

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2346

Introduced by Assembly Member Butler

February 24, 2012

~~An act to amend Section 6712 of the Labor Code, relating to employment.~~ *An act to amend Section 6330 of, and to add Chapter 10 (commencing with Section 6720) to Part 1 of Division 5 of, the Labor Code, and to add Section 192.1 to the Penal Code, relating to occupational safety.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2346, as amended, Butler. ~~Employment: field sanitation.~~ *Agricultural employee safety: heat-related illness.*

(1) Existing law permits the Occupational Safety and Health Standards Board within the Department of Industrial Relations to adopt occupational health and safety standards to protect the welfare of employees. The Division of Occupational Safety and Health enforces occupational safety and health standards and orders. Certain violations of these standards and orders are crimes.

This bill would prescribe specified duties on employers to reduce the risk of heat illness among agricultural employees, to be enforced by the division. The bill would impose specified civil penalties, and create a private right of action, for violations of these requirements. The bill would impose a state-mandated local program because certain violations of the bill's requirements would be a crime under existing provisions of law. The bill would require the Director of Industrial Relations to provide an annual report to the Legislature regarding the enforcement of the requirements.

The bill would provide that directing an agricultural employee to perform outdoor work without providing the employee with both continuous, ready access to an area of shade sufficient to allow the body to cool and potable water that is suitably cool and available in quantities sufficient to allow the employee to drink one quart of water per hour throughout the employee’s work shift, where the employee dies as the proximate result of heat-related causes, would constitute the crime of involuntary manslaughter. By expanding the bases upon which the crime of involuntary manslaughter could be committed, the bill would impose a state-mandated local program. The bill, except as otherwise provided, would require restitution to the immediate surviving family of the deceased employee in an amount between \$1,000,000 and \$1,500,000, inclusive, when involuntary manslaughter under the bill is committed.

(2) 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.

~~Existing law requires a prescribed occupational safety and health standard for field sanitation.~~

~~This bill would make technical, nonsubstantive changes to these provisions of law.~~

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

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

- 1 SECTION 1. *This act may be known, and shall be cited, as the*
- 2 *Farm Worker Safety Act of 2012.*
- 3 SEC. 2. *Section 6330 of the Labor Code is amended to read:*
- 4 6330. (a) The director shall prepare and submit to the
- 5 Legislature, not later than March 1, an annual report on the division
- 6 activities. The report shall include, but need not be limited to, the
- 7 following information for the previous calendar year:
- 8 (a)
- 9 (1) The amount of funds allocated and spent in enforcement,
- 10 education and research, and administration by the division.
- 11 (b)

1 (2) Total inspections made, and citations issued by the division.

2 (e)

3 (3) The number of civil penalties assessed, total amount of fines
4 collected, and the number of appeals heard.

5 (d)

6 (4) The number of contractors referred to the Contractor's State
7 License Board for hearing, pursuant to Section 7109.5 of the
8 Business and Professions Code, and the total number of these cases
9 resulting in suspension or revocation of a license.

10 (e)

11 (5) The report from the division prepared by the Bureau of
12 Investigations for submission to the director pursuant to Section
13 6315.3.

14 (f)

15 (6) Recommendations for legislation ~~which~~ *that* improves the
16 ability of the division to provide safety in places of employment.

17 (7) (A) *The number of complaints received charging a violation*
18 *of Chapter 10 (commencing with Section 6720), and the number*
19 *of those complaints that did not result in an onsite inspection.*

20 (B) *The amount of initial penalties imposed for a violation of*
21 *Chapter 10 (commencing with Section 6720), the amount by which*
22 *those penalties were reduced through amendment, the amount by*
23 *which those penalties were reduced through informal settlement,*
24 *the amount by which those penalties were reduced through formal*
25 *settlement, the amount by which those penalties were reduced by*
26 *decision of the appeals board, other than a decision approving a*
27 *formal settlement, and the amount by which those penalties were*
28 *reduced by any other means.*

29 (C) *The amount of penalties collected for a violation of Chapter*
30 *10 (commencing with Section 6720).*

31 (b) The report shall be made to the Speaker of the Assembly
32 and the ~~Chairman~~ *Chairperson* of the ~~Rules Committee~~ of the
33 *Senate Committee on Rules*, for assignment to the appropriate
34 committee or committees for evaluation.

