

AMENDED IN SENATE SEPTEMBER 2, 1999

AMENDED IN SENATE AUGUST 25, 1999

AMENDED IN SENATE AUGUST 23, 1999

AMENDED IN SENATE AUGUST 16, 1999

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, 6304.5, ~~6308, 6309, 6317, 6323, 6324, 6325, 6400, 6423, 6425, 6428, 6429, 6430, and 6432 of~~ 6309, 6400, 6423, 6425, 6428, 6429, 6430, 6432, *and 6434 of*, and to add Sections ~~6319.1 and Section 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~~ *6 months* 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 Sections 452 and 669 of the Evidence Code would apply to the act and the occupational safety and health standards and orders promulgated under the Labor Code in the same manner as any other statute, ordinance, or regulation.

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 would require the division additionally 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 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 *and require civil or administrative penalties against a school district, community college district, California State University, University of California, or other specified educational entities to be deposited into the Workplace Health and Safety Revolving Fund and refunded or used for specified purposes.*

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:

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

22 (b) Each complaint of unlawful discharge or
23 discrimination shall be assigned to a discrimination
24 complaint investigator who shall prepare and submit a
25 report to the Labor Commissioner based on an
26 investigation of the complaint. The Labor Commissioner
27 may designate the chief deputy or assistant Labor
28 Commissioner or the chief counsel to receive and review
29 the reports. The investigation shall include, where
30 appropriate, interviews with the complainant,
31 respondent, and any witnesses who may have
32 information concerning the alleged violation, and a
33 review of any documents which may be relevant to the

1 disposition of the complaint. The identity of witnesses
2 shall remain confidential unless the identification of the
3 witness becomes necessary to proceed with the
4 investigation or to prosecute an action to enforce a
5 determination. The investigation report submitted to the
6 Labor Commissioner or designee shall include the
7 statements and documents obtained in the investigation,
8 and the findings of the investigator concerning whether
9 a violation occurred. The Labor Commissioner may hold
10 an investigative hearing whenever the Labor
11 Commissioner determines, after review of the
12 investigation report, that a hearing is necessary to fully
13 establish the facts. In the hearing the investigation report
14 shall be made a part of the record and the complainant
15 and respondent shall have the opportunity to present
16 further evidence. The Labor Commissioner shall issue,
17 serve, and enforce any necessary subpoenas.

18 (c) If the Labor Commissioner determines a violation
19 has occurred, he or she shall notify the complainant and
20 respondent and direct the respondent to cease and desist
21 from the violation and take such action as is deemed
22 necessary to remedy the violation, including, where
23 appropriate, rehiring or reinstatement, reimbursement
24 of lost wages and interest thereon, payment of reasonable
25 attorney's fees associated with any hearing held by the
26 Labor Commissioner in investigating the complaint, and
27 the posting of notices to employees. If the respondent
28 does not comply with the order within 10 working days
29 following notification of the Labor Commissioner's
30 determination, the Labor Commissioner shall bring an
31 action promptly in an appropriate court against the
32 respondent. If the Labor Commissioner fails to bring an
33 action in court promptly, the complainant may bring an
34 action against the Labor Commissioner in any
35 appropriate court for a writ of mandate to compel the
36 Labor Commissioner to bring an action in court against
37 the respondent. If the complainant prevails in his or her
38 action for a writ, the court shall award the complainant
39 court costs and reasonable attorney's fees,
40 notwithstanding any other provision of law. Regardless of

1 any delay in bringing an action in court, the Labor
2 Commissioner shall not be divested of jurisdiction. In any
3 such action, the court may permit the claimant to
4 intervene as a party plaintiff to the action and shall have
5 jurisdiction, for cause shown, to restrain the violation and
6 to order all appropriate relief. Appropriate relief
7 includes, but is not limited to, rehiring or reinstatement
8 of the complainant, reimbursement of lost wages and
9 interest thereon, and any other compensation or
10 equitable relief as is appropriate under the circumstances
11 of the case. The Labor Commissioner shall petition the
12 court for appropriate temporary relief or restraining
13 order unless he or she determines good cause exists for
14 not doing so.

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

1 (e) The Labor Commissioner shall notify the
2 complainant and respondent of his or her determination
3 under subdivision (c) or (d), not later than 60 days after
4 the filing of the complaint. Determinations by the Labor
5 Commissioner under subdivision (c) or (d) may be
6 appealed by the complainant or respondent to the
7 Director of Industrial Relations within 10 days following
8 notification of the determination. The appeal shall set
9 forth specifically and in full detail the grounds upon
10 which the appealing party considers the Labor
11 Commissioner's determination to be unjust or unlawful,
12 and every issue to be considered by the director. The
13 director may consider any issue relating to the initial
14 determination and may modify, affirm, or reverse the
15 Labor Commissioner's determination. The director's
16 determination shall be the determination of the Labor
17 Commissioner. The director shall notify the complainant
18 and respondent of his or her determination within 10 days
19 of receipt of the appeal.

