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AMENDED IN SENATE JULY 12, 1999

AMENDED IN SENATE JUNE 29, 1999

AMENDED IN ASSEMBLY JUNE 1, 1999

AMENDED IN ASSEMBLY MAY 18, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1127

Introduced by Assembly Member Steinberg

February 25, 1999

An act to amend Sections 98.7, 6302, 6304.5, 6308, 6309, 6317, 6323, 6324, 6325, 6400, 6423, 6425, 6427, 6428, 6429, 6430, and 6432 of, to add Sections 6319.1, 6424, and 6719 to, and to repeal Section 6434 of, the Labor Code, relating to employee safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1127, as amended, Steinberg. Employee safety: violations.

Under existing law, any person who believes that he or she has been discharged or otherwise discriminated against in violation of the Labor Code under the jurisdiction of the Labor Commissioner may file a complaint with the Division of Labor Standards Enforcement within 30 days after the occurrence of the violation.

This bill would extend from 30 days to one year that period of time within which a complaint may be filed with the division.



Existing law provides that the provisions of the California Occupational Safety and Health Act of 1973 (hereafter the act) have no application to, may not be considered in, and may not be admitted into, evidence in any personal injury or wrongful death action arising after January 1, 1972, except as between an employee and his or her employer.

This bill instead would provide that neither the issuance of, or failure to issue, a citation by the Division of Occupational Safety and Health (hereafter the division) has any application to, nor may be considered in, nor may be admitted into, evidence in any personal injury or wrongful death action, except as between an employee and his or her employer. The bill also would provide that the act and the occupational safety and health standards and orders promulgated under the Labor Code may have application to, may be considered in, or may be admissible into, evidence in any personal injury or wrongful death action.

Existing law provides that if the division secures a complaint from an employee, the employee's representative, or an employer of the employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, the division is required to summarily investigate the complaint as soon as possible, but not later than 3 working days after receipt of a complaint charging a serious violation, and not later than 14 days after receipt of a complaint charging a nonserious violation. Under existing law the division is not required to respond to a complaint if it determines that either the complaint is intended to willfully harass an employer or is without reasonable basis.

This bill also would require the division to conduct those investigations if a complaint is received by the employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or representative of a government agency. The bill would also provide that the division is not required to respond to a complaint if, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer and is without any reasonable basis.

Existing law authorizes the division to issue a citation to an employer requiring the abatement of a violation of the act.

This bill would prohibit a citation requiring abatement from being stayed if the division makes specified findings pertaining to employee safety and health, except that the employer would be authorized to file a motion requesting that the period for abatement be stayed during the appeal proceedings.

Existing law provides that if the condition of any employment or place of employment or the operation of any machine, device, apparatus, or equipment constitutes a serious menace to the lives or safety of persons about it, the division may apply to the superior court of the county in which the place of employment, machine, device, apparatus, or equipment is located for an injunction restraining the use or operation of the machine, device, apparatus, or equipment until the condition is corrected. Existing law requires an affidavit to accompany that application showing *that* the place of employment, machine, device, apparatus, or equipment is being operated in violation of specified requirements and that its use or operation constitutes a menace to the life or safety of any person employed thereabout.

This bill would instead authorize the division to apply to the superior court of the county in which the place of employment or employee is located for an injunction under those circumstances. The bill would also require the affidavit accompanying that application to show that the use or operation of the machine, device, apparatus, equipment, or process violates the specified requirements and constitutes a menace to the life or safety of any person employed thereabout or is likely to cause death, serious injury or illness, or serious exposure to an employee.

Existing law provides that every employer, and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or other employee is guilty of a misdemeanor if it, among other things, knowingly or negligently violates any standard, order, or special order, or any of certain provisions of law, or part thereof, authorized by the act, the violation of which is deemed to be a serious violation, as defined.

This bill would also make conforming changes to other provisions of law that impose civil and criminal penalties on

employers for violation of specified occupational safety and health requirements. The bill would increase from \$5,000 to \$15,000 the maximum fine that may be imposed for a violation of those provisions. The bill also would increase the length of incarceration and the monetary penalties that may be imposed for a willful or repeated violation of certain employee safety standards that cause death to any employee, or cause permanent or prolonged impairment of the body of any employee. The bill also would authorize a court to impose a fine in an amount less than certain minimums specified in the bill if the court finds that it is in the interest of justice to do so and states its findings and reasons on the record.

Existing law prohibits civil penalties from being assessed against employers that are governmental agencies for violations of certain employee safety standards.

This bill would repeal that prohibition.

Existing law requires the Occupational Safety and Health Standards Board (hereafter the standards board), on or before January 1, 1995, to adopt standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion.

This bill would reaffirm the standards board's continuing duty to adopt those standards.

By making certain violations of employee safety standards by employers subject to criminal penalties, 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.

