

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, 6315.5, 6317, 6323, 6324, 6325, 6400, 6423, 6425, 6427, 6428, 6429, 6430, 6432, and 6435 of, to add Sections 6424 and 6719 to, and to repeal Sections 6357 and 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.

Under the California Occupational Safety and Health Act of 1973 (hereafter *the Act*), the term “serious exposure” is defined for purposes of establishing a violation of standards and orders of the Occupational Safety and Health Standards

Board (hereafter *the* standards board) governing employee safety.

This bill would include within the definition of a serious exposure, for those purposes, any exposure in excess of an established permissible exposure limit.

Existing law provides that the provisions of 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, family member, 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 states that all occupational safety and health standards and orders, rules, regulations, findings, and decisions of the division made and entered pursuant to the Act are admissible as evidence in any prosecution for the violation of the Act.

This bill instead would provide that all occupational safety and health standards and orders are admissible as evidence in any civil or criminal matter.

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 unless the employer establishes good cause for a stay of the citation requiring abatement, as specified, and the division makes specified findings pertaining to employee safety and health.

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 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 requires every employer to furnish employment and a place of employment that are safe and healthful for employees therein.

This bill would define an employer to include, but not be limited to, a person in a multiemployer place of employment who, with respect to any other employee at the place of employment, employs the exposed employee, creates the hazard, is responsible, by contract or through practice, for safety and health conditions, or is responsible for correcting the hazard.

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, ~~or~~ authorized by the Act, the violation of which is deemed to be a serious violation, as defined.

This bill would instead make any corporation, limited liability company, or person guilty of a misdemeanor under those circumstances. The 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 \$200,000 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 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 repeal that provision and instead would require the standards board to enforce specified standards applicable to a job, process, or operation governing the prevention of repetitive motion injuries.

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:

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

1 concurrent complaint with the United States
2 Department of Labor within 30 days after the occurrence
3 of the violation.

4 (b) Each complaint of unlawful discharge or
5 discrimination shall be assigned to a discrimination
6 complaint investigator who shall prepare and submit a
7 report to the Labor Commissioner based on an
8 investigation of the complaint. The Labor Commissioner
9 may designate the chief deputy or assistant Labor
10 Commissioner or the chief counsel to receive and review
11 the reports. The investigation shall include, where
12 appropriate, interviews with the complainant,
13 respondent, and any witnesses who may have
14 information concerning the alleged violation, and a
15 review of any documents which may be relevant to the
16 disposition of the complaint. The identity of witnesses
17 shall remain confidential unless the identification of the
18 witness becomes necessary to proceed with the
19 investigation or to prosecute an action to enforce a
20 determination. The investigation report submitted to the
21 Labor Commissioner or designee shall include the
22 statements and documents obtained in the investigation,
23 and the findings of the investigator concerning whether
24 a violation occurred. The Labor Commissioner may hold
25 an investigative hearing whenever the Labor
26 Commissioner determines, after review of the
27 investigation report, that a hearing is necessary to fully
28 establish the facts. In the hearing the investigation report
29 shall be made a part of the record and the complainant
30 and respondent shall have the opportunity to present
31 further evidence. The Labor Commissioner shall issue,
32 serve, and enforce any necessary subpoenas.

33 (c) If the Labor Commissioner determines a violation
34 has occurred, he or she shall notify the complainant and
35 respondent and direct the respondent to cease and desist
36 from the violation and take such action as is deemed
37 necessary to remedy the violation, including, where
38 appropriate, rehiring or reinstatement, reimbursement
39 of lost wages and interest thereon, payment of reasonable
40 attorney's fees associated with any hearing held by the

