

ASSEMBLY BILL

No. 2387

Introduced by Assembly Member Smyth

February 24, 2012

An act to amend Sections 62.5 and 6434 of the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2387, as introduced, Smyth. Occupational safety and health: local public entities: penalty moneys: grants.

Existing law requires the Commission on Health and Safety and Workers' Compensation in the Department of Industrial Relations to review and approve applications from employers and employee organizations, as well as applications submitted jointly by an employer organization and an employee organization, for grants to assist in establishing effective occupational injury and illness prevention programs, as specified.

Existing law requires certain civil and administrative penalties relating to workers' compensation to be deposited in the Workers' Compensation Administration Revolving Fund. Existing law authorizes the department to expend these funds upon approval by the commission, and upon appropriation from the fund by the Legislature, to fund the above-described grants and other activities and expenses of the commission.

Existing law requires any civil or administrative penalty assessed pursuant to the California Occupational Safety and Health Act of 1973 against a school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers

agency performing education functions to be deposited with the Workplace Health and Safety Revolving Fund. Existing law requires moneys in the fund that are not refunded, as specified, to be expended as provided for in the above-described grant provisions to assist schools in establishing effective occupational injury and illness prevention programs.

This bill would, instead, require any civil or administrative penalty assessed pursuant to the California Occupational Safety and Health Act of 1973 against a county, city, special district, public authority, public agency, joint powers authority, school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions to be deposited with the Workers' Compensation Administration Revolving Fund. The bill would require moneys in the fund that are not refunded to be expended as provided for in the above-described grant provisions to assist the entities listed above, regardless of whether any penalty has been assessed against them, in establishing and maintaining effective occupational injury and illness prevention programs.

This bill would add funding the above-described grants to the list of purposes for which moneys in the Workers' Compensation Administration Revolving Fund may be expended. This bill would make other nonsubstantive changes to these provisions.

Existing law, the Labor Code Private Attorneys General Act of 2004, allows aggrieved employees to bring civil actions to recover penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions are distributed 75% to the agency to be continuously appropriated for purposes of enforcement and education and 25% to the aggrieved employee, except as specified.

This bill would provide that the above provisions pertaining to civil or administrative penalties assessed pursuant to the California Occupational Safety and Health Act of 1973 shall not apply to that portion of any civil or administrative penalty that is distributed directly to an aggrieved employee pursuant to the above-described provisions.

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

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

SECTION 1. Section 62.5 of the Labor Code is amended to read:

62.5. (a) (1) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. ~~Money~~ Moneys in the fund ~~may~~ shall be expended by the department, upon appropriation by the Legislature, for all of the following purposes, and may not be used or borrowed for any other purpose:

(A) For the administration of the workers' compensation program set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to Section 3702.5.

~~(B) For the Return-to-Work Program set forth in Section 139.48.~~

~~(C)~~

(B) For the enforcement of the insurance coverage program established and maintained by the Labor Commissioner pursuant to Section 90.3.

(C) For the purposes described in Sections 78 and 6434.

(2) The fund shall consist of surcharges made pursuant to paragraph (1) of subdivision (f).

(b) (1) The Uninsured Employers Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in paragraph (1) of subdivision (f). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the payment of nonadministrative expenses of the workers' compensation program for workers injured while employed by uninsured employers in accordance with Article 2 (commencing with Section 3710) of Chapter 4 of Part 1 of Division 4, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers injured while employed by uninsured employers. Nonadministrative expenses include audits and reports of services prepared pursuant to subdivision (b) of Section 3716.1. The surcharge amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, all references to the Uninsured Employers Fund shall mean the Uninsured Employers Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Uninsured Employers Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Uninsured Employers Benefits Trust Fund upon enactment of the annual Budget Act.

(4) Any moneys from penalties collected pursuant to Section 3722 as a result of the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Workers' Compensation Administration Revolving Fund created under this section, to cover expenses incurred by the director under the insurance coverage program. The amount of any penalties in excess of payment of administrative expenses incurred by the director for the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Uninsured Employers Benefits Trust Fund for nonadministrative expenses, as prescribed in paragraph (1), and notwithstanding paragraph (1), shall only be available upon appropriation by the Legislature.

(c) (1) The Subsequent Injuries Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in paragraph (1) of subdivision (f). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the nonadministrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments, in accordance with Article 5 (commencing with Section 4751) of Chapter 2 of Part 2 of Division 4, and Section 4 of Article XIV of the California Constitution, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments. Nonadministrative expenses include audits and reports of services pursuant to subdivision (c) of Section 4755. The surcharge amount for this fund shall be stated separately.

1 (2) Notwithstanding any other law, all references to the
2 Subsequent Injuries Fund shall mean the Subsequent Injuries
3 Benefits Trust Fund.

4 (3) Notwithstanding paragraph (1), in the event that budgetary
5 restrictions or impasse prevent the timely payment of administrative
6 expenses from the Workers' Compensation Administration
7 Revolving Fund, those expenses shall be advanced from the
8 Subsequent Injuries Benefits Trust Fund. Expense advances made
9 pursuant to this paragraph shall be reimbursed in full to the
10 Subsequent Injuries Benefits Trust Fund upon enactment of the
11 annual Budget Act.