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. Section 98.7 of the Labor Code is
2 amended to read:



1 98.7. (a) Any person who believes that he or she has
2 been discharged or otherwise discriminated against in
3 violation of this code under the jurisdiction of the Labor
4 Commissioner may file a complaint with the division
5 within one year after the occurrence of the violation. The
6 one-year period may be extended for good cause. The
7 complaint shall be investigated by a discrimination
8 complaint investigator in accordance with this section.
9 The Labor Commissioner shall establish procedures for
10 the investigation of discrimination complaints. A
11 summary of the procedures shall be provided to each
12 complainant and respondent at the time of initial contact.
13 The Labor Commissioner shall inform complainants
14 charging a violation of Section 6310 or 6311, at the time
15 of initial contact, of his or her right to file a separate,
16 concurrent complaint with the United States
17 Department of Labor within 30 days after the occurrence
18 of the violation.

19 (b) Each complaint of unlawful discharge or
20 discrimination shall be assigned to a discrimination
21 complaint investigator who shall prepare and submit a
22 report to the Labor Commissioner based on an
23 investigation of the complaint. The Labor Commissioner
24 may designate the chief deputy or assistant Labor
25 Commissioner or the chief counsel to receive and review
26 the reports. The investigation shall include, where
27 appropriate, interviews with the complainant,
28 respondent, and any witnesses who may have
29 information concerning the alleged violation, and a
30 review of any documents which may be relevant to the
31 disposition of the complaint. The identity of witnesses
32 shall remain confidential unless the identification of the
33 witness becomes necessary to proceed with the
34 investigation or to prosecute an action to enforce a
35 determination. The investigation report submitted to the
36 Labor Commissioner or designee shall include the
37 statements and documents obtained in the investigation,
38 and the findings of the investigator concerning whether
39 a violation occurred. The Labor Commissioner may hold
40 an investigative hearing whenever the Labor

1 Commissioner determines, after review of the
2 investigation report, that a hearing is necessary to fully
3 establish the facts. In the hearing the investigation report
4 shall be made a part of the record and the complainant
5 and respondent shall have the opportunity to present
6 further evidence. The Labor Commissioner shall issue,
7 serve, and enforce any necessary subpoenas.

8 (c) If the Labor Commissioner determines a violation
9 has occurred, he or she shall notify the complainant and
10 respondent and direct the respondent to cease and desist
11 from the violation and take such action as is deemed
12 necessary to remedy the violation, including, where
13 appropriate, rehiring or reinstatement, reimbursement
14 of lost wages and interest thereon, payment of reasonable
15 attorney's fees associated with any hearing held by the
16 Labor Commissioner in investigating the complaint, and
17 the posting of notices to employees. If the respondent
18 does not comply with the order within 10 working days
19 following notification of the Labor Commissioner's
20 determination, the Labor Commissioner shall bring an
21 action promptly in an appropriate court against the
22 respondent. If the Labor Commissioner fails to bring an
23 action in court promptly, the complainant may bring an
24 action against the Labor Commissioner in any
25 appropriate court for a writ of mandate to compel the
26 Labor Commissioner to bring an action in court against
27 the respondent. If the complainant prevails in his or her
28 action for a writ, the court shall award the complainant
29 court costs and reasonable attorney's fees,
30 notwithstanding any other provision of law. Regardless of
31 any delay in bringing an action in court, the Labor
32 Commissioner shall not be divested of jurisdiction. In any
33 such action, the court may permit the claimant to
34 intervene as a party plaintiff to the action and shall have
35 jurisdiction, for cause shown, to restrain the violation and
36 to order all appropriate relief. Appropriate relief
37 includes, but is not limited to, rehiring or reinstatement
38 of the complainant, reimbursement of lost wages and
39 interest thereon, and any other compensation or
40 equitable relief as is appropriate under the circumstances

1 of the case. The Labor Commissioner shall petition the
2 court for appropriate temporary relief or restraining
3 order unless he or she determines good cause exists for
4 not doing so.

5 (d) If the Labor Commissioner determines no
6 violation has occurred, he or she shall notify the
7 complainant and respondent and shall dismiss the
8 complaint. The Labor Commissioner may direct the
9 complainant to pay reasonable attorney's fees associated
10 with any hearing held by the Labor Commissioner if the
11 Labor Commissioner finds the complaint was frivolous,
12 unreasonable, groundless, and was brought in bad faith.
13 The complainant may, after notification of the Labor
14 Commissioner's determination to dismiss a complaint,
15 bring an action in an appropriate court, which shall have
16 jurisdiction to determine whether a violation occurred,
17 and if so, to restrain the violation and order all
18 appropriate relief to remedy the violation. Appropriate
19 relief includes, but is not limited to, rehiring or
20 reinstatement of the complainant, reimbursement of lost
21 wages and interest thereon, and such other compensation
22 or equitable relief as is appropriate under the
23 circumstances of the case. When dismissing a complaint,
24 the Labor Commissioner shall advise the complainant of
25 his or her right to bring an action in an appropriate court
26 if he or she disagrees with the determination of the Labor
27 Commissioner, and in the case of an alleged violation of
28 Section 6310 or 6311, to file a complaint against the state
29 program with the United States Department of Labor.