1 Labor Commissioner in investigating the complaint, and
2 the posting of notices to employees. If the respondent
3 does not comply with the order within 10 working days
4 following notification of the Labor Commissioner's
5 determination, the Labor Commissioner shall bring an
6 action promptly in an appropriate court against the
7 respondent. If the Labor Commissioner fails to bring an
8 action in court promptly, the complainant may bring an
9 action against the Labor Commissioner in any
10 appropriate court for a writ of mandate to compel the
11 Labor Commissioner to bring an action in court against
12 the respondent. If the complainant prevails in his or her
13 action for a writ, the court shall award the complainant
14 court costs and reasonable attorney's fees,
15 notwithstanding any other provision of law. Regardless of
16 any delay in bringing an action in court, the Labor
17 Commissioner shall not be divested of jurisdiction. In any
18 such action, the court may permit the claimant to
19 intervene as a party plaintiff to the action and shall have
20 jurisdiction, for cause shown, to restrain the violation and
21 to order all appropriate relief. Appropriate relief
22 includes, but is not limited to, rehiring or reinstatement
23 of the complainant, reimbursement of lost wages and
24 interest thereon, and any other compensation or
25 equitable relief as is appropriate under the circumstances
26 of the case. The Labor Commissioner shall petition the
27 court for appropriate temporary relief or restraining
28 order unless he or she determines good cause exists for
29 not doing so.

30 (d) If the Labor Commissioner determines no
31 violation has occurred, he or she shall notify the
32 complainant and respondent and shall dismiss the
33 complaint. The Labor Commissioner may direct the
34 complainant to pay reasonable attorney's fees associated
35 with any hearing held by the Labor Commissioner if the
36 Labor Commissioner finds the complaint was frivolous,
37 unreasonable, groundless, and was brought in bad faith.
38 The complainant may, after notification of the Labor
39 Commissioner's determination to dismiss a complaint,
40 bring an action in an appropriate court, which shall have

1 jurisdiction to determine whether a violation occurred,
2 and if so, to restrain the violation and order all
3 appropriate relief to remedy the violation. Appropriate
4 relief includes, but is not limited to, rehiring or
5 reinstatement of the complainant, reimbursement of lost
6 wages and interest thereon, and such other compensation
7 or equitable relief as is appropriate under the
8 circumstances of the case. When dismissing a complaint,
9 the Labor Commissioner shall advise the complainant of
10 his or her right to bring an action in an appropriate court
11 if he or she disagrees with the determination of the Labor
12 Commissioner, and in the case of an alleged violation of
13 Section 6310 or 6311, to file a complaint against the state
14 program with the United States Department of Labor.

15 (e) The Labor Commissioner shall notify the
16 complainant and respondent of his or her determination
17 under subdivision (c) or (d), not later than 60 days after
18 the filing of the complaint. Determinations by the Labor
19 Commissioner under subdivision (c) or (d) may be
20 appealed by the complainant or respondent to the
21 Director of Industrial Relations within 10 days following
22 notification of the determination. The appeal shall set
23 forth specifically and in full detail the grounds upon
24 which the appealing party considers the Labor
25 Commissioner's determination to be unjust or unlawful,
26 and every issue to be considered by the director. The
27 director may consider any issue relating to the initial
28 determination and may modify, affirm, or reverse the
29 Labor Commissioner's determination. The director's
30 determination shall be the determination of the Labor
31 Commissioner. The director shall notify the complainant
32 and respondent of his or her determination within 10 days
33 of receipt of the appeal.

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

37 SEC. 2. Section 6302 of the Labor Code is amended to
38 read:

39 6302. As used in this division:



1 (a) “Director” means the Director of Industrial
2 Relations.

3 (b) “Department” means the Department of
4 Industrial Relations.

5 (c) “Insurer” includes the State Compensation
6 Insurance Fund and any private company, corporation,
7 mutual association, and reciprocal or interinsurance
8 exchange, authorized under the laws of this state to insure
9 employers against liability for compensation under this
10 part and under Division 4 (commencing with Section
11 3201), and any employer to whom a certificate of consent
12 to self-insure has been issued.

13 (d) “Division” means the Division of Occupational
14 Safety and Health.

15 (e) “Standards board” means the Occupational Safety
16 and Health Standards Board, within the department.

17 (f) “Appeals board” means the Occupational Safety
18 and Health Appeals Board, within the department.

19 (g) “Aquaculture” means a form of agriculture as
20 defined in Section 17 of the Fish and Game Code.