35 *SEC. 3. Chapter 10 (commencing with Section 6720) is added*
36 *to Part 1 of Division 5 of the Labor Code, to read:*

CHAPTER 10. AGRICULTURAL EMPLOYMENT

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6720. For the purpose of this chapter, the following terms have the following meanings:

(a) “Acclimatization” means temporary adaptation of the body to work in the heat that occurs gradually when a person is exposed to the heat.

(b) “Employee” means an agricultural employee.

(c) “Employer” means an agricultural employer.

(d) “Environmental risk factors for heat illness” means working conditions that create the possibility that heat illness could occur, including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload severity and duration, and protective clothing.

(e) “Farm operator” includes both of the following:

(1) A person who owns the real property used in the farming operation, except that, when the real property is leased, the owner is considered a farm operator only if he or she gains something of benefit from the farming operation beyond the reasonable and customary rent or cost of leasing the property.

(2) A person who leases the real property used in the farming operation.

(f) “Farming operation” shall be liberally construed to include farming in any of its branches, and includes the production, cultivation, growing, harvesting, packing, whether in a field, packing shed, or any other location, or shipping of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in Section 1141j(f) of Title 12 of the United States Code; any activity necessary to the operation of a dairy farm, as defined in Section 32505 of the Food and Agricultural Code; the raising of livestock, bees, furbearing animals, or poultry; and any practices, including any forestry or lumbering operations, performed by a farm operator or in a farm operation as an incident to or in conjunction with these farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

(g) “Heat illness” means a serious medical condition resulting from the body’s inability to cope with a particular heat load, and

1 includes heat cramps, heat exhaustion, heat syncope, and heat
2 stroke.

3 (h) “Personal risk factors for heat illness” means factors such
4 as an individual’s age, degree of acclimatization, health, water
5 consumption, alcohol consumption, caffeine consumption, and use
6 of prescription medications that affect the body’s water retention
7 or other physiological responses to heat.

8 (i) “Shade” means complete blockage of direct sunlight. One
9 indicator that blockage is sufficient is when objects do not cast a
10 shadow in the area of blocked sunlight. Shade is not adequate
11 when heat in the area of shade defeats the purpose of shade, which
12 is to allow the body to cool.

13 (j) “Temperature” means the dry bulb temperature in degrees
14 Fahrenheit obtainable by using a thermometer to measure the
15 outdoor temperature. Except where otherwise indicated, the
16 temperature measurement shall be taken in an area where there
17 is no shade. The bulb or sensor of the thermometer shall be
18 shielded, with the hand or some other object, from direct contact
19 by sunlight while taking the measurement.

20 6721. (a) This chapter applies to the control of the risk of
21 occurrence of heat illness among agricultural employees. This
22 chapter is not intended to exclude the application of any section
23 of Title 8 of the California Code of Regulations. This chapter
24 applies to all outdoor places of agricultural employment.

25 (b) (1) Each employee shall have continuous, ready access, as
26 close as possible and at a distance of no more than 10 feet from
27 where he or she is working, to fresh, pure, and suitably cool
28 potable drinking water meeting the requirements of Title 8 of the
29 California Code of Regulations, which does not have an
30 unpalatable smell or taste. The temperature of the water shall be
31 70 degrees or lower at all times. The water shall be provided to
32 the employee free of charge.

33 (2) Each employee shall be provided with a canteen for his or
34 her individual use for the temporary storage and drinking of water,
35 or with a cup of at least 8-ounce but no more than 32-ounce
36 capacity for his or her individual use for drinking of water. The
37 canteens or cups shall be provided to the employees free of charge
38 and replaced or cleaned and sanitized after each work shift.

39 (3) Where drinking water is not plumbed or otherwise
40 continuously supplied, it shall be provided in a sufficient quantity

1 at the beginning of the work shift to provide at least one quart per
2 employee per hour for drinking for the entire shift. Water shall be
3 available at all times in sufficient quantities to provide at least
4 one quart per employee per hour for the remainder of the work
5 shift.