30 (e) The Labor Commissioner shall notify the
31 complainant and respondent of his or her determination
32 under subdivision (c) or (d), not later than 60 days after
33 the filing of the complaint. Determinations by the Labor
34 Commissioner under subdivision (c) or (d) may be
35 appealed by the complainant or respondent to the
36 Director of Industrial Relations within 10 days following
37 notification of the determination. The appeal shall set
38 forth specifically and in full detail the grounds upon
39 which the appealing party considers the Labor
40 Commissioner's determination to be unjust or unlawful,

1 and every issue to be considered by the director. The
2 director may consider any issue relating to the initial
3 determination and may modify, affirm, or reverse the
4 Labor Commissioner's determination. The director's
5 determination shall be the determination of the Labor
6 Commissioner. The director shall notify the complainant
7 and respondent of his or her determination within 10 days
8 of receipt of the appeal.

9 (f) The rights and remedies provided by this section
10 do not preclude an employee from pursuing any other
11 rights and remedies under any other provisions of law.

12 SEC. 2. Section 6302 of the Labor Code is amended to
13 read:

14 6302. As used in this division:

15 (a) "Director" means the Director of Industrial
16 Relations.

17 (b) "Department" means the Department of
18 Industrial Relations.

19 (c) "Insurer" includes the State Compensation
20 Insurance Fund and any private company, corporation,
21 mutual association, and reciprocal or interinsurance
22 exchange, authorized under the laws of this state to insure
23 employers against liability for compensation under this
24 part and under Division 4 (commencing with Section
25 3201), and any employer to whom a certificate of consent
26 to self-insure has been issued.

27 (d) "Division" means the Division of Occupational
28 Safety and Health.

29 (e) "Standards board" means the Occupational Safety
30 and Health Standards Board, within the department.

31 (f) "Appeals board" means the Occupational Safety
32 and Health Appeals Board, within the department.

33 (g) "Aquaculture" means a form of agriculture as
34 defined in Section 17 of the Fish and Game Code.

35 (h) "Serious injury or illness" means any injury or
36 illness occurring in a place of employment or in
37 connection with any employment which requires
38 inpatient hospitalization for a period in excess of 24 hours
39 for other than medical observation or in which an
40 employee suffers a loss of any member of the body or

1 suffers any serious degree of permanent disfigurement,
2 but does not include any injury or illness or death caused
3 by the commission of a violation of the Penal Code, except
4 the violation of Section 385 of the Penal Code, or an
5 accident on a public street or highway.

6 (i) "Serious exposure" means any exposure of an
7 employee to a hazardous substance when the exposure
8 occurs as a result of an incident, accident, emergency, or
9 exposure over time and is in a degree or amount sufficient
10 to create a substantial probability that death or serious
11 physical harm in the future could result from the
12 exposure.

13 SEC. 3.

14 SEC. 2. Section 6304.5 of the Labor Code is amended
15 to read:

16 6304.5. It is the intent of the Legislature that the
17 provisions of this division, and the occupational safety and
18 health standards and orders promulgated under this
19 code, are applicable to proceedings against employers for
20 the exclusive purpose of maintaining and enforcing
21 employee safety.

22 Neither the issuance of, or failure to issue, a citation by
23 the division shall have any application to, nor be
24 considered in, nor be admissible into, evidence in any
25 personal injury or wrongful death action, except as
26 between an employee and his or her own employer. This
27 division and the occupational safety and health standards
28 and orders promulgated under this code may have
29 application to, be considered in, or be admissible into,
30 evidence in any personal injury or wrongful death action.

31 SEC. 4.

32 SEC. 3. Section 6308 of the Labor Code is amended to
33 read:

34 6308. In enforcing this division, occupational safety
35 and health standards, orders, and special orders, the
36 division may do any of the following:

37 (a) Declare and prescribe the safety devices,
38 safeguards, or other means or methods of protection that
39 are well adapted to render the employees of every

1 employment and place of employment safe as required
2 by law or lawful order.

3 (b) Enforce Section 25910 of the Health and Safety
4 Code and standards and orders adopted by the standards
5 board pursuant to Chapter 6 (commencing with Section
6 140) of Division 1 of the Labor Code, for the installation,
7 use, maintenance, and operation of reasonable uniform
8 safety devices, safeguards, and other means or methods
9 of protection, which are necessary to carry out all laws
10 and lawful standards or special orders relative to the
11 protection of the life and safety of employees in
12 employment and places of employment.

13 (c) Require the performance of any other act that is
14 reasonably necessary for the protection of the life and
15 safety of the employees in employment and places of
16 employment.

