

AMENDED IN SENATE AUGUST 21, 2012

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JULY 2, 2012

AMENDED IN ASSEMBLY APRIL 25, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2346**

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**Introduced by Assembly Member Butler**

February 24, 2012

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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, relating to occupational safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2346, as amended, Butler. 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. *Existing regulations prescribe duties with respect to heat illness prevention in outdoor place of employment.*

This bill would prescribe specified duties on employers to reduce the risk of heat illness among agricultural employees, ~~to be enforced by the~~

~~division~~ including the adopted heat illness prevention regulatory requirements. 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.

(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.

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

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

1 SECTION 1. (a) This act may be known, and shall be cited,  
 2 as the Farm Worker Safety Act of 2012.

3 (b) *It is the intent of the Legislature to ensure that employers*  
 4 *provide farm workers with sufficient water and adequate shade*  
 5 *and that employers take necessary and appropriate steps to prevent*  
 6 *heat illness and death. This act creates a meaningful deterrent for*  
 7 *all employers who violate heat illness prevention requirements,*  
 8 *especially those employers who are repeat offenders.*

9 SEC. 2. Section 6330 of the Labor Code is amended to read:  
 10 6330. (a) The director shall prepare and submit to the  
 11 Legislature, not later than March 1, an annual report on the division  
 12 activities. The report shall include, but need not be limited to, the  
 13 following information for the previous calendar year:

14 (1) The amount of funds allocated and spent in enforcement,  
 15 education and research, and administration by the division.

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

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

19 (4) The number of contractors referred to the Contractors’ State  
 20 License Board for hearing, pursuant to Section 7109.5 of the  
 21 Business and Professions Code, and the total number of these cases  
 22 resulting in suspension or revocation of a license.

1 (5) The report from the division prepared by the Bureau of  
2 Investigations for submission to the director pursuant to Section  
3 6315.3.

4 (6) Recommendations for legislation that improves the ability  
5 of the division to provide safety in places of employment.

6 (7) (A) The number of complaints received charging a violation  
7 of Section 3395 of Title 8 of the California Code of Regulations  
8 or of Chapter 10 (commencing with Section 6720), and the number  
9 of those complaints that did not result in an onsite inspection.

10 (B) The amount of initial penalties imposed for a violation of  
11 Section 3395 of Title 8 of the California Code of Regulations or  
12 of Chapter 10 (commencing with Section 6720), the amount by  
13 which those penalties were reduced through amendment, the  
14 amount by which those penalties were reduced through informal  
15 settlement, the amount by which those penalties were reduced  
16 through formal settlement, the amount by which those penalties  
17 were reduced by decision of the appeals board, other than a  
18 decision approving a formal settlement, and the amount by which  
19 those penalties were reduced by any other means.

20 (C) The amount of penalties collected for a violation of Section  
21 3395 of Title 8 of the California Code of Regulations or of Chapter  
22 10 (commencing with Section 6720).

23 (b) The report shall be made to the Speaker of the Assembly  
24 and the Chairperson of the Senate Committee on Rules, for  
25 assignment to the appropriate committee or committees for  
26 evaluation.

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

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CHAPTER 10. AGRICULTURAL EMPLOYMENT

31

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6720. *Except as otherwise provided, this chapter incorporates  
33 the definitions set forth in Section 3395 of Title 8 of the California  
34 Code of Regulations.* For the purpose of this chapter, the following  
35 terms have the following meanings:

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

39 (b) ~~“Areas where employees are working” includes the physical  
40 locations where labor is being performed, and excludes restrooms.~~