6 (4) The frequent drinking of water, as described in this section,
7 shall be encouraged and permitted. At no time shall any employer
8 state or imply that an employee will face a negative consequence
9 for the frequent drinking of water or for stopping work to drink
10 water. Each employee shall be compensated for the time taken to
11 access water. For an employee working on a piece-rate basis,
12 compensation during the pay period in which time was taken to
13 access water shall be determined based upon the employee's
14 average piece-rate wage.

15 (c) (1) The employer shall have and maintain one or more areas
16 with shade at all times while employees are present that is either
17 open to the air or provided with ventilation or cooling. The shaded
18 area shall be located as close as practicable to the areas where
19 employees are working, and in no event shall be at a distance
20 greater than 200 feet away from any employee. Canopies,
21 umbrellas, and other temporary structures or devices may be used
22 to provide shade in combination, if they completely block direct
23 sunlight and the temperature in the area of shade is significantly
24 lower than the ambient temperature outside of that area.

25 (2) The amount of shade provided shall be enough to
26 accommodate all of the employees on the shift at any time, so that
27 the employees can all sit fully in the shade without having to be
28 in physical contact with each other. An employer shall provide
29 seating or ground covering sufficient to prevent each of the
30 employees from being in contact with bare soil and to insulate
31 each of the employees from the heat of the ground.

32 (d) (1) Each employee shall be encouraged and permitted to
33 take rest breaks in the shade at any time when he or she feels the
34 need to do so to protect himself or herself from overheating. At no
35 time shall any employer state or imply that an employee will face
36 any negative consequence for taking a rest break in the shade or
37 for stopping work to take a rest break in the shade. An employee
38 who takes a rest break shall be encouraged and permitted to
39 continue resting in the shade as long as necessary to ensure that
40 any signs or symptoms of heat illness have resolved, but in no

1 event for less than 10 minutes in addition to the time needed to
2 access the shade. Rest in the shade shall be permitted at all times.

3 (2) The employer shall implement additional high-heat
4 procedures when the temperature equals or exceeds 80 degrees.
5 These procedures shall be in addition to, and not instead of, any
6 other procedures required by this chapter, and shall include all
7 of the following:

8 (A) Requiring that each employee take a rest break at least
9 every two hours for a minimum of 15 minutes per break.

10 (B) Ensuring that effective communication by voice, observation,
11 or electronic means is maintained so that employees at the worksite
12 can immediately contact a supervisor when necessary. An
13 electronic device, such as a cell phone or text messaging device,
14 may be used for this purpose only if reception in the area is
15 reliable.

16 (C) Using a buddy system, in which two workers are assigned
17 to observe each other throughout the workday or a portion of the
18 workday, to encourage each other to drink water and take rest
19 breaks, and to watch for signs of heat illness. Each worker shall
20 be trained to recognize the signs of heat illness in others.

21 (D) Supervisor observation of employees for decreases in
22 alertness and signs or symptoms of heat illness. If a supervisor
23 observes a decreases in alertness or signs or symptoms of heat
24 illness, the supervisor shall take action as required under
25 subdivision (e).

26 (E) Reminding employees throughout the work shift to drink
27 plenty of water.

28 (F) Close supervision of a new employee for heat illness
29 prevention by a supervisor or designee for the first 14 days of the
30 employee's employment by the employer, unless the employer
31 documents at the time of hire that the employee has been doing
32 similar outdoor work for at least 10 of the past 30 days for four
33 or more hours per day.