17 An employer may request a hearing on a special order
18 or action ordered pursuant to this section, at which the
19 employer, owner, or any other person may appear. The
20 appeals board shall conduct the hearing at the earliest
21 possible time.

22 All orders, rules, regulations, findings, and decisions of
23 the division made or entered under this part, except
24 special orders and action orders, may be reviewed by the
25 Supreme Court and the courts of appeal as may be
26 provided by law.

27 SEC. 5.

28 SEC. 4. Section 6309 of the Labor Code is amended to
29 read:

30 6309. If the division learns or has reason to believe
31 that any employment or place of employment is not safe
32 or is injurious to the welfare of any employee, it may, of
33 its own motion, or upon complaint, summarily investigate
34 the employment or place of employment, with or without
35 notice or hearings. However, if the division secures a
36 complaint from an employee, the employee's
37 representative, including, but not limited to, an attorney,
38 health or safety professional, union representative, or
39 representative of a government agency, or an employer
40 of an employee directly involved in an unsafe place of

1 employment, that his or her employment or place of
2 employment is not safe, it shall, with or without notice or
3 hearing, summarily investigate the employment or place
4 of employment as soon as possible, but not later than
5 three working days after receipt of a complaint charging
6 a serious violation, and not later than 14 calendar days
7 after receipt of a complaint charging a nonserious
8 violation. The division shall attempt to determine the
9 period of time in the future that the complainant believes
10 the unsafe condition may continue to exist, and shall
11 allocate inspection resources so as to respond first to those
12 situations in which time is of the essence. For purposes of
13 this section, a complaint shall be deemed to allege a
14 serious violation if the division determines that the
15 complaint charges that there is a substantial probability
16 that death or serious physical harm could result from a
17 condition which exists, or from one or more practices,
18 means, methods, operations, or processes which have
19 been adopted or are in use in a place of employment. All
20 other complaints shall be deemed to allege nonserious
21 violations. The division may enter and serve any
22 necessary order relative thereto. The division is not
23 required to respond to any complaint within this period
24 where, from the facts stated in the complaint, it
25 determines that the complaint is intended to willfully
26 harass an employer or is without any reasonable basis.

27 The division shall keep complete and accurate records
28 of any complaints, whether verbal or written, and shall
29 inform the complainant, whenever his or her identity is
30 known, of any action taken by the division in regard to the
31 subject matter of the complaint, and the reasons for the
32 action. The records of the division shall include the dates
33 on which any action was taken on the complaint, or the
34 reasons for not taking any action on the complaint. The
35 division shall, pursuant to authorized regulations,
36 conduct an informal review of any refusal by a
37 representative of the division to issue a citation with
38 respect to any alleged violation. The division shall furnish
39 the employee or the representative of employees

1 requesting the review a written statement of the reasons
2 for the division's final disposition of the case.

3 The name of any person who submits to the division a
4 complaint regarding the unsafeness of an employment or
5 place of employment shall be kept confidential by the
6 division, unless that person requests otherwise.

7 The requirements of this section shall not relieve the
8 division of its requirement to inspect and assure that all
9 places of employment are safe and healthful for
10 employees. The division shall maintain the capability to
11 receive and act upon complaints at all times.

12 SEC. 6.

13 *SEC. 5.* Section 6317 of the Labor Code is amended to
14 read:

15 6317. If, upon inspection or investigation, the division
16 believes that an employer has violated Section 25910 of
17 the Health and Safety Code, any standard, rule, order, or
18 regulation established pursuant to Chapter 6
19 (commencing with Section 140) of Division 1 of the Labor
20 Code, any provision of this division relating to the health
21 and safety of employees, or any standard, rule, order, or
22 regulation established pursuant to this part, it shall with
23 reasonable promptness issue a citation to the employer.
24 Each citation shall be in writing and shall describe with
25 particularity the nature of the violation, including a
26 reference to the provision of the code, standard, rule,
27 regulation, or order alleged to have been violated. In
28 addition, the citation shall fix a reasonable time for the
29 abatement of the alleged violation. The period specified
30 for abatement does not commence until the date the
31 citation or notice is received by certified mail and the
32 certified mail receipt is signed, or if not signed, the date
33 the return is made to the post office. If the division
34 officially and directly delivers the citation or notice to the
35 employer, the period specified for abatement
36 commences on the date of the delivery.

37 A "notice" in lieu of citation may be issued with respect
38 to violations found in an inspection or investigation that
39 meet either of the following requirements:

1 (1) The violations do not have a direct relationship
2 upon the health or safety of an employee.