- 1 (e)
- 2 (a) “Employee” means an agricultural employee.
- 3 ~~(d)~~
- 4 (b) “Employer” means an agricultural employer.
- 5 ~~(e) “Environmental risk factors for heat illness” means working~~
- 6 ~~conditions that create the possibility that heat illness could occur,~~
- 7 ~~including air temperature, relative humidity, radiant heat from the~~
- 8 ~~sun and other sources, conductive heat sources such as the ground,~~
- 9 ~~air movement, workload severity and duration, and protective~~
- 10 ~~clothing.~~
- 11 ~~(f)~~
- 12 (c) “Farm operator” includes both of the following:
- 13 (1) A person who owns the real property used in the farming
- 14 operation, except that, when the real property is leased, the owner
- 15 is considered a farm operator only if he or she gains something of
- 16 benefit from the farming operation beyond the reasonable and
- 17 customary rent or cost of leasing the property.
- 18 (2) A person who leases the real property used in the farming
- 19 operation.
- 20 ~~(g)~~
- 21 (d) “Farming operation” shall be liberally construed to include
- 22 farming in any of its branches, and includes the production,
- 23 cultivation, growing, harvesting, packing, whether in a field,
- 24 packing shed, or any other location, or shipping of any agricultural
- 25 or horticultural commodities, including commodities defined as
- 26 agricultural commodities in Section 1141j(f) of Title 12 of the
- 27 United States Code; any activity necessary to the operation of a
- 28 dairy farm, as defined in Section 32505 of the Food and
- 29 Agricultural Code; the raising of livestock, bees, furbearing
- 30 animals, or poultry; and any practices, including any forestry or
- 31 lumbering operations, performed by a farm operator or in a farm
- 32 operation as an incident to or in conjunction with these farming
- 33 operations, including preparation for market and delivery to storage
- 34 or to market or to carriers for transportation to market.
- 35 ~~(h) “Heat illness” means a serious medical condition resulting~~
- 36 ~~from the body’s inability to cope with a particular heat load, and~~
- 37 ~~includes heat cramps, heat exhaustion, heat syncope, and heat~~
- 38 ~~stroke.~~
- 39 ~~(i) “Personal risk factors for heat illness” means factors such as~~
- 40 ~~an individual’s age, degree of acclimatization, health, water~~

1 consumption, alcohol consumption, caffeine consumption, and  
2 use of prescription medications that affect the body's water  
3 retention or other physiological responses to heat.

4 (j) "Shade" means complete blockage of direct sunlight. One  
5 indicator that blockage is sufficient is when objects do not cast a  
6 shadow in the area of blocked sunlight. Shade is not adequate when  
7 heat in the area of shade defeats the purpose of shade, which is to  
8 allow the body to cool.

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

16 (e) "Repeat offender" means both of the following:

17 (1) A farm operator, if the farm operator or any agricultural  
18 employer acting on the real property used in the farm operator's  
19 farming operation, violates Section 3395 of Title 8 of the California  
20 Code of Regulations or commits any other violation of this chapter  
21 on two or more days within a three-year period.

22 (2) An agricultural employer, other than a farm operator, who  
23 violates Section 3395 of Title 8 of the California Code of  
24 Regulations or commits any other violation of this chapter on two  
25 or more days within a three-year period.

26 6721. (a) This chapter applies to the control of the risk of  
27 occurrence of heat illness among agricultural employees. This  
28 chapter is not intended to exclude the application of any section  
29 of Title 8 of the California Code of Regulations. This chapter  
30 applies to all outdoor places of agricultural employment.

31 (b) (1) (A) Each employee shall have continuous, ready access  
32 to fresh, pure, and suitably cool potable drinking water meeting  
33 the requirements of Title 8 of the California Code of Regulations,  
34 which does not have an unpalatable smell or taste.

35 (B) The water shall be located as close as practicable to the  
36 areas where employees are working, and shall be at a distance of  
37 not greater than 200 feet from any employee at any time other than  
38 when the employee is using a restroom or traveling between the  
39 restroom and an area where employees are working. If an employee  
40 is working on a crop that is planted in a row longer than 400 feet

1 and the water is located within 10 feet of each end of the row where  
2 the employee is working, the water shall be deemed to be at a  
3 distance of not greater than 200 feet from the employee.

4 (C) The temperature of the water shall be 70 degrees or lower,  
5 or the water shall contain ice that has not completely melted, at  
6 all times.

7 (D) The water shall be provided to each employee free of charge.

8 (2) In addition to the water access required by paragraph (1),  
9 each employee shall be provided with a canteen for his or her  
10 individual use for the temporary storage and drinking of water, or  
11 with a cup of at least 8-ounce but no more than 32-ounce capacity  
12 for his or her individual use for the drinking of water. The canteens  
13 or cups shall be provided to the employees free of charge and  
14 replaced or cleaned and sanitized after each work shift. Each  
15 employee shall be encouraged to keep any canteen with him or  
16 her during work.