34 (3) Each employee shall be compensated for rest breaks taken
35 pursuant to this section, and for rest periods or cool-down rest
36 periods established by any applicable regulation or order of the
37 Industrial Welfare Commission, the Division of Occupational
38 Health and Safety, or the Occupational Safety and Health
39 Standards Board. An employee working on a piece-rate basis shall
40 be compensated at the employee's average piece-rate wage during

1 *the pay period in which the rest break, rest period, or cool-down*
2 *rest period was taken.*

3 *(e) If a supervisor observes, or any employee reports, any signs*
4 *of heat illness in an employee, the supervisor shall take immediate*
5 *action to alleviate the symptoms, including providing the employee*
6 *with water, a paid rest break in the shade, and appropriate first*
7 *aid. The employee shall be provided access to medical aid*
8 *consistent with the procedures established pursuant to subdivision*
9 *(f).*

10 *(f) (1) An employer shall establish procedures for the following:*

11 *(A) Responding to signs of possible heat illness, including how*
12 *emergency medical services will be provided.*

13 *(B) Contacting emergency medical services and, if necessary,*
14 *transporting employees to a place where they can be reached by*
15 *an emergency medical service provider.*

16 *(C) Ensuring that, in the event of an emergency, clear and*
17 *precise directions to the worksite are provided to emergency*
18 *responders.*

19 *(2) The procedures shall include designating a person to be*
20 *available to ensure that emergency procedures are invoked when*
21 *appropriate.*

22 *(3) The procedures shall be deemed insufficient, and therefore*
23 *in violation of this subdivision, if either of the following occurs:*

24 *(A) An employee presents signs of heat illness and is not*
25 *transported, commencing within 5 minutes of the onset of the heat*
26 *stress signs, by air-conditioned automobile or ambulance to the*
27 *nearest appropriate emergency medical service provider for*
28 *appropriate medical care.*

29 *(B) An employee presents suspected signs of heat illness and is*
30 *sent home instead of being given onsite first aid and being*
31 *transported by air-conditioned automobile or ambulance to the*
32 *nearest appropriate emergency medical service provider and*
33 *assessed and authorized for discharge by licensed medical*
34 *personnel.*

35 *(g) (1) An employee shall not begin outdoor work unless the*
36 *employee has received the training required by this paragraph.*
37 *Effective training in the following topics shall be provided to each*
38 *supervisory and nonsupervisory employee:*

39 *(A) The requirements of this section, including the employer's*
40 *responsibility to provide water, shade, rest breaks, and access to*

1 *medical aid as set forth in this section, and the prohibition on*
2 *retaliation as set forth in Section 6723.*

3 *(B) The employer's procedures established pursuant to*
4 *subdivision (f).*

5 *(C) The environmental and personal risk factors for heat illness,*
6 *as well as the added burden of heat load on the body caused by*
7 *exertion, clothing, and personal protective equipment.*

8 *(D) The importance of frequent consumption of small quantities*
9 *of water, up to four cups per hour, when the work environment is*
10 *hot and employees are likely to be sweating more than usual in*
11 *the performance of their duties.*

12 *(E) The importance of acclimatization.*

13 *(F) The different types of heat illness and the common signs*
14 *and symptoms of heat illness.*

15 *(G) The importance to each employee of immediately reporting*
16 *to the employer, directly or through the employee's supervisor,*
17 *symptoms or signs of heat illness in himself or herself, or in*
18 *coworkers.*

19 *(2) A supervisor shall not be assigned to supervise employees*
20 *unless the supervisor has received the training required by this*
21 *paragraph. In addition to the training required by paragraph (1),*
22 *effective training on the following topics shall be provided to each*
23 *supervisory employee:*

24 *(A) The procedures the supervisor is to follow to implement the*
25 *applicable provisions of this section.*

26 *(B) The procedures the supervisor is to follow when an employee*
27 *exhibits symptoms consistent with possible heat illness, including*
28 *emergency response procedures.*

29 *(C) How to monitor weather reports and how to respond to hot*
30 *weather advisories.*

31 *6722. (a) (1) An employer shall maintain written procedures*
32 *for complying with the requirements of this chapter. The written*
33 *procedures shall be made available within 24 hours of a request*
34 *made by a representative of the division, an employee, or a*
35 *representative of an employee.*

36 *(2) Procedures for complying with the requirements of this*
37 *chapter may be integrated into the employer's written Injury and*
38 *Illness Prevention Program, or maintained in a separate document.*

39 *(b) (1) An employer shall certify by January 31 of each year,*
40 *or on the first day of operation in any calendar year in which an*

1 employer begins an employment relationship after January 31,
2 that the employer has adopted written procedures for complying
3 with the requirements of this chapter, and has acquired and made
4 available to the appropriate persons all materials and equipment
5 necessary for providing employees with water, shade, and training
6 in the prevention of heat illness. This certification shall be in
7 writing, signed, and dated, and shall be made available within 24
8 hours of a request made by a representative of the division, an
9 employee, or a representative of an employee.