3 (2) The violations do not have an immediate
4 relationship to the health or safety of an employee, and
5 are of a general or regulatory nature. A notice in lieu of
6 a citation may be issued only if the employer agrees to
7 correct the violations within a reasonable time, as
8 specified by the division, and agrees not to appeal the
9 finding of the division that the violations exist. A notice
10 issued pursuant to this paragraph shall have the same
11 effect as a citation for purposes of establishing repeat
12 violations or a failure to abate. Every notice shall clearly
13 state the abatement period specified by the division, that
14 the notice may not be appealed, and that the notice has
15 the same effect as a citation for purposes of establishing
16 a repeated violation or a failure to abate. The employer
17 shall indicate agreement to the provisions and conditions
18 of the notice by his or her signature on the notice.

19 A notice may not be issued in lieu of a citation if the
20 violations are serious, repeated, willful, or arise from a
21 failure to abate.

22 The director shall prescribe guidelines for the issuance
23 of these notices.

24 The division may impose a civil penalty against an
25 employer as specified in Chapter 4 (commencing with
26 Section 6423). A notice in lieu of a citation may not be
27 issued if the number of first instance violations found in
28 the inspection (other than serious, willful, or repeated
29 violations) is 10 or more violations.

30 A citation or notice may not be issued by the division
31 for a given violation or violations after six months have
32 elapsed since occurrence of the violation.

33 The director shall prescribe procedures for the issuance
34 of a citation or notice.

35 The division shall prepare and maintain records
36 capable of supplying an inspector with previous citations
37 and notices issued to an employer.

38 SEC. 7.

39 SEC. 6. Section 6319.1 is added to the Labor Code, to
40 read:

1 6319.1. (a) Notwithstanding any other provision of
2 law, if the division, or its authorized representative,
3 determines that an alleged violation is serious and
4 presents such a substantial risk to the safety or health of
5 employees that the initiation of an appeal by the
6 employer should not suspend the running of the period
7 for abatement of that violation, the citation issued
8 pursuant to Section 6317 shall include a statement of that
9 determination.

10 (b) (1) If a citation issued pursuant to Section 6317
11 includes a statement of the division's determination as
12 provided in subdivision (a), the employer may,
13 concurrent with the timely initiation of appeal
14 proceedings as to the alleged violation, file a motion
15 requesting that the running of the period for abatement
16 of that violation be suspended during the appeal
17 proceedings. The appeals board shall conduct an
18 expedited hearing on the employer's motion within 15
19 days of the filing of the motion and shall, in deciding that
20 motion, balance the extent of any irreparable injury to
21 the employer as a result of abatement of the alleged
22 violation during the pendency of appeal proceedings, and
23 the nature and degree of risk posed to employees by the
24 employer's failure to immediately abate that violation.
25 The appeals board shall also consider the likely success of
26 the employer's appeal with respect to the alleged
27 violation, whether that appeal is initiated in good faith
28 and not for the purpose of delay or the avoidance of
29 penalties, and whether the division's determination is
30 unreasonable under the circumstances. At the hearing,
31 the division shall have the burden of establishing that
32 during the pendency of the appeal, the duty of an
33 employer to abate a violation should not be suspended
34 due to the initiation of an appeal because a substantial risk
35 to the safety or health of employees continues to exist. If
36 the division meets that burden, the employer shall have
37 the responsibility of establishing that irreparable injury
38 will occur to the employer if the duty of abatement is not
39 suspended during the pendency of an appeal.

1 (2) In all cases where the employer files a motion as
2 described in paragraph (1), the appeals board shall
3 expedite the consideration and decision of the employer's
4 appeal with respect to the alleged violation, and give that
5 appeal priority over all other matters, except matters of
6 a like kind.

7 (3) In its decision on the appeal with respect to the
8 alleged violation, the appeals board may modify the
9 citation's direction that the period for the abatement of
10 the alleged violation not be suspended.

11 (c) Nothing in this section shall be construed to limit
12 the authority of the division to proceed under Section
13 6325, but the division may not proceed simultaneously
14 under this section and under Section 6325 as to any
15 individual alleged violation contained within any
16 individual citation.

17 SEC. 8.

18 *SEC. 7.* Section 6323 of the Labor Code is amended to
19 read:

20 6323. If the condition of any employment or place of
21 employment or the operation of any machine, device,
22 apparatus, equipment, or process constitutes a serious
23 menace to the lives or safety of persons about it, the
24 division may apply to the superior court of the county in
25 which the place of employment or employee is situated,
26 for an injunction restraining the use or operation thereof
27 until the condition is corrected.

28 SEC. 9.

29 *SEC. 8.* Section 6324 of the Labor Code is amended to
30 read:

31 6324. An application to the superior court for an
32 injunction shall be accompanied by an affidavit showing
33 that a place of employment, machine, device, apparatus,
34 equipment, or process is being operated in violation of a
35 safety order or standard, or in violation of Section 25910
36 of the Health and Safety Code, and that the use or
37 operation constitutes a menace to the life or safety of any
38 person employed thereabout or is likely to cause death,
39 serious injury or illness, or serious exposure to an
40 employee. The affidavit shall be accompanied by a copy

1 of the order or standard applicable thereto. The
2 application and affidavit are a sufficient *prima facie*
3 showing to warrant, in the discretion of the court, the
4 immediate granting of a temporary restraining order. No
5 bond shall be required from the division or any other state
6 or local prosecutor as a prerequisite to the granting of any
7 restraining order.