21 (h) “Serious injury or illness” means any injury or
22 illness occurring in a place of employment or in
23 connection with any employment which requires
24 inpatient hospitalization for a period in excess of 24 hours
25 for other than medical observation or in which an
26 employee suffers a loss of any member of the body or
27 suffers any serious degree of permanent disfigurement,
28 but does not include any injury or illness or death caused
29 by the commission of a violation of the Penal Code, except
30 the violation of Section 385 of the Penal Code, or an
31 accident on a public street or highway.

32 (i) “Serious exposure” means any exposure of an
33 employee to a hazardous substance when the exposure
34 occurs as a result of an incident, accident, emergency, or
35 exposure over time and is in a degree or amount sufficient
36 to create a substantial probability that death or serious
37 physical harm in the future could result from the
38 exposure. Any exposure in excess of an established
39 permissible exposure limit is a serious exposure.

1 (j) “Serious physical harm” means any of the
2 following:

3 (1) Any injury involving a temporary, prolonged, or
4 permanent impairment of the body in which any part of
5 the body is rendered functionally useless or substantially
6 reduced in efficiency on or off the job.

7 (2) Any illness involving a condition that may shorten
8 life or significantly reduce physical or mental efficiency
9 by inhibiting the normal function of a part of the body.

10 (3) Any injury or illness that results in temporary or
11 permanent disability.

12 SEC. 3. Section 6304.5 of the Labor Code is amended
13 to read:

14 6304.5. It is the intent of the Legislature that the
15 provisions of this division, and the occupational safety and
16 health standards and orders promulgated under this
17 code, are applicable to proceedings against employers for
18 the exclusive purpose of maintaining and enforcing
19 employee safety.

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

29 SEC. 4. Section 6308 of the Labor Code is amended to
30 read:

31 6308. In enforcing this division, occupational safety
32 and health standards, orders, and special orders, the
33 division may do any of the following:

34 (a) Declare and prescribe the safety devices,
35 safeguards, or other means or methods of protection that
36 are well adapted to render the employees of every
37 employment and place of employment safe as required
38 by law or lawful order.

39 (b) Enforce Section 25910 of the Health and Safety
40 Code and standards and orders adopted by the standards

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

9 (c) Require the performance of any other act that is
10 reasonably necessary for the protection of the life and
11 safety of the employees in employments and places of
12 employment.

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

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

23 SEC. 5. Section 6309 of the Labor Code is amended to
24 read:

25 6309. If the division learns or has reason to believe
26 that any employment or place of employment is not safe
27 or is injurious to the welfare of any employee, it may, of
28 its own motion, or upon complaint, summarily investigate
29 the employment or place of employment, with or without
30 notice or hearings. However, if the division secures a
31 complaint from an employee, the employee's
32 representative, including, but not limited to, an attorney,
33 health or safety professional, union representative, family
34 member, or representative of a government agency, or
35 an employer of an employee directly involved in an
36 unsafe place of employment, that his or her employment
37 or place of employment is not safe, it shall, with or without
38 notice or hearing, summarily investigate the
39 employment or place of employment as soon as possible,
40 but not later than three working days after receipt of a

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

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

37 The name of any person who submits to the division a
38 complaint regarding the unsafeness of an employment or
39 place of employment shall be kept confidential by the
40 division, unless that person requests otherwise.

1 The requirements of this section shall not relieve the
2 division of its requirement to inspect and assure that all
3 places of employment are safe and healthful for
4 employees. The division shall maintain the capability to
5 receive and act upon complaints at all times.

6 SEC. 6. Section 6315.5 of the Labor Code is amended
7 to read:

8 6315.5. All occupational safety and health standards
9 and orders are admissible as evidence in any civil or
10 criminal matter, and shall, in any such action, be
11 presumed to be reasonable and lawful and to fix a
12 reasonable and proper requirement of safety unless, prior
13 to the institution of the action, proceedings for a hearing
14 on a special order are instituted, or a petition is filed
15 under Section 11426 of the Government Code.