10 (2) If an employer is found not to have adopted written
11 procedures for complying with the requirements of this chapter
12 following certification, or is found to lack any of the materials and
13 equipment necessary for providing employees with water, shade,
14 and training in the prevention of heat illness following certification,
15 there shall be a rebuttable presumption that the certification was
16 false at the time it was made, and the employer shall be subject to
17 penalties for fraud.

18 (c) Prior to the commencement of outdoor work at any worksite,
19 the employer shall post in a manner readily visible and legible a
20 sign setting forth the identity of the farm operator, the identity of
21 the employer, the date, the number of employees of that employer
22 in each crew at that worksite on that date, and the location at
23 which the written procedures for complying with this chapter are
24 maintained.

25 6723. (a) An employee shall not be discharged or penalized
26 in any way for drinking water, taking a break to get water, taking
27 a rest break in the shade, or taking any other action on behalf of
28 himself or herself or his or her coworkers that is reasonably
29 calculated to prevent heat illness.

30 (b) An employee shall not be discharged or penalized in any
31 way for taking action to secure his or her employer's compliance
32 with the requirements of this chapter, including directly or
33 indirectly communicating with the employer about the requirements
34 of this chapter or the prevention of heat illness, reporting a
35 violation of this chapter or otherwise communicating with any
36 person or entity about the employer's compliance with the
37 requirements of this section, or participating in any way in any
38 investigation or proceeding to enforce the requirements of this
39 chapter.

40 6724. (a) (1) This chapter shall be enforced by the division.

1 (2) *The division shall treat a complaint alleging violation of*
2 *this chapter, other than a complaint alleging a violation of only*
3 *Section 6722, as a complaint charging a serious violation within*
4 *the meaning of Section 6309, and shall investigate all of these*
5 *complaints through onsite inspection.*

6 (3) *During an onsite inspection of an outdoor place of*
7 *agricultural employment, the division shall inform all employees*
8 *of the prohibition on retaliation set forth in Section 6723. The*
9 *division shall provide employees with written materials, in the*
10 *language or languages spoken by the employees, setting forth a*
11 *clear and concise summary of the requirements of this chapter*
12 *and a means of contacting the division if the employer subsequently*
13 *commits a retaliatory act or other violation of this chapter.*

14 (4) *An employer shall be designated as a high hazardous*
15 *industry employer within the meaning of Section 6314.1 if the*
16 *division receives a complaint against the employer from an*
17 *employee or an employee's representative alleging a violation of*
18 *this chapter, unless the division investigates the complaint within*
19 *24 hours and finds it to be without foundation, or the division*
20 *issues a citation against the employer for a violation of this*
21 *chapter, unless the citation is withdrawn in its entirety.*

22 (5) *The division shall require an employer to immediately*
23 *correct any failure to provide water or shade as required by this*
24 *chapter, regardless of the status of any related action or appeal.*

25 (b) (1) *An employee affected by an employer's failure to comply*
26 *with this chapter may bring an action for injunctive relief and is*
27 *entitled to recover in a civil action all damages caused by the*
28 *failure to comply, including interest on those damages, and civil*
29 *penalties as set forth in Section 6725. This remedy shall be in*
30 *addition to any other available remedy.*

31 (2) *An employee may bring a civil action pursuant to this*
32 *subdivision notwithstanding any action taken or not taken by the*
33 *division in relation to the employer's compliance with this chapter.*
34 *However, an employee may recover the civil penalties set forth in*
35 *Section 6725 only to the extent that the division has not imposed*
36 *and collected those penalties against the same employer for the*
37 *same alleged violation as of the date the civil action is filed.*