12 (d) The Occupational Safety and Health Fund is hereby created
13 as a special account in the State Treasury. Moneys in the account
14 may be expended by the department, upon appropriation by the
15 Legislature, for support of the Division of Occupational Safety
16 and Health, the Occupational Safety and Health Standards Board,
17 and the Occupational Safety and Health Appeals Board, and the
18 activities these entities perform as set forth in this division, and
19 Division 5 (commencing with Section 6300).

20 (e) The Labor Enforcement and Compliance Fund is hereby
21 created as a special account in the State Treasury. Moneys in the
22 fund may be expended by the department, upon appropriation by
23 the Legislature, for the support of the activities that the Division
24 of Labor Standards Enforcement performs pursuant to this division
25 and Division 2 (commencing with Section 200), Division 3
26 (commencing with Section 2700), and Division 4 (commencing
27 with Section 3200). The fund shall consist of surcharges imposed
28 pursuant to paragraph (3) of subdivision (f).

29 (f) (1) Separate surcharges shall be levied by the director upon
30 all employers, as defined in Section 3300, for purposes of deposit
31 in the Workers' Compensation Administration Revolving Fund,
32 the Uninsured Employers Benefits Trust Fund, the Subsequent
33 Injuries Benefits Trust Fund, and the Occupational Safety and
34 Health Fund. The total amount of the surcharges shall be allocated
35 between self-insured employers and insured employers in
36 proportion to payroll respectively paid in the most recent year for
37 which payroll information is available. The director shall adopt
38 reasonable regulations governing the manner of collection of the
39 surcharges. The regulations shall require the surcharges to be paid
40 by self-insurers to be expressed as a percentage of indemnity paid

1 during the most recent year for which information is available,
2 and the surcharges to be paid by insured employers to be expressed
3 as a percentage of premium. In no event shall the surcharges paid
4 by insured employers be considered a premium for computation
5 of a gross premium tax or agents' commission. In no event shall
6 the total amount of the surcharges paid by insured and self-insured
7 employers exceed the amounts reasonably necessary to carry out
8 the purposes of this section.

9 (2) The surcharge levied by the director for the Occupational
10 Safety and Health Fund, pursuant to paragraph (1), shall not
11 generate revenues in excess of fifty-two million dollars
12 (\$52,000,000) on and after the 2009–10 fiscal year, adjusted for
13 each fiscal year as appropriate to reconcile any over/under
14 assessments from previous fiscal years pursuant to Sections 15606
15 and 15609 of Title 8 of the California Code of Regulations, and
16 may increase by not more than the state-local government deflator
17 each year thereafter through July 1, 2013, and, as appropriate, to
18 reconcile any over/under assessments from previous fiscal years.
19 For the 2013–14 fiscal year, the surcharge level shall return to the
20 level in place on June 30, 2009, adjusted for inflation based on the
21 state-local government deflator.

22 (3) A separate surcharge shall be levied by the director upon all
23 employers, as defined in Section 3300, for purposes of deposit in
24 the Labor Enforcement and Compliance Fund. The total amount
25 of the surcharges shall be allocated between employers in
26 proportion to payroll respectively paid in the most recent year for
27 which payroll information is available. The director shall adopt
28 reasonable regulations governing the manner of collection of the
29 surcharges. In no event shall the total amount of the surcharges
30 paid by employers exceed the amounts reasonably necessary to
31 carry out the purposes of this section.

32 (4) The surcharge levied by the director for the Labor
33 Enforcement and Compliance Fund shall not exceed thirty-seven
34 million dollars (\$37,000,000) in the 2009–10 fiscal year, adjusted
35 as appropriate to reconcile any over/under assessments from
36 previous fiscal years, and shall not be adjusted each year thereafter
37 by more than the state-local government deflator, and, as
38 appropriate, to reconcile any over/under assessments from previous
39 fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the
40 California Code of Regulations.

(5) The regulations adopted pursuant to paragraph (1) to (4), inclusive, shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(g) On and after July 1, 2013, subdivision (e) and paragraphs (2) to (4), inclusive, of subdivision (f) are inoperative, unless a later enacted statute, that is enacted before July 1, 2013, deletes or extends that date.

SEC. 2. Section 6434 of the Labor Code is amended to read:

6434. (a) Any civil or administrative penalty assessed pursuant to this chapter against a *county, city, special district, public authority, public agency, joint powers authority*, school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions shall be deposited ~~with the Workplace Health and Safety in the Workers' Compensation Administration~~ Revolving Fund established pursuant to Section 78 62.5.

(b) Any *county, city, special district, public authority, public agency, joint powers authority*, school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions may apply for a refund of their civil penalty, with interest, if all conditions previously cited have been abated, they have abated any other outstanding citation, and if they have not been cited by the division for a serious violation at the same *county, city, special district, public authority, public agency, joint powers authority, or school* within two years of the date of the original violation. Funds not applied for within two years and six months of the time of the original violation shall be expended as provided for in Section 78 to assist ~~schools in establishing the entities listed in subdivision (a) and this subdivision, regardless of whether any penalty has been assessed against them, in establishing and maintaining~~ effective occupational injury and illness prevention programs.

- 1 (c) *This section does not apply to the portion of any civil or*
- 2 *administrative penalty that is distributed directly to an aggrieved*
- 3 *employee pursuant to Section 2699.*