16 SEC. 7. Section 6317 of the Labor Code is amended to
17 read:

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

39 A citation requiring abatement may not be stayed by
40 the filing of an appeal, except as provided in this

1 subdivision. Upon an application accompanied by
2 declarations and exhibits, submitted under penalty of
3 perjury, an employer may petition the appeals board for
4 a stay of abatement pending appeal at the time the
5 employer files a notice of appeal. The employer shall have
6 the burden of establishing good cause for a stay of the
7 citation requiring abatement. Within five business days of
8 the date of receipt of the notice of appeal and request for
9 stay of abatement pending appeal, the division may
10 respond to the employer's declarations and exhibits, and
11 the division also may request an expedited hearing.
12 Within 10 business days, the appeals board shall consider
13 the evidence submitted by the employer and the division,
14 and shall consider oral testimony if the division requests
15 an expedited hearing, and upon all the evidence and
16 proceedings may grant a stay of abatement pending
17 appeal if it finds that (1) no employee may be exposed to
18 the unsafe or unhealthful condition or (2) that the
19 condition is not likely to cause death, serious injury or
20 illness, or serious exposure to any employee.

21 (b) A "notice" in lieu of citation may be issued with
22 respect to violations found in an inspection or
23 investigation which meet either of the following
24 requirements:

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

27 (2) The violations do not have an immediate
28 relationship to the health or safety of an employee, and
29 are of a general or regulatory nature. A notice in lieu of
30 a citation may be issued only if the employer agrees to
31 correct the violations within a reasonable time, as
32 specified by the division, and agrees not to appeal the
33 finding of the division that the violations exist. A notice
34 issued pursuant to this paragraph shall have the same
35 effect as a citation for purposes of establishing repeat
36 violations or a failure to abate. Every notice shall clearly
37 state the abatement period specified by the division, that
38 the notice may not be appealed, and that the notice has
39 the same effect as a citation for purposes of establishing
40 a repeated violation or a failure to abate. The employer

1 shall indicate agreement to the provisions and conditions
2 of the notice by his or her signature on the notice.

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

6 The director shall prescribe guidelines for the issuance
7 of these notices.

8 The division may impose a civil penalty against an
9 employer as specified in Chapter 4 (commencing with
10 Section 6423) of this part. A notice in lieu of a citation may
11 not be issued if the number of first instance violations
12 found in the inspection (other than serious, willful, or
13 repeated violations) is 10 or more violations.

14 No citation or notice shall be issued by the division for
15 a given violation or violations after six months have
16 elapsed since occurrence of the violation.

17 The director shall prescribe procedures for the issuance
18 of a citation or notice.

19 The division shall prepare and maintain records
20 capable of supplying an inspector with previous citations
21 and notices issued to an employer.

22 SEC. 8. Section 6323 of the Labor Code is amended to
23 read:

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

32 SEC. 9. Section 6324 of the Labor Code is amended to
33 read:

34 6324. An application to the superior court for an
35 injunction shall be accompanied by an affidavit showing
36 that a place of employment, machine, device, apparatus,
37 equipment, or process is being operated in violation of a
38 safety order or standard, or in violation of Section 25910
39 of the Health and Safety Code, and that the use or
40 operation constitutes a menace to the life or safety of any

1 person employed thereabout or is likely to cause death,
2 serious injury or illness, or serious exposure to an
3 employee. The affidavit shall be accompanied by a copy
4 of the order or standard applicable thereto. The
5 application and affidavit are a sufficient prima facie
6 showing to warrant, in the discretion of the court, the
7 immediate granting of a temporary restraining order. No
8 bond shall be required from the division or any other state
9 or local prosecutor as a prerequisite to the granting of any
10 restraining order.

11 SEC. 10. Section 6325 of the Labor Code is amended
12 to read:

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

37 SEC. 11. Section 6357 of the Labor Code is repealed.

38 SEC. 12. Section 6400 of the Labor Code is amended
39 to read:

1 6400. Every employer shall furnish employment and
2 a place of employment that are safe and healthful for the
3 employees therein. "Employer" includes, but is not
4 limited to, a person in a multiemployer place of
5 employment who, with respect to any other employee at
6 the place of employment, does any of the following:

7 (a) Employs the exposed employee.

8 (b) Creates the hazard.

9 (c) Is responsible, by contract or through practice, for
10 safety and health conditions.

11 (d) Is responsible for correcting the hazard.