17 (3) Where drinking water is not plumbed or otherwise  
18 continuously supplied, it shall be provided in a sufficient quantity  
19 at the beginning of the work shift to provide at least one quart per  
20 employee per hour for drinking for the entire shift. Water shall be  
21 available at all times in sufficient quantities to provide at least one  
22 quart per employee per hour for the remainder of the work shift.

23 (4) The frequent drinking of water, as described in this section,  
24 shall be encouraged and permitted. At no time shall any employer  
25 state or imply that an employee will face a negative consequence  
26 for the frequent drinking of water or for stopping work to drink  
27 water. Each employee shall be compensated for the time taken to  
28 access water. For an employee working on a piece-rate basis,  
29 compensation during the pay period in which time was taken to  
30 access water shall be determined based upon the employee's  
31 average piece-rate wage.

32 (e) (1) The employer shall have and maintain one or more areas  
33 with shade at all times while employees are present that are either  
34 open to the air or provided with ventilation or cooling. The shaded  
35 area shall be located as close as practicable to the areas where  
36 employees are working, and shall be at a distance of not greater  
37 than 200 feet from any employee at any time other than when the  
38 employee is using a restroom or traveling between the restroom  
39 and an area where employees are working. If an employee is  
40 working on a crop that is planted in a row longer than 400 feet and

1 shaded areas are located within 10 feet of each end of the row  
2 where the employee is working, the shaded areas shall be deemed  
3 to be at a distance of not greater than 200 feet from the employee.  
4 Canopies, umbrellas, and other temporary structures or devices  
5 may be used to provide shade in combination, if they completely  
6 block direct sunlight and the temperature in the area of shade is  
7 significantly lower than the ambient temperature outside of that  
8 area.

9 (2) The amount of shade provided shall be enough to  
10 accommodate all of the employees on the shift at any time, so that  
11 the employees can all sit fully in the shade without having to be  
12 in physical contact with each other. An employer shall provide  
13 seating or ground covering sufficient to prevent each of the  
14 employees from being in contact with bare soil and to insulate  
15 each of the employees from the heat of the ground.

16 (d) (1) Each employee shall be encouraged and permitted to  
17 take rest breaks in the shade at any time when he or she feels the  
18 need to do so to protect himself or herself from overheating. At  
19 no time shall any employer state or imply that an employee will  
20 face any negative consequence for taking a rest break in the shade  
21 or for stopping work to take a rest break in the shade. An employee  
22 who takes a rest break shall be encouraged and permitted to  
23 continue resting in the shade as long as necessary to ensure that  
24 any signs or symptoms of heat illness have resolved, but in no  
25 event for less than 10 minutes in addition to the time needed to  
26 access the shade. Rest in the shade shall be permitted at all times.

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

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

34 (B) Ensuring that effective communication by voice,  
35 observation, or electronic means is maintained so that employees  
36 at the worksite can immediately contact a supervisor when  
37 necessary. An electronic device, such as a cellular telephone or  
38 text messaging device, may be used for this purpose only if  
39 reception in the area is reliable.

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

6     ~~(D) Supervisor observation of employees for decreases in~~  
7 ~~alertness and signs or symptoms of heat illness. If a supervisor~~  
8 ~~observes a decrease in alertness or signs or symptoms of heat~~  
9 ~~illness, the supervisor shall take action as required under~~  
10 ~~subdivision (e).~~

11     ~~(E) Reminding employees throughout the work shift to drink~~  
12 ~~plenty of water.~~

13     ~~(F) Close supervision of a new employee for heat illness~~  
14 ~~prevention by a supervisor or designee for the first 14 days of the~~  
15 ~~employee’s employment by the employer, unless the employer~~  
16 ~~documents at the time of hire that the employee has been doing~~  
17 ~~similar outdoor work for at least 10 of the past 30 days for four or~~  
18 ~~more hours per day.~~

19     ~~(3) Each employee shall be compensated for rest breaks taken~~  
20 ~~pursuant to this section, and for rest periods or cool-down rest~~  
21 ~~periods established by any applicable regulation or order of the~~  
22 ~~Industrial Welfare Commission, the Division of Occupational~~  
23 ~~Health and Safety, or the Occupational Safety and Health Standards~~  
24 ~~Board. An employee working on a piece-rate basis shall be~~  
25 ~~compensated at the employee’s average piece-rate wage during~~  
26 ~~the pay period in which the rest break, rest period, or cool-down~~  
27 ~~rest period was taken.~~

