 1, 2017. The written waiver shall remain in effect until the officer or member of the board of directors provides the corporation’s insurance carrier with a written withdrawal of the waiver.

(17) (A) An individual who is a general partner of a partnership or a managing member of a limited liability company who executes a written waiver of his or her rights under this chapter stating under penalty of perjury that the person is a qualifying general partner or managing member. The waiver shall be effective upon the date of receipt and acceptance by the partnership’s or limited liability company’s insurance carrier and shall remain effective until the general partner or managing member provides the insurance carrier with a written withdrawal of the waiver.

(B) A written waiver that is executed pursuant to this paragraph, including, but not limited to, a written waiver that was executed prior to January 1, 2017, and is accepted by the insurance carrier on or before December 31, 2017, may be deemed to be accepted by the insurance carrier as of January 1, 2017. The written waiver shall remain in effect until the general partner provides the partnership's insurance carrier or the managing member provides the limited liability company's insurance carrier with a written withdrawal of the waiver.

(b) This section shall remain in effect only until July 1, 2018, and as of that date is repealed.

SEC. 4. Section 3352 is added to the Labor Code, to read:

3352. (a) "Employee," excludes the following:

(1) A person defined in subdivision (d) of Section 3351 who is employed by his or her parent, spouse, or child.

(2) A person performing services in return for aid or sustenance only, received from any religious, charitable, or relief organization.

(3) A person holding an appointment as deputy clerk or deputy sheriff appointed for his or her own convenience, and who does not receive compensation from the county or municipal corporation or from the citizens of that county or municipal corporation for his or her services as the deputy. This exclusion is operative only as to employment by the county or municipal corporation and does not deprive that person of recourse against a private person employing him or her for injury occurring in the course of, and arising out of, the employment.

(4) A person performing voluntary services at or for a recreational camp, hut, or lodge operated by a nonprofit organization, exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, of which he or she or a member of his or her family is a member and who does not receive compensation for those services, other than meals, lodging, or transportation.

(5) A person performing voluntary service as a ski patrolman who does not receive compensation for those services, other than meals or lodging or the use of ski tow or ski lift facilities.

(6) A person employed by a ski lift operator to work at a snow ski area who is relieved of, and is not performing any, prescribed duties, while participating in recreational activities on his or her own initiative.

(7) A person, other than a regular employee, participating in sports or athletics who does not receive compensation for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, or other expenses incidental thereto.

(8) A person described in subdivision (d) of Section 3351 whose employment by the employer to be held liable, during the 90 calendar days immediately preceding the date of injury, for injuries as described in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury, for diseases or injuries as described in Section 5412, comes within either of the following descriptions:

(A) The employment was, or was contracted to be, for less than 52 hours.

(B) The employment was, or was contracted to be, for wages of not more than one hundred dollars (\$100).

(9) A person performing voluntary service for a public agency or a private, nonprofit organization who does not receive remuneration for the services, other than meals, transportation, lodging, or reimbursement for incidental expenses.

(10) A person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by a public agency or private, nonprofit organization, who does not receive remuneration for these services, other than a stipend for each day of service no greater than the amount established by the Department of Human Resources as a per diem expense for employees or officers of the state. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

(11) A student participating as an athlete in amateur sporting events sponsored by a public agency or public or private nonprofit college, university, or school, who does not receive remuneration for the participation, other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

(12) A law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

(13) A law enforcement officer who is regularly employed by the Oregon State Police, the Nevada Department of Public Safety, or the Arizona Department of Public Safety and who is acting as a peace officer in this state pursuant to subdivision (a) of Section 830.39 of the Penal Code.

(14) A person, other than a regular employee, performing services as a sports official for an entity sponsoring an intercollegiate or interscholastic sports event, or any person performing services as a sports official for a public agency, public entity, or a private nonprofit organization, which public agency, public entity, or private nonprofit organization sponsors an amateur sports event. For purposes of this subdivision, “sports official” includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sports event.