12 SEC. 13. Section 6423 of the Labor Code is amended
13 to read:

14 6423. Any corporation, limited liability company, or
15 person having direction, management, control, or
16 custody of any employment, place of employment, or of
17 any other employee, who does any of the following is
18 guilty of a misdemeanor:

19 (a) Knowingly or negligently violates any standard,
20 order, or special order, or any provision of this division, or
21 of any part thereof in, or authorized by, this part the
22 violation of which is deemed to be a serious violation
23 pursuant to Section 6432.

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

28 (c) Fails or refuses to comply, after notification and
29 expiration of any abatement period, with any such
30 standard, order, special order, or provision of this division,
31 or any part thereof, which failure or refusal creates a real
32 and apparent hazard to employees.

33 (d) Directly or indirectly, knowingly induces another
34 to commit any of the acts in subdivisions (a), (b), or (c).

35 Any violation of the provisions of this section is
36 punishable by imprisonment in a county jail for a term not
37 exceeding one year, or by a fine not exceeding two
38 hundred thousand dollars (\$200,000), or by both that
39 imprisonment and fine. If the defendant is a corporation
40 or a limited liability company, the fine shall not be less

1 that one hundred thousand dollars (\$100,000) but may
2 not exceed one million dollars (\$1,000,000). *However, a*
3 *court may impose a fine for a violation of this section by*
4 *a corporation in an amount less than one hundred*
5 *thousand dollars (\$100,000) if the court finds that it is in*
6 *the interest of justice to do so and states its findings and*
7 *reasons on the record.*

8 SEC. 14. Section 6424 is added to the Labor Code, to
9 read:

10 6424. For purposes of construing this chapter, the
11 following rules of construction apply:

12 (a) To the extent that a word or term of this chapter
13 is defined in Section 7 of the Penal Code, the definitions
14 of Section 7 of the Penal Code govern the interpretation
15 of that word or term.

16 (b) In addition to the definition of “negligence” in
17 Section 7 of the Penal Code, any act or failure to act that
18 is inconsistent with any standard, special order, or any
19 provision of this division or of Section 25910 of the Health
20 and Safety Code, constitutes evidence of negligence.

21 (c) An “employer” includes, but is not limited to, a
22 person in a multiemployer place of employment who,
23 with respect to any other employee at the place of
24 employment, does any of the following:

25 (a) Employs the exposed employee.

26 (b) Creates the hazard.

27 (c) Is responsible, by contract or through practice, for
28 safety and health conditions.

29 (d) Is responsible for correcting the hazard.

30 SEC. 15. Section 6425 of the Labor Code is amended
31 to read:

32 6425. (a) Every corporation, limited liability
33 company, or person having direction, management,
34 control, or custody of any employment, place of
35 employment, or of any other employee, who willfully
36 violates any occupational safety or health standard, order,
37 or special order, or any provision of this division or of
38 Section 25910 of the Health and Safety Code, and that
39 violation caused death to any employee, or caused
40 permanent or prolonged impairment of the body of any

1 employee, is guilty of a public offense punishable by
 2 imprisonment in a county jail for a term not exceeding
 3 one year, or by a fine not exceeding two hundred fifty
 4 thousand dollars (\$250,000), or by both that
 5 imprisonment and fine; or by imprisonment in the state
 6 prison for 16 months, or two or three years, or by a fine
 7 of not less than two hundred fifty thousand dollars
 8 (\$250,000) but not exceeding one million dollars
 9 (\$1,000,000), or by both that imprisonment and fine; and
 10 in either case, if the defendant is a corporation or a limited
 11 liability company, the fine shall not be less than five
 12 hundred thousand dollars (\$500,000) but may not exceed
 13 five million dollars (\$5,000,000).

14 (b) If the conviction is for a violation committed after
 15 a first conviction of the person or corporation for any
 16 crime involving a violation of occupational safety and
 17 health provisions, punishment shall be by imprisonment
 18 in the state prison for two, three, or four years, or by a fine
 19 no less than five hundred thousand dollars (\$500,000) but
 20 not exceeding five million dollars (\$5,000,000), or by both
 21 that fine and imprisonment, but if the defendant is a
 22 corporation or a limited liability company, the fine shall
 23 not be less than one million dollars (\$1,000,000) but may
 24 not exceed ten million dollars (\$10,000,000).