8 **SEC. 10.**

9 *SEC.* 9. Section 6325 of the Labor Code is amended to
10 read:

11 6325. If, in the opinion of the division, a place of
12 employment, machine, device, apparatus, or equipment,
13 or any part thereof, is in a dangerous condition, or if a
14 machine, device, apparatus, or piece of equipment is not
15 properly guarded or is dangerously placed so as to
16 constitute an imminent hazard to employees, or is likely
17 to cause death, serious injury or illness, or serious
18 exposure to an employee, entry therein, or the use
19 thereof, as the case may be, shall be prohibited by the
20 division, and a conspicuous notice to that effect shall be
21 posted thereon. The prohibition of use shall be limited to
22 the immediate area in which the imminent hazard or
23 condition exists, and the division shall not prohibit any
24 entry in or use of a place of employment, machine,
25 device, apparatus, or equipment, or any part thereof,
26 which is outside the area of imminent hazard or
27 condition. The notice only may be removed by an
28 authorized representative of the division if the place of
29 employment, machine, device, apparatus, or equipment
30 is made safe and the required safeguards or safety
31 appliances or devices are provided. This section does not
32 prevent the entry or use with the division's knowledge
33 and permission for the sole purpose of eliminating the
34 dangerous conditions.

35 **SEC. 11.**

36 *SEC.* 10. Section 6400 of the Labor Code is amended
37 to read:

38 6400. (a) Every employer shall furnish employment
39 and a place of employment that is safe and healthful for
40 ~~the employees therein.~~ “Employer” includes, but is not

1 limited to, an employer in a multiemployer place of
2 employment who, with respect to any other employee at
3 the place of employment, does any of the following:

4 (a) Employs the exposed employee.

5 (b) Creates the hazard.

6 (c) Is primarily responsible, by contract or through
7 practice, for safety and health conditions that resulted in
8 the hazard.

9 (d) Is responsible for correcting the hazard.

10 the employees therein.

11 (b) On multiemployer worksites, both construction
12 and nonconstruction, citations may be issued only to the
13 following categories of employers when the division has
14 evidence that an employee was exposed to a hazard in
15 violation of any requirement enforceable by the division:

16 (1) The employer whose employees were exposed to
17 the hazard.

18 (2) The employer who actually created the hazard.

19 (3) The employer who was responsible, by contract or
20 through actual practice, for safety and health conditions
21 on the worksite, which is the employer who had the
22 authority for ensuring that the hazardous condition is
23 corrected.

24 (4) The employer who had the responsibility for
25 actually correcting the hazard.

26 (c) It is the intent of the Legislature, in adding
27 subdivision (b) to this section, to codify existing
28 regulations with respect to the responsibility of
29 employers at multiemployer worksites. Subdivision (b) of
30 this section is declaratory of existing law and shall not be
31 construed or interpreted as creating a new law or as
32 modifying or changing an existing law.

33 SEC. 12.—

34 SEC. 11. Section 6423 of the Labor Code is amended
35 to read:

36 6423. Except where another penalty is specifically
37 provided, every employer and every officer,
38 management official, or supervisor having direction,
39 management, control, or custody of any employment,

1 place of employment, or of any other employee, who does
2 any of the following is guilty of a misdemeanor:

3 (a) Knowingly or negligently violates any standard,
4 order, or special order, or any provision of this division, or
5 of any part thereof in, or authorized by, this part the
6 violation of which is deemed to be a serious violation
7 pursuant to Section 6432.

8 (b) Repeatedly violates any standard, order, or special
9 order, or provision of this division, or any part thereof in,
10 or authorized by, this part, which repeated violation
11 creates a real and apparent hazard to employees.

12 (c) Fails or refuses to comply, after notification and
13 expiration of any abatement period, with any such
14 standard, order, special order, or provision of this division,
15 or any part thereof, which failure or refusal creates a real
16 and apparent hazard to employees.

17 (d) Directly or indirectly, knowingly induces another
18 to commit any of the acts in subdivisions (a), (b), or (c).
19 Any violation of subdivision (a) is punishable by
20 imprisonment in the county jail for a period not to exceed
21 six months, or by a fine not to exceed five thousand dollars
22 (\$5,000), or by both that imprisonment and fine.

23 Any violation of the provisions of subdivision (b), (c),
24 or (d) of this section is punishable by imprisonment in a
25 county jail for a term not exceeding one year, or by a fine
26 not exceeding fifteen thousand dollars (\$15,000), or by
27 both that imprisonment and fine. If the defendant is a
28 corporation or a limited liability company, the fine may
29 not exceed one hundred fifty thousand dollars (\$150,000).