(15) A person who is an owner-builder, as defined in subdivision (a) of Section 50692 of the Health and Safety Code, who is participating in a mutual self-help housing program, as defined in Section 50087 of the Health and Safety Code, sponsored by a nonprofit corporation.

(16) (A) (i) An officer or member of the board of directors, as described in subdivision (c) of Section 3351, if he or she owns at least 10 percent of the issued and outstanding stock of the corporation, or at least 1 percent of the issued and outstanding stock of the corporation if that officer’s or member’s parent, grandparent, sibling, spouse, or child owns at least 10

percent of the issued and outstanding stock of the corporation and that officer or member is covered by a health insurance policy or a health care service plan, and executes a written waiver of his or her rights under this chapter stating under penalty of perjury that the person is a qualifying officer or director. The waiver shall be effective upon the date of receipt and acceptance by the corporation's insurance carrier. The insurance carrier, with the consent of the individual executing the waiver, may elect to backdate the acceptance of the waiver up to 15 days prior to the date of receipt of the waiver. The insurance carrier, insurance agent, or insurance broker is not required to investigate, verify, or confirm the accuracy of the facts contained in the waiver. There is a conclusive presumption that a person who executes a waiver pursuant to this subdivision is not covered by workers' compensation benefits.

(ii) A written waiver that is executed pursuant to this subparagraph, including, but not limited to, a written waiver that was executed prior to January 1, 2017, and is accepted by the insurance carrier on or before December 31, 2017, may be deemed to be accepted by the insurance carrier as of January 1, 2017. The written waiver shall remain in effect until the officer or member of the board of directors provides the corporation's insurance carrier with a written withdrawal of the waiver.

(B) Notwithstanding subparagraph (A), an officer or director of a private corporation who is the sole shareholder of the private corporation, unless the officer, director, or private corporation has elected to be subject to liability for workers' compensation pursuant to subdivision (a) of Section 4151.

(17) (A) An individual who is a general partner of a partnership or a managing member of a limited liability company who executes a written waiver of his or her rights under this chapter stating under penalty of perjury that the person is a qualifying general partner or managing member. The waiver shall be effective upon the date of receipt and acceptance by the partnership's or limited liability company's insurance carrier. The insurance carrier, with the consent of the individual executing the waiver, may elect to backdate the acceptance of the waiver up to 15 days prior to the date of receipt of the waiver. The insurance carrier, insurance agent, or insurance broker is not required to investigate, verify, or confirm the accuracy of the facts contained in the waiver. There is a conclusive presumption that a person who executes a waiver pursuant to this subdivision is not covered by workers' compensation benefits.

(B) A written waiver that is executed pursuant to this paragraph, including, but not limited to, a written waiver that was executed prior to January 1, 2017, and is accepted by the insurance carrier on or before December 31, 2017, may be deemed to be accepted by the insurance carrier as of January 1, 2017. The written waiver shall remain in effect until the general partner provides the partnership's insurance carrier or the managing member provides the limited liability company's insurance carrier with a written withdrawal of the waiver.

(18) (A) (i) An owner of a professional corporation, as defined in Section 13401 of the Corporations Code, who is a practitioner rendering the professional services for which the professional corporation is organized and who executes a document, in writing and under penalty of perjury, both waiving his or her rights under this chapter and stating that he or she is covered by a health insurance policy or a health care service plan. The owner shall provide a copy of the waiver to all other owners of the professional corporation and the professional corporation shall keep a copy of the waiver on file. The waiver is effective upon the date of receipt and acceptance by the professional corporation's insurance carrier. The insurance carrier, with the consent of the individual executing the waiver, may elect to backdate the acceptance of the waiver up to 15 days prior to the date of receipt of the waiver. The insurance carrier, insurance agent, or insurance broker is not required to investigate, verify, or confirm the accuracy of the facts contained in the waiver. There is a conclusive presumption that a person who executes a waiver pursuant to this subdivision is not covered by workers' compensation benefits.

(ii) A written waiver that is executed pursuant to this subparagraph and is accepted by the insurance carrier on or before December 31, 2017, may be deemed to be accepted by the insurance carrier as of January 1, 2017. The written waiver shall remain in effect until the owner provides the professional corporation's insurance carrier with a written withdrawal of the waiver.

