

AMENDED IN SENATE AUGUST 18, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1634**

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**Introduced by Assembly Member Skinner**

(Principal coauthor: Senator Hancock)

**(Coauthors: Assembly Members Ammiano, Bonta, Gonzalez, Quirk,  
Ting, and Wieckowski)**

February 10, 2014

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An act to amend ~~Section 6600~~ *Sections 6319, 6320, and 6625* of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1634, as amended, Skinner. Occupational safety and health: violations.

Existing law establishes the Division of Occupational Safety and Health in the Department of Industrial Relations to enforce employment safety laws. Existing law authorizes the division to conduct hearings, inspections, and investigations regarding alleged violations of employment safety laws and to issue a citation for a violation of those laws, including violations that regulations adopted by the division classify as serious, repeat, or willful violations. *Existing law authorizes the division to propose appropriate modifications concerning the characterization of violations and corresponding modifications to civil penalties for violations. Existing law requires the division, if a serious violation is not abated at the time of the initial or subsequent inspection, to require the employer to submit a signed statement under penalty of perjury that he or she has complied with the abatement terms within the period fixed for abatement of the violation.* Existing law establishes the Occupational Safety and Health Appeals Board in the department,

and prescribes procedures for the appeals board to hear and decide appeals of a citation. Regulations adopted by the appeals board generally stay the abatement period of a citation until the conclusion of the appeal.

This bill would prohibit the *division from granting a proposed modification to civil penalties for abatement or credit for abatement unless the employer has submitted a statement to the division in accordance with existing law, and would additionally require supporting evidence with the statement. The bill would prohibit the division from granting such a modification unless the signed statement and supporting evidence is received within 10 days after the end of the period fixed for abatement. The bill would generally prohibit the stay or suspension of an abatement period during the pendency before the appeals board of an appeal a petition for reconsideration of a citation for a violation that is classified as a serious violation, repeat serious violation, or willful serious violation. The bill would, however, authorize the ~~division~~ appeals board to stay these abatement periods, upon request, or suspend an abatement, upon petition by the employer, if the ~~division determines that a stay~~ if the employer demonstrates that a stay or suspension will not adversely affect the health and safety of employees.*

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

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

- 1     SECTION 1. Section 6319 of the Labor Code is amended to
- 2     read:
- 3     6319. (a) If, after an inspection or investigation, the division
- 4     issues a citation pursuant to Section 6317 or an order pursuant to
- 5     Section 6308, it shall, within a reasonable time after the termination
- 6     of the inspection or investigation, notify the employer by certified
- 7     mail of the citation or order, and that the employer has 15 working
- 8     days from receipt of the notice within which to notify the appeals
- 9     board that he or she wishes to contest the citation or order for any
- 10    reason set forth in Section 6600 or 6600.5.
- 11    (b) Any employer served by certified mail with a notice of civil
- 12    penalty may appeal to the appeals board within 15 working days
- 13    from receipt of that notice for any reason set forth in Section 6600.
- 14    If the citation is issued for a violation involving the condition or
- 15    operation of any machine, device, apparatus, or equipment, and a
- 16    person other than the employer is obligated to the employer to

1 repair the machine, device, apparatus, or equipment and to pay  
2 any penalties assessed against the employer, the other person may  
3 appeal to the appeals board within 15 working days of the receipt  
4 of the citation by the employer for any reasons set forth in Section  
5 6600.

6 (c) The director shall promulgate regulations covering the  
7 assessment of civil penalties under this chapter which give due  
8 consideration to the appropriateness of the penalty with respect to  
9 the following factors:

- 10 (1) The size of the business of the employer being charged.  
11 (2) The gravity of the violation.  
12 (3) The good faith of the employer, including timely abatement.  
13 (4) The history of previous violations.

14 (d) Notwithstanding subdivision (c), if serious injury, illness,  
15 exposure, or death is caused by any serious, willful, or repeated  
16 violation, or by any failure to correct a serious violation within the  
17 time permitted for its correction, the penalty shall not be reduced  
18 for any reason other than the size of the business of the employer  
19 being charged. Whenever the division issues a citation for a  
20 violation covered by this subdivision, it shall notify the employer  
21 of its determination that serious injury, illness, exposure or death  
22 was caused by the violation and shall, upon request, provide the  
23 employer with a copy of the inspection report.

24 (e) The employer shall not be liable for a civil penalty under  
25 this part for any citation issued by a division representative  
26 providing consulting services pursuant to Sections 6354 and 6355.

27 (f) Whenever a citation of a self-insured employer for a willful,  
28 or repeat serious violation of the standard adopted pursuant to  
29 Section 6401.7 becomes final, the division shall notify the director  
30 so that a hearing may be held to determine whether good cause  
31 exists to revoke the employer's certificate of consent to self-insure  
32 as provided in Section 3702.