30 (e) In determining the amount of fine to impose under
31 this section, the court shall consider all relevant
32 circumstances, including, but not limited to, the nature,
33 circumstance, extent, and gravity of the violation, any
34 prior history of violations by the defendant, the ability of
35 the defendant to pay, and any other matters the court
36 determines the interests of justice require.

37 SEC. 13.

38 *SEC. 12.* Section 6424 is added to the Labor Code, to
39 read:

1 6424. For purposes of construing the criminal
2 provisions of this chapter, to the extent that a word or
3 term of this chapter is defined in Section 7 of the Penal
4 Code, the definitions of Section 7 of the Penal Code
5 govern the interpretation of that word or term.

6 SEC. 14.

7 *SEC. 13.* Section 6425 of the Labor Code is amended
8 to read:

9 6425. (a) Any employer and any employee having
10 direction, management, control, or custody of any
11 employment, place of employment, or of any other
12 employee, who willfully violates any occupational safety
13 or health standard, order, or special order, or any
14 ~~provision of this division or of~~ Section 25910 of the Health
15 and Safety Code, and that violation caused death to any
16 employee, or caused permanent or prolonged
17 impairment of the body of any employee, is guilty of a
18 public offense punishable by imprisonment in a county
19 jail for a term not exceeding one year, or by a fine not
20 exceeding one hundred thousand dollars (\$100,000), or
21 by both that imprisonment and fine; or by imprisonment
22 in the state prison for 16 months, or two or three years, or
23 by a fine of not more than two hundred fifty thousand
24 dollars (\$250,000), or by both that imprisonment and fine;
25 and in either case, if the defendant is a corporation or a
26 limited liability company, the fine may not exceed two
27 million dollars (\$2,000,000).

28 (b) If the conviction is for a violation committed
29 within seven years after a conviction under Section 6423
30 or subdivision (c) of Section 6430, punishment shall be by
31 imprisonment in state prison for a term of 16 months, two,
32 or three years, or by a fine not exceeding two hundred
33 fifty thousand dollars (\$250,000), or by both that fine and
34 imprisonment, but if the defendant is a corporation or
35 limited liability company, the fine may not be less than
36 five hundred thousand dollars (\$500,000) or more than
37 three million dollars (\$3,000,000).

38 (c) If the conviction is for a violation committed
39 within seven years after a first conviction of the
40 defendant for any crime involving a violation of

1 subdivision (a), punishment shall be by imprisonment in
2 the state prison for two, three, or four years, or by a fine
3 not exceeding two hundred fifty thousand dollars
4 (\$250,000), or by both that fine and imprisonment, but if
5 the defendant is a corporation or a limited liability
6 company, the fine shall not be less than one million dollars
7 (\$1,000,000) but may not exceed four million dollars
8 (\$4,000,000).

9 (d) In determining the amount of fine to be imposed
10 under this section, the court shall consider all relevant
11 circumstances, including, but not limited to, the nature,
12 circumstance, extent, and gravity of the violation, any
13 prior history of violations by the defendant, the ability of
14 the defendant to pay, and any other matters the court
15 determines the interests of justice require.

16 (e) This section does not prohibit a prosecution under
17 Section 192 of the Penal Code.

18 **SEC. 15.**

19 *SEC. 14.* Section 6427 of the Labor Code is amended
20 to read:

21 6427. Any employer who violates any occupational
22 safety or health standard, order, or special order, or any
23 provision of this division relating to the health or safety
24 of employees or of Section 25910 of the Health and Safety
25 Code, and the violation is specifically determined not to
26 be of a serious nature, may be assessed a civil penalty of
27 up to seven thousand dollars (\$7,000) for each violation.

28 **SEC. 16.**

29 *SEC. 15.* Section 6428 of the Labor Code is amended
30 to read:

31 6428. Any employer who violates any occupational
32 safety or health standard, order, or special order, or any
33 provision of this division relating to the health or safety
34 of employees or of Section 25910 of the Health and Safety
35 Code, if that violation is a serious violation, shall be
36 assessed a civil penalty of up to twenty-five thousand
37 dollars (\$25,000) for each violation. Employers who do
38 not have an operative injury prevention program shall
39 receive no adjustment for good faith of the employer or

1 history of previous violations as provided in paragraphs
2 (3) and (4) of subdivision (c) of Section 6319.

3 SEC. 17.

4 SEC. 16. Section 6429 of the Labor Code is amended
5 to read:

6 6429. Any employer who willfully or repeatedly
7 violates any occupational safety or health standard, order,
8 or special order, or any provision of this division relating
9 to the health and safety of employees or of Section 25910
10 of the Health and Safety Code, may be assessed a civil
11 penalty of not more than seventy thousand dollars
12 (\$70,000) for each violation, but in no case less than five
13 thousand dollars (\$5,000) for each willful violation.