(B) Notwithstanding subparagraph (A), an owner of a private professional corporation who is the sole shareholder of the private professional corporation, unless the owner or private professional corporation has elected to be subject to liability for workers' compensation pursuant to subdivision (a) of Section 4151.

(19) (A) (i) An officer or member of the board of directors of a cooperative corporation organized pursuant to the Cooperative Corporation Law, as set forth in Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code, who executes a document, in writing and under penalty of perjury, both waiving his or her rights under this chapter and stating that he or she is covered by both a health care service plan or health insurance policy, and a disability insurance policy that is comparable in scope and coverage, as determined by the Insurance Commissioner, to a workers' compensation policy. The officer or member of the board of directors shall provide a copy of the waiver to all other officers and members of the board of directors of the cooperative corporation, and the cooperative corporation shall keep a copy of the waiver on file. The waiver is effective upon the date of receipt and acceptance by the cooperative corporation's insurance carrier. The insurance carrier, with the consent of the individual executing the waiver, may elect to backdate the acceptance of the waiver up to 15 days prior to the date of receipt of the waiver. The insurance carrier, insurance agent, or insurance broker is not required to investigate, verify, or confirm the accuracy of the facts contained in the waiver. There is a

conclusive presumption that a person who executes a waiver pursuant to this subdivision is not covered by workers' compensation benefits.

(ii) A written waiver that is executed pursuant to this subparagraph and is accepted by the insurance carrier on or before December 31, 2017, may be deemed to be accepted by the insurance carrier as of January 1, 2017. The written waiver shall remain in effect until the officer or member of the board provides the cooperative corporation's insurance carrier with a written withdrawal of the waiver.

(B) Notwithstanding subparagraph (A), an officer or director of a private cooperative corporation who is the sole shareholder of the private cooperative corporation, unless the officer, director, or private cooperative corporation has elected to be subject to liability for workers' compensation pursuant to subdivision (a) of Section 4151.

(b) (1) This section shall become operative on July 1, 2018.

(2) A policy or contract that is entered into or renewed in compliance with this section is subject to this section as it read on the date that the policy or contract was entered into or renewed.

SEC. 5. Section 3364 of the Labor Code is amended to read:

3364. Notwithstanding paragraph (3) of subdivision (a) of Section 3352, a volunteer, unsalaried member of a sheriff's reserve in any county who is not deemed an employee of the county under Section 3362.5, shall, upon the adoption of a resolution of the board of supervisors declaring that the member is deemed an employee of the county for the purposes of this division, be entitled to the workers' compensation benefits provided by this division for any injury sustained by him or her while engaged in the performance of any active law enforcement service under the direction and control of the sheriff.

SEC. 6. Section 3706.5 of the Labor Code is amended to read:

3706.5. The provisions of this article and Sections 4553, 4554, and 4555, and any other penalty provided by law for failure to secure the payment of compensation for employees, shall not apply to individual members of a board or governing body of a public agency or to members of a private, nonprofit organization, if the agency or organization performs officiating services relating to amateur sporting events and those members are excluded from the definition of "employee" pursuant to paragraph (10) of subdivision (a) of Section 3352.

SEC. 7. Section 4156 of the Labor Code is amended to read:

4156. Liability for compensation does not attach to any employer of a person excluded by paragraph (8) of subdivision (a) of Section 3352 from the definition of "employee" for an injury to or the death of a person so excluded which occurs on or after the effective date of this section if the employer elected to come under the compensation provisions of this division pursuant to subdivision (a) of Section 4151 prior to the effective date of this section by purchasing or renewing a policy providing comprehensive personal liability insurance containing a provision for coverage against liability for the payment of compensation, as defined in Section 3207 of the Labor Code, to any person defined as an employee by subdivision (d) of

Section 3351 of the Labor Code, however, this section does not prohibit an employer from providing compensation pursuant to the provisions of this chapter.

SEC. 8. 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.