38 (3) *Fifty percent of the civil penalties recovered by the employee*
39 *in a civil action brought pursuant to this subdivision shall be*
40 *distributed to the division, with the remainder distributed to the*

1 *employee. The entire amount of any damages recovered by the*
2 *employee shall be distributed to the employee.*

3 *(4) An employer who is found in violation of this chapter in a*
4 *civil action brought pursuant to this subdivision shall be designated*
5 *a high hazardous industry employer within the meaning of Section*
6 *6314.1, and that designation shall be withdrawn only if the*
7 *judgment is vacated in its entirety.*

8 *(5) An employee who prevails in a civil action brought pursuant*
9 *to this subdivision is entitled to an award of reasonable attorney's*
10 *fees and costs of suit, including expert witness fees.*

11 *(c) An enforcement action or proceeding may be brought*
12 *pursuant to this section against all agricultural entities involved*
13 *in the farming operation, including the farm operator. For*
14 *purposes of this section, the acts or omissions of an agricultural*
15 *employer shall be imputed to the farm operator on the real property*
16 *used in whose farming operation the agricultural employer was*
17 *acting at the time of the alleged violation of this chapter and that*
18 *farm operator shall be jointly and severally liable with and to the*
19 *same extent as the agricultural employer.*

20 *(d) A signed statement obtained by the division from an*
21 *employee that is made under penalty of perjury is admissible in*
22 *an administrative enforcement proceeding brought pursuant to*
23 *this section.*

24 *6725. (a) For a violation of Section 6721 or 6723, the civil*
25 *penalties shall be as follows:*

26 *(1) For each day on which the violation existed while one or*
27 *more employees were working and the temperature did not exceed*
28 *80 degrees, the penalty shall be the product of five hundred dollars*
29 *(\$500) multiplied by the number of employees on the work crew*
30 *at the time of the violation.*

31 *(2) For each day on which the violation existed while one or*
32 *more employees were working and the temperature exceeded 80*
33 *degrees but did not exceed 90 degrees, the penalty shall be the*
34 *product of two thousand dollars (\$2,000) multiplied by the number*
35 *of employees on the work crew at the time of the violation.*

36 *(3) For each day on which the violation existed while one or*
37 *more employees were working and the temperature exceeded 90*
38 *degrees but did not exceed 100 degrees, the penalty shall be the*
39 *product of five thousand dollars (\$5,000) multiplied by the number*
40 *of employees on the work crew at the time of the violation.*

1 (4) For each day on which the violation existed while one or
2 more employees were working and the temperature exceeded 100
3 degrees, the penalty shall be the product of ten thousand dollars
4 (\$10,000) multiplied by the number of employees on the work crew
5 at the time of the violation.

6 (5) Notwithstanding paragraphs (1) to (4), inclusive, if the
7 violation existed during any work shift when any employee suffered
8 heat illness, the penalty shall be not less than fifty thousand dollars
9 (\$50,000).

10 (6) Notwithstanding paragraphs (1) to (4), inclusive, no penalty
11 shall exceed two hundred thousand dollars (\$200,000).

12 (b) (1) Except as otherwise provided in paragraph (2), for a
13 violation of Section 6722, civil penalties shall be imposed in the
14 amount of five hundred dollars (\$500) multiplied by the number
15 of days the violation existed while employees were working.

16 (2) The penalty described in paragraph (1) shall not exceed ten
17 thousand dollars (\$10,000).

18 (c) (1) A civil penalty imposed and calculated pursuant to
19 subdivision (a) or (b) may be reduced by as much as 50 percent,
20 if the violation did not exist during a work shift when an employee
21 suffered heat illness. A reduction shall be based on the facts and
22 circumstances of the violation, including the following
23 considerations:

24 (A) The culpability of the employer.

25 (B) Whether an employee lacked access to water or shade at
26 any time while the violation existed.

27 (C) The size, sophistication, and financial strength of the
28 employer.

29 (D) The employer compliance history related to heat illness.

30 (E) The degree of injury caused by the employer's current or
31 past violations.