28     ~~(e) If a supervisor observes, or any employee reports, any signs~~  
29 ~~of heat illness in an employee, the supervisor shall take immediate~~  
30 ~~action to alleviate the symptoms, including providing the employee~~  
31 ~~with water, a paid rest break in the shade, and appropriate first aid.~~  
32 ~~The employee shall be provided access to medical aid consistent~~  
33 ~~with the procedures established pursuant to subdivision (f).~~

34     ~~(f) (1) An employer shall establish procedures for the following:~~

35         ~~(A) Responding to signs of possible heat illness, including how~~  
36 ~~emergency medical services will be provided.~~

37         ~~(B) Contacting emergency medical services and, if necessary,~~  
38 ~~transporting employees to a place where they can be reached by~~  
39 ~~an emergency medical service provider.~~

1 ~~(C) Ensuring that, in the event of an emergency, clear and~~  
2 ~~precise directions to the worksite are provided to emergency~~  
3 ~~responders.~~

4 ~~(2) The procedures shall include designating a person to be~~  
5 ~~available to ensure that emergency procedures are invoked when~~  
6 ~~appropriate.~~

7 ~~(3) The procedures shall be deemed insufficient, and therefore~~  
8 ~~in violation of this subdivision, if either of the following occurs:~~

9 ~~(A) An employee presents signs of heat illness and is not~~  
10 ~~transported, commencing within five minutes of the onset of the~~  
11 ~~heat stress signs, by air-conditioned automobile or ambulance to~~  
12 ~~the nearest appropriate emergency medical service provider for~~  
13 ~~appropriate medical care. An employer is not subject to the~~  
14 ~~requirement that the transportation commence within five minutes~~  
15 ~~of the onset of the heat stress signs if the employer has developed~~  
16 ~~a written alternative emergency response plan and obtained from~~  
17 ~~the local fire department or other appropriate emergency service~~  
18 ~~provider written approval of the plan prior to the date on which~~  
19 ~~the employee presented signs of heat illness, and the employer~~  
20 ~~substantially complied with that plan when the employee presented~~  
21 ~~signs of heat illness.~~

22 ~~(B) An employee presents suspected signs of heat illness and~~  
23 ~~is sent home instead of being given onsite first aid and being~~  
24 ~~transported by air-conditioned automobile or ambulance to the~~  
25 ~~nearest appropriate emergency medical service provider and~~  
26 ~~assessed and authorized for discharge by licensed medical~~  
27 ~~personnel.~~

28 ~~(g) (1) An employee shall not begin outdoor work unless the~~  
29 ~~employee has received the training required by this paragraph.~~  
30 ~~Effective training in the following topics shall be provided to each~~  
31 ~~supervisory and nonsupervisory employee:~~

32 ~~(A) The requirements of this section, including the employer's~~  
33 ~~responsibility to provide water, shade, rest breaks, and access to~~  
34 ~~medical aid as set forth in this section, and the prohibition on~~  
35 ~~retaliation as set forth in Section 6723.~~

36 ~~(B) The employer's procedures established pursuant to~~  
37 ~~subdivision (f).~~

38 ~~(C) The environmental and personal risk factors for heat illness,~~  
39 ~~as well as the added burden of heat load on the body caused by~~  
40 ~~exertion, clothing, and personal protective equipment.~~

1     ~~(D) The importance of frequent consumption of small quantities~~  
2     ~~of water, up to four cups per hour, when the work environment is~~  
3     ~~hot and employees are likely to be sweating more than usual in~~  
4     ~~the performance of their duties.~~

5     ~~(E) The importance of acclimatization.~~

6     ~~(F) The different types of heat illness and the common signs~~  
7     ~~and symptoms of heat illness.~~

8     ~~(G) The importance to each employee of immediately reporting~~  
9     ~~to the employer, directly or through the employee’s supervisor,~~  
10    ~~symptoms or signs of heat illness in himself or herself, or in~~  
11    ~~coworkers.~~