25 (c) *However, a court may impose a fine for a violation*
 26 *of this section less than the minimum specified in this*
 27 *section if the court finds that it is in the interest of justice*
 28 *to do so and states its findings and reasons on the record.*

29 (d) This section does not prohibit a prosecution under
 30 Section 192 of the Penal Code.

31 SEC. 16. Section 6427 of the Labor Code is amended
 32 to read:

33 6427. Any corporation or limited liability company,
 34 and every employer who creates a hazard, controls the
 35 work or the premises, or is responsible for correction of
 36 a hazard who violates any occupational safety or health
 37 standard, order, or special order, or any provision of this
 38 division or of Section 25910 of the Health and Safety Code,
 39 and the violation is specifically determined not to be of a

1 serious nature, may be assessed a civil penalty of up to
2 seven thousand dollars (\$7,000) for each violation.

3 SEC. 17. Section 6428 of the Labor Code is amended
4 to read:

5 6428. Any corporation or limited liability company,
6 and every employer who creates a hazard, controls the
7 work or the premises, or is responsible for correction of
8 a hazard who violates any occupational safety or health
9 standard, order, or special order, or any provision of this
10 division or of Section 25910 of the Health and Safety Code,
11 if that violation is a serious violation, shall be assessed a
12 civil penalty of up to twenty-five thousand dollars
13 (\$25,000) for each violation. Employers who do not have
14 an operative injury prevention program shall receive no
15 adjustment 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 SEC. 18. Section 6429 of the Labor Code is amended
19 to read:

20 6429. (a) Any corporation or limited liability
21 company who creates a hazard, controls the work or the
22 premises, or is responsible for correction of a hazard, and
23 every employer who willfully or repeatedly violates any
24 occupational safety or health standard, order, or special
25 order, or any provision of this division or of Section 25910
26 of the Health and Safety Code, may be assessed a civil
27 penalty of not more than seventy thousand dollars
28 (\$70,000) for each violation, but in no case less than five
29 thousand dollars (\$5,000) for each willful violation.

30 (b) Any corporation or limited liability company, who
31 creates a hazard, controls the work or the premises, or is
32 responsible for correction of the hazard, and every
33 employer who repeatedly violates any occupational
34 safety or health standard, order, or special order, or any
35 provision of this division or of Section 25910 of the Health
36 and Safety Code, shall not receive any adjustment of a
37 penalty assessed pursuant to this section on the basis of
38 the regulations promulgated pursuant to subdivision (c)
39 of Section 6319 pertaining to the good faith of the

1 employer or the history of previous violations of the
2 employer.

3 (c) Any past violation by any corporation or limited
4 liability company, and every employer who creates a
5 hazard, controls the work or the premises, or is
6 responsible for correction of the hazard, occurring
7 anywhere within the state within the previous five years
8 of any occupational safety or health standard, order, or
9 special order, or any provision of this division or of Section
10 25910 of the Health and Safety Code, shall be used to
11 establish whether a current violation is a repeat violation,
12 and shall constitute evidence of willfulness for purposes
13 of this section.

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

17 SEC. 19. Section 6430 of the Labor Code is amended
18 to read:

19 6430. (a) Any corporation or limited liability
20 company who creates a hazard, controls the work or the
21 premises, or is responsible for the correction of a hazard,
22 and every employer who fails to correct a violation of any
23 occupational safety or health standard, order, or special
24 order, or any provision of this division or of Section 25910
25 of the Health and Safety Code, within the period
26 permitted for its correction shall be assessed a civil
27 penalty of not more than twenty-five thousand dollars
28 (\$25,000) for each day during which the failure or
29 violation continues.

30 (b) Notwithstanding subdivision (a), for any
31 employer who submits a signed statement affirming
32 compliance with the abatement terms pursuant to
33 Section 6320, and is found upon a reinspection not to have
34 abated the violation, any adjustment to the civil penalty
35 based on abatement shall be rescinded and the additional
36 civil penalty assessed for failure to abate shall not be
37 adjusted for good faith of the employer or history of
38 previous violations as provided in paragraphs (3) and (4)
39 of subdivision (c) of Section 6319.