32 (F) Any efforts by an employee or other person to secure the
33 employer's compliance through means other than litigation.

34 (G) Any expenses incurred by employees, the division, and
35 others in investigating the employer's compliance.

36 (2) The employer has the burden of proving the existence of
37 facts justifying a reduction of the penalty pursuant to this
38 subdivision.

39 SEC. 4. Section 192.1 is added to the Penal Code, to read:

1 192.1. (a) For the purpose of Section 192, directing an
2 agricultural employee to perform outdoor work without providing
3 the employee with both continuous, ready access to an area of
4 shade sufficient to allow the body to cool and potable water that
5 is suitably cool and available in quantities sufficient to allow the
6 employee to drink one quart of water per hour throughout the
7 employee's work shift, where the employee dies as the proximate
8 result of heat-related causes, shall be deemed to be the commission
9 of an unlawful act, not amounting to a felony, or the commission
10 of a lawful act that might produce death, in an unlawful manner,
11 or without due caution and circumspection. This subdivision does
12 not narrow or limit in any way the definition of involuntary
13 manslaughter that would exist without regard to this subdivision,
14 or limit or prevent prosecution pursuant to any other applicable
15 law.

16 (b) (1) If a corporation or natural person is convicted of the
17 crime described in subdivision (a), the court shall require the
18 defendant to make restitution to the immediate surviving family of
19 the deceased employee, to be shared equally, in an amount between
20 one million dollars (\$1,000,000) and one million five hundred
21 thousand dollars (\$1,500,000), inclusive. The court may impose
22 restitution in an amount less than one million dollars (\$1,000,000),
23 if necessary to comply with constitutional requirements. The
24 restitution described in this subdivision shall be in addition to any
25 other restitution required by Section 1202.4 or 1203.1, or any
26 other applicable provision of law. The restitution order shall be
27 enforceable as if the order were a civil judgment.

28 (2) "Immediate surviving family" means a spouse, child,
29 stepchild, brother, stepbrother, sister, stepsister, mother,
30 stepmother, father, or stepfather of the decedent.

31 SEC. 5. The provisions of this section are severable. If any
32 provision of this act or its application is held invalid, that invalidity
33 shall not affect other provisions or applications that can be given
34 effect without the invalid provision or application.

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

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 SECTION 1. ~~Section 6712 of the Labor Code is amended to~~
5 ~~read:~~

6 ~~6712. (a) The standards board shall, no later than December~~
7 ~~1, 1991, adopt an occupational safety and health standard for field~~
8 ~~sanitation. The standard shall comply with all of the following:~~

9 ~~(1) Be at least as effective as the federal field sanitation standard~~
10 ~~contained in Section 1928.110 of Title 29 of the Code of Federal~~
11 ~~Regulations.~~

12 ~~(2) Be at least as effective as California field sanitation~~
13 ~~requirements in effect as of July 1, 1990, pursuant to Article 4~~
14 ~~(commencing with Section 113310) of Chapter 11 of Part 6 of~~
15 ~~Division 104 of the Health and Safety Code, Article 1~~
16 ~~(commencing with Section 118375) of Chapter 1 of Part 15 of~~
17 ~~Division 104 of the Health and Safety Code, and Section 2441 of~~
18 ~~this code.~~

19 ~~(3) Apply to all agricultural places of employment.~~

20 ~~(4) Require that toilets are serviced and maintained in a clean,~~
21 ~~sanitary condition and kept in good repair at all times, including~~
22 ~~written records of that service and maintenance.~~