12    ~~(2) A supervisor shall not be assigned to supervise employees~~  
13    ~~unless the supervisor has received the training required by this~~  
14    ~~paragraph. In addition to the training required by paragraph (1),~~  
15    ~~effective training on the following topics shall be provided to each~~  
16    ~~supervisory employee:~~

17    ~~(A) The procedures the supervisor is to follow to implement~~  
18    ~~the applicable provisions of this section.~~

19    ~~(B) The procedures the supervisor is to follow when an~~  
20    ~~employee exhibits symptoms consistent with possible heat illness,~~  
21    ~~including emergency response procedures.~~

22    ~~(C) How to monitor weather reports and how to respond to hot~~  
23    ~~weather advisories.~~

24    ~~(b) (1) An employer shall comply with Section 3395 of Title 8~~  
25    ~~of the California Code of Regulations and with any other regulation~~  
26    ~~or statute imposing requirements related to the prevention of heat~~  
27    ~~illness, including those requiring an employer to provide employees~~  
28    ~~with water, shade, or training in the prevention of heat illness.~~

29    ~~(2) An employee shall not be discharged or penalized in any~~  
30    ~~way for taking action to secure his or her employer’s compliance~~  
31    ~~with the requirements of this chapter, including the requirements~~  
32    ~~of Section 3395 of Title 8 of the California Code of Regulations.~~  
33    ~~Actions to secure an employer’s compliance with the requirements~~  
34    ~~of this chapter include directly or indirectly communicating with~~  
35    ~~the employer about the requirements of this chapter or the~~  
36    ~~prevention of heat illness; reporting a violation of this chapter or~~  
37    ~~otherwise communicating with a person or entity about the~~  
38    ~~employer’s compliance with the requirements of this chapter; or~~  
39    ~~participating in any way in an investigation, action, or proceeding~~  
40    ~~to enforce the requirements of this chapter.~~

1 (c) (1) An employer shall certify by January 31 of each year,  
2 or on the first day of operation in any calendar year in which an  
3 employer begins an employment relationship after January 31,  
4 that the employer has adopted written procedures for complying  
5 with the requirements of this chapter, and has acquired and made  
6 available to the appropriate persons all materials and equipment  
7 necessary for providing employees with water, shade, and training  
8 in the prevention of heat illness, as required by law. This  
9 certification shall be in writing, signed, and dated, and shall be  
10 made available within 24 hours after a request is made by a  
11 representative of the division, an employee, or a representative of  
12 an employee.

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

21 ~~6722. (a) (1) An employer shall maintain written procedures~~  
22 ~~for complying with the requirements of this chapter. The written~~  
23 ~~procedures shall be made available within 24 hours of a request~~  
24 ~~made by a representative of the division, an employee, or a~~  
25 ~~representative of an employee.~~

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

29 ~~(b) (1) An employer shall certify by January 31 of each year,~~  
30 ~~or on the first day of operation in any calendar year in which an~~  
31 ~~employer begins an employment relationship after January 31, that~~  
32 ~~the employer has adopted written procedures for complying with~~  
33 ~~the requirements of this chapter, and has acquired and made~~  
34 ~~available to the appropriate persons all materials and equipment~~  
35 ~~necessary for providing employees with water, shade, and training~~  
36 ~~in the prevention of heat illness. This certification shall be in~~  
37 ~~writing, signed, and dated, and shall be made available within 24~~  
38 ~~hours of a request made by a representative of the division, an~~  
39 ~~employee, or a representative of an employee.~~

1     ~~(2) If an employer is found not to have adopted written~~  
 2 ~~procedures for complying with the requirements of this chapter~~  
 3 ~~following certification, or is found to lack any of the materials and~~  
 4 ~~equipment necessary for providing employees with water, shade,~~  
 5 ~~and training in the prevention of heat illness following certification,~~  
 6 ~~there shall be a rebuttable presumption that the certification was~~  
 7 ~~false at the time it was made, and the employer shall be subject to~~  
 8 ~~penalties for fraud.~~