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

23 SEC. 2. Section 6304.5 of the Labor Code is amended
24 to read:

25 6304.5. It is the intent of the Legislature that the
26 provisions of this division, and the occupational safety and
27 health standards and orders promulgated under this
28 code, are applicable to proceedings against employers for
29 the exclusive purpose of maintaining and enforcing
30 employee safety.

31 Neither the issuance of, or failure to issue, a citation by
32 the division shall have any application to, nor be
33 considered in, nor be admissible into, evidence in any
34 personal injury or wrongful death action, except as
35 between an employee and his or her own employer.
36 Sections 452 and 669 of the Evidence Code shall apply to
37 this division and to occupational safety and health
38 standards adopted under this division in the same manner
39 as any other statute, ordinance, or regulation. *The*
40 *testimony of employees of the division shall not be*

1 *admissible as expert opinion or with respect to the*
2 *application of occupational safety and health standards.*

3 ~~SEC. 3. Section 6308 of the Labor Code is amended to~~
4 ~~read:~~

5 ~~6308. In enforcing this division, occupational safety~~
6 ~~and health standards, orders, and special orders, the~~
7 ~~division may do any of the following:~~

8 ~~(a) Declare and prescribe the safety devices,~~
9 ~~safeguards, or other means or methods of protection that~~
10 ~~are well adapted to render the employees of every~~
11 ~~employment and place of employment safe as required~~
12 ~~by law or lawful order.~~

13 ~~(b) Enforce Section 25910 of the Health and Safety~~
14 ~~Code and standards and orders adopted by the standards~~
15 ~~board pursuant to Chapter 6 (commencing with Section~~
16 ~~140) of Division 1 of the Labor Code, for the installation,~~
17 ~~use, maintenance, and operation of reasonable uniform~~
18 ~~safety devices, safeguards, and other means or methods~~
19 ~~of protection, which are necessary to carry out all laws~~
20 ~~and lawful standards or special orders relative to the~~
21 ~~protection of the life and safety of employees in~~
22 ~~employment and places of employment.~~

23 ~~(c) Require the performance of any other act that is~~
24 ~~reasonably necessary for the protection of the life and~~
25 ~~safety of the employees in employment and places of~~
26 ~~employment.~~

27 ~~An employer may request a hearing on a special order~~
28 ~~or action ordered pursuant to this section, at which the~~
29 ~~employer, owner, or any other person may appear. The~~
30 ~~appeals board shall conduct the hearing at the earliest~~
31 ~~possible time.~~

32 ~~All orders, rules, regulations, findings, and decisions of~~
33 ~~the division made or entered under this part, except~~
34 ~~special orders and action orders, may be reviewed by the~~
35 ~~Supreme Court and the courts of appeal as may be~~
36 ~~provided by law.~~

37 ~~SEC. 4.~~

38 ~~SEC. 3. Section 6309 of the Labor Code is amended to~~
39 ~~read:~~

1 6309. If the division learns or has reason to believe
2 that any employment or place of employment is not safe
3 or is injurious to the welfare of any employee, it may, of
4 its own motion, or upon complaint, summarily investigate
5 the same with or without notice or hearings. However, if
6 the division secures a complaint from an employee, the
7 employee's representative, including, but not limited to,
8 an attorney, health or safety professional, union
9 representative; or representative of a government
10 agency, or an employer of an employee directly involved
11 in an unsafe place of employment, that his or her
12 employment or place of employment is not safe, it shall,
13 with or without notice or hearing, summarily investigate
14 the same as soon as possible, but not later than three
15 working days after receipt of a complaint charging a
16 serious violation, and not later than 14 calendar days after
17 receipt of a complaint charging a nonserious violation.
18 The division shall attempt to determine the period of
19 time in the future that the complainant believes the
20 unsafe condition may continue to exist, and shall allocate
21 inspection resources so as to respond first to those
22 situations in which time is of the essence. For purposes of
23 this section, a complaint shall be deemed to allege a
24 serious violation if the division determines that the
25 complaint charges that there is a substantial probability
26 that death or serious physical harm could result from a
27 condition which exists, or from one or more practices,
28 means, methods, operations, or processes which have
29 been adopted or are in use in a place of employment.
30 When a complaint charging a serious violation is received
31 from a state or local prosecutor, the division shall
32 summarily investigate the employment or place of
33 employment within 24 hours of receipt of the complaint.
34 All other complaints shall be deemed to allege nonserious
35 violations. The division may enter and serve any
36 necessary order relative thereto. The division is not
37 required to respond to any complaint within this period
38 where, from the facts stated in the complaint, it
39 determines that the complaint is intended to willfully
40 harass an employer or is without any reasonable basis.