1 (c) Notwithstanding subdivision (a), any corporation
2 or limited liability company and every employer who
3 creates a hazard, controls the work or the premises, or is
4 responsible for correction of a hazard, who submits a
5 signed statement affirming compliance with the
6 abatement terms pursuant to subdivision (b) of Section
7 6320, and is found not to have abated the violation, is
8 guilty of a public offense punishable by imprisonment in
9 a county jail for a term not exceeding one year, or by a fine
10 not exceeding one hundred thousand dollars (\$100,000),
11 or by both that fine and imprisonment; or by
12 imprisonment in the state prison for 16 months, or two or
13 three years, or by a fine not less than fifty thousand dollars
14 (\$50,000) but not exceeding two hundred fifty thousand
15 dollars (\$250,000), or by both that fine and imprisonment;
16 and in either case, if the defendant is corporation or a
17 limited liability company the fine shall be not less than
18 one hundred thousand dollars (\$100,000) but not exceed
19 one million dollars (\$1,000,000). *However, a court may*
20 *impose a fine for a violation of this subdivision in an*
21 *amount less than the minimum specified in this*
22 *subdivision if the court finds that it is in the interest of*
23 *justice to do so and states its findings and reasons on the*
24 *record.*

25 SEC. 20. Section 6432 of the Labor Code is amended
26 to read:

27 6432. (a) As used in this part, a “serious violation”
28 shall be deemed to exist in a place of employment if any
29 of the following conditions exist:

30 (1) There is a substantial probability that death or
31 serious physical harm could result from a violation,
32 including, but not limited to, any of the following
33 circumstances:

34 (A) An exposure exceeding an established permissible
35 exposure limit.

36 (B) The existence of an unsafe or unhealthful
37 condition.

38 (C) The existence of one or more practices, means,
39 methods, operations, or processes which have been
40 adopted or are in use, in the place of employment.

1 (2) The violation results in occupational injuries or
2 illnesses that are indicative of a condition that may result
3 in serious physical harm.

4 (b) Notwithstanding subdivision (a), a serious
5 violation shall not be deemed to exist if the employer can
6 demonstrate that it did not, and could not with the
7 exercise of reasonable diligence, know of the presence of
8 the violation.

9 (c) As used in this section, “substantial probability”
10 refers not to the probability that an accident or exposure
11 will occur as a result of the violation, but rather to the
12 probability that death or serious physical harm will result
13 assuming an accident or exposure occurs as a result of the
14 violation. A substantial probability of serious injury also
15 shall exist if any single serious injury has been caused by
16 the violation.

17 SEC. 21. Section 6434 of the Labor Code is repealed.

18 SEC. 22. Section 6435 of the Labor Code is amended
19 to read:

20 6435. Any corporation or limited liability company
21 and every employer who creates a hazard, controls the
22 work or premises, or is responsible for correction of a
23 hazard, who violates any of the requirements of Chapter
24 6 (commencing with Section 6500) of this part shall be
25 assessed a civil penalty under the appropriate provisions
26 of Sections 6427 to 6430, inclusive.

27 SEC. 23. Section 6719 is added to the Labor Code, to
28 read:

29 6719. (a) The Legislature finds and declares all of the
30 following:

31 (1) In 1993, the Legislature adopted Section 6357 to
32 require the Occupational Safety and Health Standards
33 Board, on or before January 1, 1995, to adopt standards for
34 ergonomics in the workplace designed to minimize the
35 instances of injury from repetitive motion.

36 (2) The standards board failed to follow this mandate,
37 by failing to adopt ergonomics standards by January 1,
38 1995, and then by adopting a regulation concerning
39 ergonomics that was not designed to minimize the

1 instances of injury from repetitive motion because it
2 contained exemptions and loopholes.

3 (3) The ergonomics regulation adopted by the
4 standards board was held to be invalid in part by a court
5 because it did not fulfill the mandate of Section 6357, and
6 litigation concerning the validity of the regulation is still
7 pending.