9     ~~(e) Prior to the commencement of outdoor work at any worksite,~~  
 10 ~~the employer shall post in a manner readily visible and legible a~~  
 11 ~~sign setting forth the identity of the farm operator, the identity of~~  
 12 ~~the employer, the date, the number of employees of that employer~~  
 13 ~~in each crew at that worksite on that date, and the location at which~~  
 14 ~~the written procedures for complying with this chapter are~~  
 15 ~~maintained.~~

16     ~~6723. (a) An employee shall not be discharged or penalized~~  
 17 ~~in any way for drinking water, taking a break to get water, taking~~  
 18 ~~a rest break in the shade, or taking any other action on behalf of~~  
 19 ~~himself or herself or his or her coworkers that is reasonably~~  
 20 ~~calculated to prevent heat illness.~~

21     ~~(b) An employee shall not be discharged or penalized in any~~  
 22 ~~way for taking action to secure his or her employer's compliance~~  
 23 ~~with the requirements of this chapter, including directly or~~  
 24 ~~indirectly communicating with the employer about the requirements~~  
 25 ~~of this chapter or the prevention of heat illness, reporting a violation~~  
 26 ~~of this chapter or otherwise communicating with any person or~~  
 27 ~~entity about the employer's compliance with the requirements of~~  
 28 ~~this section, or participating in any way in any investigation or~~  
 29 ~~proceeding to enforce the requirements of this chapter.~~

30     ~~6724.~~

31     ~~6722. (a) (1) This chapter shall be enforced by the division.~~

32     ~~(2) The division shall treat a complaint alleging violation of this~~  
 33 ~~chapter, other than a complaint alleging a violation of only Section~~  
 34 ~~6722, as a complaint charging a serious violation within the~~  
 35 ~~meaning of Section 6309, and shall investigate all of these~~  
 36 ~~complaints through onsite inspection.~~

37     ~~(3) During an onsite inspection of an outdoor place of~~  
 38 ~~agricultural employment, the division shall inform all employees~~  
 39 ~~of the prohibition on retaliation set forth in Section 6723. The~~  
 40 ~~division shall provide employees with written materials, in the~~

1 language or languages spoken by the employees, setting forth a  
2 clear and concise summary of the requirements of this chapter and  
3 a means of contacting the division if the employer subsequently  
4 commits a retaliatory act or other violation of this chapter.

5 (4) ~~An employer shall be designated as a high hazardous industry~~  
6 ~~employer within the meaning of Section 6314.1 if the division~~  
7 ~~receives a complaint against the employer from an employee or~~  
8 ~~an employee's representative alleging a violation of this chapter,~~  
9 ~~unless the division investigates the complaint within 24 hours and~~  
10 ~~finds it to be without foundation, or the division issues a citation~~  
11 ~~against the employer for a violation of this chapter, unless the~~  
12 ~~citation is withdrawn in its entirety.~~

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

16 (b) (1) ~~In addition to any other available remedies, and, except~~  
17 ~~as otherwise provided in this paragraph~~ *causes of action,*  
18 *irrespective of any action or omission of the division in the*  
19 *enforcement of this chapter, an employee affected by an employer's*  
20 *failure to comply with this chapter, including a failure to comply*  
21 *with Section 3395 of Title 8 of the California Code of Regulations,*  
22 *may bring a civil action against a repeat offender for any of the*  
23 *following:*

24 (A) Injunctive relief.

25 (B) ~~All damages~~ *Damages* caused by the failure to comply,  
26 including interest on those damages.

27 (C) If the failure to comply had a direct effect *relationship* upon  
28 the health or safety of an employee, civil penalties as set forth in  
29 Section 6725

30 ~~, to the extent that the division has not imposed and collected~~  
31 ~~those penalties against the same employer for the same alleged~~  
32 ~~violation as of the date the civil action is filed~~ 6723, *except that*  
33 *the penalties shall be reduced by the amount of any penalties that*  
34 *have been imposed and collected by the division against the same*  
35 *employer for the same alleged violation as of the date the civil*  
36 *action is filed.*

37 (2) Fifty percent of any civil penalties recovered by ~~the an~~  
38 employee in a civil action brought pursuant to this subdivision  
39 shall be distributed to the division, with the remainder distributed

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

3 (3) Upon a showing in a civil action brought pursuant to this  
4 subdivision of an employer's failure to comply with any provision  
5 of this chapter, *including a failure to comply with Section 3395 of*  
6 *Title 8 of the California Code of Regulations*, any prerequisites to  
7 the granting of injunctive relief shall be presumed to be satisfied.