33 (g) Based upon the evidence, the division may propose  
34 appropriate modifications concerning the characterization of  
35 violations and corresponding modifications to civil penalties as a  
36 result thereof. *The division shall not grant a proposed modification*  
37 *to civil penalties for abatement or credit for abatement unless the*  
38 *employer has submitted a signed statement under penalty of perjury*  
39 *and supporting evidence in accordance with subdivision (b) of*  
40 *Section 6320.*

1     *SEC. 2. Section 6320 of the Labor Code is amended to read:*

2     6320. (a) If, after inspection or investigation, the division  
3 issues a special order, order to take special action, or a citation for  
4 a serious violation, and if at the time of inspection the order is not  
5 complied with or the violation is not abated, the division shall  
6 conduct a reinspection in the following cases:

7     (1) All inspections or investigations involving a serious violation  
8 of a standard adopted pursuant to Section 6401.7, a special order  
9 or order to take special action, serious violations of those orders,  
10 and serious violations characterized as repeat or willful or with  
11 abatement periods of less than six days. These reinspections shall  
12 be conducted at the end of the period fixed for compliance with  
13 the order or abatement of the violation or within 30 days thereafter.

14     (2) At least 20 percent of the inspections or investigations  
15 involving a serious violation not otherwise scheduled for  
16 reinspection. These inspections shall be randomly selected and  
17 shall be conducted at the end of the period fixed for abatement of  
18 the violation or within a reasonable time thereafter.

19     (b) Whenever a serious violation is not abated at the time of the  
20 initial or subsequent inspection, the division shall require the  
21 employer to submit a signed statement *with supporting evidence*,  
22 under penalty of ~~perjury~~ *perjury*, that he or she has complied with  
23 the abatement terms within the period fixed for abatement of the  
24 violation. ~~If the statement is not received by the division within~~  
25 ~~10 working days after the end of the period fixed for abatement,~~  
26 ~~the division shall revoke any adjustments to the civil penalty based~~  
27 ~~on abatement of the violation. The division may grant a~~  
28 ~~modification pursuant to subdivision (g) of Section 6319 only if~~  
29 ~~the statement, signed under penalty of perjury, and supporting~~  
30 ~~evidence are received within 10 days after the end of the period~~  
31 ~~fixed for abatement.~~ The division shall include on the initial notice  
32 of civil penalty a clear warning of reinspection ~~and automatic~~  
33 ~~revocation of any civil penalty adjustments based on abatement~~  
34 for failure to submit the required statement in the time allotted,  
35 and of an additional, potentially substantial monetary penalty for  
36 failure to abate the violation. If the division fails to receive  
37 evidence of abatement or the statement within 10 working days  
38 after the end of the abatement period, the division shall notify the  
39 employer that the additional civil penalty for failure to abate, as  
40 provided in Section 6430, will be assessed retroactive to the end

1 of the abatement period unless the employer can provide sufficient  
2 evidence that the violation was abated prior to that date. The  
3 division shall conduct a reinspection of serious violations within  
4 45 days following the end of the abatement period whenever it  
5 still has no evidence of abatement.

6 *SEC. 3. Section 6625 of the Labor Code is amended to read:*

7 *6625. The (a) Except as provided in subdivision (b), the filing*  
8 *of a petition for reconsideration shall suspend for a period of 10*  
9 *days the order or decision affected, insofar as it applies to the*  
10 *parties to the petition, unless otherwise ordered by the appeals*  
11 *board. The appeals board upon the terms and conditions which it*  
12 *by order directs, may stay, suspend, or postpone the order or*  
13 *decision during the pendency of the reconsideration.*

14 *(b) The filing of a petition for, or the pendency of,*  
15 *reconsideration of a final order or decision involving a citation*  
16 *classified as serious, repeat serious, or willful serious may stay*  
17 *or suspend the order or decision only if the employer demonstrates*  
18 *by a preponderance of the evidence that a stay or suspension will*  
19 *not adversely affect the health and safety of employees. The*  
20 *employer must request a stay or suspension by filing a written,*  
21 *verified petition with supporting declarations within 10 days after*  
22 *the filing of the order or decision.*

23 ~~SECTION 1. Section 6600 of the Labor Code is amended to~~  
24 ~~read:~~

25 ~~6600. (a) An employer served with a citation pursuant to~~  
26 ~~Section 6317, or a notice of proposed penalty under this part, or~~  
27 ~~any other person obligated to the employer as specified in~~  
28 ~~subdivision (b) of Section 6319, may appeal to the appeals board~~  
29 ~~within 15 working days from the receipt of the citation or notice~~  
30 ~~with respect to violations alleged by the division, abatement~~  
31 ~~periods, amount of proposed penalties, and the reasonableness of~~  
32 ~~the changes required by the division to abate the condition.~~

33 ~~(b) (1) An appeal of a citation that is classified as a serious~~  
34 ~~violation, a repeat serious violation, or a willful serious violation~~  
35 ~~shall not stay the abatement periods and requirements of the~~  
36 ~~division, except as provided in paragraph (2).~~

37 ~~(2) If a stay of abatement is requested from the division with~~  
38 ~~respect to an appeal described in paragraph (1), the division may~~  
39 ~~stay the abatement if the division determines that a stay will not~~  
40 ~~adversely affect the health and safety of employees.~~

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