8 (4) The purpose of this section is to mandate a
9 minimum standard for ergonomics in the workplace so as
10 to effectuate the original intent and purpose of Section
11 6357, as adopted in 1993, and to avoid continuing
12 litigation.

13 (b) On and after January 1, 2000, the division shall
14 enforce this section through all appropriate means,
15 including, but not limited to, issuing citations and
16 penalties for any violation of this section pursuant to
17 Section 6317. By January 15, 2000, the standards board also
18 shall enforce the following requirements pertaining to a
19 job, process, or operation if any of the following exists:

20 (1) A repetitive motion injury (RMI) has occurred to
21 one or more employees engaged in the job, process, or
22 operation. For the purposes of this section, an RMI is an
23 injury or illness that results in any of the following:

24 (A) Fatalities, regardless of the time between the
25 injury and death, or the length of the illness.

26 (B) Lost workday cases, other than fatalities, that
27 result in lost workdays.

28 (C) Nonfatal cases without lost workdays which result
29 in transfer to another job or termination of employment,
30 or require medical treatment, other than first aid, or
31 involve loss of consciousness or restriction of work or
32 motion. The injuries or illnesses specified in this
33 subparagraph also includes any diagnosed occupational
34 illnesses which are reported to the employer but are not
35 classified as fatalities or lost workday cases.

36 (2) A pattern of symptoms or physical signs of
37 work-related RMIs among one or more employees
38 engaged in a job, process, or operation has been identified
39 or reported.

1 (3) One or more employees are exposed to hazards
2 causing or contributing to or likely to cause or contribute
3 to RMI.

4 (4) One or more employees of an employer are in a
5 work activity substantially similar to a job, process, or
6 operation where an RMI or pattern of symptoms of an
7 RMI has been identified or reported at the employer's
8 place of employment. "Substantially similar work
9 activity" means that one or more employees are
10 performing similar tasks, including, but not limited to,
11 word processing, assembly, or loading.

12 (c) Each employer subject to this section shall
13 establish and implement a program designed to prevent
14 and minimize RMIs. The program shall include a worksite
15 evaluation, control of exposures which are causing or
16 contributing to or likely to cause or contribute to RMIs,
17 and training of employees.

18 (1) Each job, process, or operation covered by this
19 section, or a representative number of those jobs,
20 processes, or operations, shall be evaluated for exposures
21 that are causing or contributing to or likely to cause or
22 contribute to RMIs.

23 (2) Any exposures that are causing or contributing to
24 or likely to cause or contribute to RMIs shall be corrected
25 in a timely manner or, if not capable of being corrected,
26 shall be minimized to the extent feasible. The employer
27 shall utilize a hierarchy of controls, beginning with
28 engineering controls, such as work station redesign,
29 adjustable fixtures, or tool redesign, and administrative
30 controls such as job rotation, work pacing, or work breaks.

31 (3) Employees and supervisors performing or
32 supervising a job, process, or operation to which this
33 section applies shall be provided training that includes an
34 explanation of at least the following:

35 (A) The employer's program.

36 (B) Exposures that have been associated with RMIs.

37 (C) Symptoms and consequences of injuries caused by
38 repetitive motion.

39 (D) The importance of reporting symptoms and
40 injuries to the employer.

1 (E) Methods used by the employer to prevent and
2 minimize RMIs.

3 (d) Regulations adopted pursuant to this section are
4 expressly exempted from the provisions of Article 5
5 (commencing with Section 11346) of Chapter 3.5 of Part
6 1 of Division 3 of Title 2 of the Government Code.

7 (e) This section does not prohibit the Occupational
8 Safety and Health Standards Board from acting pursuant
9 to its authority to promulgate regulations in Section 142.3
10 to amend its regulations if the amendments do not reduce
11 the protection with respect to RMIs afforded workers by
12 the standard set forth in this section.

13 SEC. 24. No reimbursement is required by this act
14 pursuant to Section 6 of Article XIII B of the California
15 Constitution because the only costs that may be incurred
16 by a local agency or school district will be incurred
17 because this act creates a new crime or infraction,
18 eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section
20 17556 of the Government Code, or changes the definition
21 of a crime within the meaning of Section 6 of Article
22 XIII B of the California Constitution.