8 (4) An employer who is found to have violated any provision  
9 of this chapter, *including a failure to comply with Section 3395 of*  
10 *Title 8 of the California Code of Regulations*, in a civil action  
11 brought pursuant to this subdivision shall be designated a high  
12 hazardous industry employer within the meaning of Section 6314.1,  
13 and that designation shall be withdrawn only if the judgment  
14 against the employer is vacated in its entirety.

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

18 (e)

19 ~~(b) An action or proceeding, whether brought by the division~~  
20 ~~or an employee, may be brought pursuant to this section against~~  
21 ~~all agricultural entities~~ *employee may bring a civil action pursuant*  
22 *to subdivision (a) against an agricultural entity involved in the a*  
23 *farming operation, including the a farm operator, that is a repeat*  
24 *offender. For*

25 *(c) The division may bring an administrative proceeding to*  
26 *enforce this chapter, including an administrative proceeding to*  
27 *enforce Section 3395 of Title 8 of the California Code of*  
28 *Regulations, against an agricultural entity involved in a farming*  
29 *operation, including a farm operator, that is a repeat offender.*  
30 *This subdivision does not limit or prevent an enforcement action*  
31 *authorized by any other provision of law.*

32 *(d) For purposes of this section, the acts or omissions of an*  
33 *agricultural employer shall be imputed to the farm operator on the*  
34 *real property used in whose farming operation the agricultural*  
35 *employer was acting at the time of the alleged violation of this*  
36 *chapter and that farm operator shall be jointly and severally liable*  
37 *with and to the same extent as the agricultural employer.*

38 (d)

39 *(e) A signed statement obtained by the division from an*  
40 *employee that is made under penalty of perjury is admissible in*

1 an administrative enforcement proceeding brought pursuant to this  
2 section to enforce this chapter, including an administrative  
3 proceeding brought to enforce Section 3395 of Title 8 of the  
4 California Code of Regulations.

5 ~~6725.~~

6 6723. (a) ~~For~~ *In a civil action brought by an employee pursuant*  
7 *to Section 6722, for a violation of subdivision (b) of Section 6721*  
8 ~~or 6723~~, the civil penalties shall be as follows:

9 (1) For each day on which the violation existed while one or  
10 more employees were working and the temperature did not exceed  
11 80 degrees, the penalty shall be the product of five hundred dollars  
12 (\$500) multiplied by the number of employees on the work crew  
13 at the time of the violation.

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

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

24 (4) For each day on which the violation existed while one or  
25 more employees were working and the temperature exceeded 100  
26 degrees, the penalty shall be the product of ten thousand dollars  
27 (\$10,000) multiplied by the number of employees on the work  
28 crew at the time of the violation.

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

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

35 (b) (1) ~~Except~~ *In a civil action brought by an employee pursuant*  
36 *to Section 6722, except as otherwise provided in paragraph (2),*  
37 *for a violation of subdivision (c) of Section ~~6722~~ 6721, civil*  
38 *penalties shall be imposed in the amount of five hundred dollars*  
39 *(\$500) multiplied by the number of days the violation existed while*  
40 *employees were working.*

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

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

9 (A) The culpability of the employer.

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

12 (C) The size, sophistication, and financial strength of the  
13 employer.

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

15 (E) The degree of injury caused by the employer’s current or  
16 past violations.

17 (F) Any efforts by an employee or other person to secure the  
18 employer’s compliance through means other than litigation.

19 (G) Any expenses incurred by employees, the division, and  
20 others in investigating the employer’s compliance.

21 (2) The employer has the burden of proving the existence of  
22 facts justifying a reduction of the penalty pursuant to this  
23 subdivision.

24 SEC. 4. The provisions of this act are severable. If any  
25 provision of this act or its application is held invalid, that invalidity  
26 shall not affect other provisions or applications that can be given  
27 effect without the invalid provision or application.

28 SEC. 5. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the penalty  
33 for a crime or infraction, within the meaning of Section 17556 of  
34 the Government Code, or changes the definition of a crime within  
35 the meaning of Section 6 of Article XIII B of the California  
36 Constitution.

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