14 (b) Any employer who repeatedly violates any
15 occupational safety or health standard, order, or special
16 order, or any provision of this division relating to the
17 health and safety of employees or of Section 25910 of the
18 Health and Safety Code, shall not receive any adjustment
19 of a penalty assessed pursuant to this section on the basis
20 of the regulations promulgated pursuant to subdivision
21 (c) of Section 6319 pertaining to the good faith of the
22 employer or the history of previous violations of the
23 employer.

24 (c) Any past *substantially* similar violation by any
25 employer occurring anywhere within the state within the
26 previous five years of any occupational safety or health
27 standard, order, or special order, or any provision of this
28 division relating to the health and safety of employees or
29 of Section 25910 of the Health and Safety Code, shall be
30 used to establish whether a current serious violation is a
31 repeat violation, ~~and shall constitute evidence of~~
32 ~~willfulness for purposes of this section.~~

33 (d) The division shall preserve and maintain records
34 of its investigations and inspections and citations for a
35 period of not less than seven years.

36 SEC. 18.

37 SEC. 17. Section 6430 of the Labor Code is amended
38 to read:

39 6430. (a) Any employer who fails to correct a
40 violation of any occupational safety or health standard,

1 order, or special order, or any provision of this division
2 relating to the health or safety of employees or of Section
3 25910 of the Health and Safety Code, within the period
4 permitted for its correction shall be assessed a civil
5 penalty of not more than twenty-five thousand dollars
6 (\$25,000) for each day during which the failure or
7 violation continues.

8 (b) Notwithstanding subdivision (a), for any
9 employer who submits a signed statement affirming
10 compliance with the abatement terms pursuant to
11 Section 6320, and is found upon a reinspection not to have
12 abated the violation, any adjustment to the civil penalty
13 based on abatement shall be rescinded and the additional
14 civil penalty assessed for failure to abate shall not be
15 adjusted for good faith of the employer or history of
16 previous violations as provided in paragraphs (3) and (4)
17 of subdivision (c) of Section 6319.

18 (c) Notwithstanding subdivision (a), any employer
19 who submits a signed statement affirming compliance
20 with the abatement terms pursuant to subdivision (b) of
21 Section 6320, and is found not to have abated the
22 violation, is guilty of a public offense punishable by
23 imprisonment in a county jail for a term not exceeding
24 one year, or by a fine not exceeding one hundred
25 thousand dollars (\$100,000), or by both that fine and
26 imprisonment; but if the defendant is a corporation or a
27 limited liability company the fine shall be not less than
28 one hundred thousand dollars (\$100,000) but not exceed
29 one million dollars (\$1,000,000). However, a court may
30 impose a fine for a violation of this subdivision in an
31 amount less than the minimum specified in this
32 subdivision if the court finds that it is in the interest of
33 justice to do so and states its findings and reasons on the
34 record.

35 SEC. 19.

36 SEC. 18. Section 6432 of the Labor Code is amended
37 to read:

38 6432. (a) As used in this part, a "serious violation"
39 shall be deemed to exist in a place of employment if ~~either~~
40 ~~of the following conditions exist:~~

1 (1) There *there* is a substantial probability that death
2 or serious physical harm could result from a violation,
3 including, but not limited to, circumstances where there
4 is a substantial probability that either of the following
5 could result in death or great bodily injury:

6 (A)

7 (1) An exposure exceeding an established permissible
8 exposure limit.

9 (B)

10 (2) The existence of one or more practices, means,
11 methods, operations, or processes which have been
12 adopted or are in use, in the place of employment.

13 (2) ~~The violation results in occupational injuries or
14 illnesses that are indicative of a condition that may result
15 in serious physical harm.~~

16 (b) Notwithstanding subdivision (a), a serious
17 violation shall not be deemed to exist if the employer can
18 demonstrate that it did not, and could not with the
19 exercise of reasonable diligence, know of the presence of
20 the violation.

21 (c) As used in this section, "substantial probability"
22 refers not to the probability that an accident or exposure
23 will occur as a result of the violation, but rather to the
24 probability that death or serious physical harm will result
25 assuming an accident or exposure occurs as a result of the
26 violation.

27 SEC. 20.

28 SEC. 19. Section 6434 of the Labor Code is repealed.

29 SEC. 21.

30 SEC. 20. Section 6719 is added to the Labor Code, to
31 read:

32 6719. The Legislature reaffirms its concern over the
33 prevalence of repetitive motion injuries in the workplace
34 and reaffirms the Occupational Safety and Health
35 Standards Board's continuing duty to carry out Section
36 6357.

37 SEC. 22.

38 SEC. 21. No reimbursement is required by this act
39 pursuant to Section 6 of Article XIII B of the California
40 Constitution because the only costs that may be incurred

1 by a local agency or school district will be incurred
2 because this act creates a new crime or infraction,
3 eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section
5 17556 of the Government Code, or changes the definition
6 of a crime within the meaning of Section 6 of Article
7 XIII B of the California Constitution.

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