23 ~~(b) Consistent with its mandatory investigation and reinspection~~
24 ~~duties under Sections 6309, 6313, and 6320, the division shall~~
25 ~~develop and implement a special emphasis program for~~
26 ~~enforcement of the standard for at least two years following its~~
27 ~~adoption. Not later than March 15, 1995, the division shall also~~
28 ~~develop a written plan to coordinate its enforcement program with~~
29 ~~other state and local agencies. The division shall be the lead~~
30 ~~enforcement agency. Other state and local agencies shall cooperate~~
31 ~~with the division in the development and implementation of the~~
32 ~~plan. The division shall report to the Legislature, not later than~~
33 ~~January 1, 1994, on its enforcement program. The plan shall~~
34 ~~provide for coordination between the division and local officials~~
35 ~~in counties where the field sanitation facilities required by the~~
36 ~~standard adopted pursuant to subdivision (a) are registered by the~~
37 ~~county health officer or other appropriate official of the county~~
38 ~~where the facilities are located. The division shall establish~~
39 ~~guidelines to assist counties that choose to register sanitation~~
40 ~~facilities pursuant to this section, for developing service charges,~~

1 fees, or assessments to defray the costs of registering the facilities,
2 taking into consideration the differences between small and large
3 employers.

4 (e) (1) ~~Past violations by a fixed-site or nonfixed-site employer,~~
5 ~~occurring anywhere in the state within the previous five years, of~~
6 ~~one or more field sanitation regulations established pursuant to~~
7 ~~this section, or of Section 1928.110 of Title 29 of the Code of~~
8 ~~Federal Regulations, shall be considered for purposes of~~
9 ~~establishing whether a current violation is a repeat violation under~~
10 ~~Section 6429.~~

11 (2) ~~Past violations by a fixed-site or nonfixed-site employer,~~
12 ~~occurring anywhere in the state within the previous five years, of~~
13 ~~one or more field sanitation regulations established pursuant to~~
14 ~~this section, Article 4 (commencing with Section 113310) of~~
15 ~~Chapter 11 of Part 6 of Division 104 of the Health and Safety~~
16 ~~Code, Article 1 (commencing with Section 118375) of Chapter 1~~
17 ~~of Part 15 of Division 104 of the Health and Safety Code, or~~
18 ~~Section 2441 of this code, or of Section 1928.110 of Title 29 of~~
19 ~~the Code of Federal Regulations, shall constitute evidence of~~
20 ~~willfulness for purposes of Section 6429.~~

21 (d) (1) ~~Notwithstanding Sections 6317 and 6434, any employer~~
22 ~~who fails to provide the facilities required by the field sanitation~~
23 ~~standard shall be assessed a civil penalty under the appropriate~~
24 ~~provisions of Sections 6427 to 6430, inclusive, except that in no~~
25 ~~case shall the penalty be less than seven hundred fifty dollars~~
26 ~~(\$750) for each violation.~~

27 (2) ~~Abatement periods fixed by the division pursuant to Section~~
28 ~~6317 for violations shall be limited to one working day. However,~~
29 ~~the division may, pursuant to Section 6319.5, modify the period~~
30 ~~in cases where a good faith effort to comply with the abatement~~
31 ~~requirement is shown. The filing of an appeal with the appeals~~
32 ~~board pursuant to Sections 6319 and 6600 shall not stay the~~
33 ~~abatement period.~~

34 (3) ~~An employer cited pursuant to paragraph (1) shall be required~~
35 ~~to annually complete a field sanitation compliance form which~~
36 ~~shall list the estimated peak number of employees, the toilets,~~
37 ~~washing, and drinking water facilities to be provided by the~~
38 ~~employer, any rental and maintenance agreements, and any other~~
39 ~~information considered relevant by the division for a period of five~~
40 ~~years following the citation. The employer shall be required to~~

1 annually submit the completed form, subscribed under penalty of
2 perjury, to the division, or to an agency designated by the division.

3 ~~(e) The division shall notify the State Department of Health
4 Services and the appropriate local health officers whenever a
5 violation of the standard adopted pursuant to this section may result
6 in the adulteration of food with harmful bacteria or other
7 deleterious substances within the meaning of Article 5
8 (commencing with Section 110545) of Chapter 5 of Part 5 of
9 Division 104 of the Health and Safety Code.~~

10 ~~(f) Pending final adoption and approval of the standard required
11 by subdivision (a), the division may enforce the field sanitation
12 standards prescribed by Section 1928.110 of Title 29 of the Code
13 of Federal Regulations, except subdivision (a) of Section 1928.110,
14 in the same manner as other standards contained in this division.~~

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