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

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

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

~~SEC. 5. Section 6317 of the Labor Code is amended to read:~~

~~6317. If, upon inspection or investigation, the division believes that an employer has violated Section 25910 of the Health and Safety Code, any standard, rule, order, or regulation established pursuant to Chapter 6 (commencing with Section 140) of Division 1, or any standard, rule, order, or regulation established pursuant to this part, it shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the code, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the alleged violation. The period specified for abatement does not~~

~~1 commence until the date the citation or notice is received
2 by certified mail and the certified mail receipt is signed,
3 or if not signed, the date the return is made to the post
4 office. If the division officially and directly delivers the
5 citation or notice to the employer, the period specified for
6 abatement commences on the date of the delivery.~~

~~7 A “notice” in lieu of citation may be issued with respect
8 to violations found in an inspection or investigation that
9 meet either of the following requirements:~~

~~10 (1) The violations do not have a direct relationship
11 upon the health or safety of an employee.~~

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

~~28 A notice may not be issued in lieu of a citation if the
29 violations are serious, repeated, willful, or arise from a
30 failure to abate.~~

~~31 The director shall prescribe guidelines for the issuance
32 of these notices.~~

~~33 The division may impose a civil penalty against an
34 employer as specified in Chapter 4 (commencing with
35 Section 6423). A notice in lieu of a citation may not be
36 issued if the number of first instance violations found in
37 the inspection (other than serious, willful, or repeated
38 violations) is 10 or more violations.~~

~~A citation or notice may not be issued by the division for a violation after six months have elapsed since occurrence of the violation.~~

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

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

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

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

~~(b) (1) If a citation issued pursuant to Section 6317 includes a statement of the division's determination as provided in subdivision (a), the employer may, concurrent with the timely initiation of appeal proceedings as to the alleged violation, file a motion requesting that the running of the period for abatement of that violation be suspended during the appeal proceedings. The appeals board shall conduct an expedited hearing on the employer's motion within 15 days of the filing of the motion and shall, in deciding that motion, balance the extent of any irreparable injury to the employer as a result of abatement of the alleged violation during the pendency of appeal proceedings, and the nature and degree of risk posed to employees by the employer's failure to immediately abate that violation. The appeals board shall also consider the likely success of the employer's appeal with respect to the alleged violation, whether that appeal is initiated in good faith and not for the purpose of delay or the avoidance of penalties, and whether the division's determination is unreasonable under the circumstances. At the hearing,~~

~~the division shall have the burden of establishing that during the pendency of the appeal, the duty of an employer to abate a violation should not be suspended due to the initiation of an appeal because a substantial risk to the safety or health of employees continues to exist. If the division meets that burden, the employer shall have the responsibility of establishing that irreparable injury will occur to the employer if the duty of abatement is not suspended during the pendency of an appeal.~~

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

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

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

~~SEC. 7. Section 6323 of the Labor Code is amended to read:~~

~~6323. If the condition of any employment or place of employment or the operation of any machine, device, apparatus, equipment, or process 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 situated, for an injunction restraining the use or operation thereof until the condition is corrected.~~

~~SEC. 8. Section 6324 of the Labor Code is amended to read:~~

~~6324. An application to the superior court for an injunction shall be accompanied by an affidavit showing~~

1 ~~that a place of employment, machine, device, apparatus,~~
2 ~~equipment, or process is being operated in violation of a~~
3 ~~safety order or standard, or in violation of Section 25910~~
4 ~~of the Health and Safety Code, and that the use or~~
5 ~~operation constitutes a menace to the life or safety of any~~
6 ~~person employed thereabout or is likely to cause death,~~
7 ~~serious injury or illness, or serious exposure to an~~
8 ~~employee. The affidavit shall be accompanied by a copy~~
9 ~~of the order or standard applicable thereto. The~~
10 ~~application and affidavit are a sufficient prima facie~~
11 ~~showing to warrant, in the discretion of the court, the~~
12 ~~immediate granting of a temporary restraining order. No~~
13 ~~bond shall be required from the division as a prerequisite~~
14 ~~to the granting of any restraining order.~~

15 ~~SEC. 9. Section 6325 of the Labor Code is amended to~~
16 ~~read:~~

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

1 ~~SEC. 10.~~

2 *SEC. 4.* Section 6400 of the Labor Code is amended to
3 read:

4 6400. (a) Every employer shall furnish employment
5 and a place of employment that is safe and healthful for
6 the employees therein.

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

12 (1) The employer whose employees were exposed to
13 the hazard (the exposing employer).

14 (2) The employer who actually created the hazard
15 (the creating employer).

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

21 (4) The employer who had the responsibility for
22 actually correcting the hazard (the correcting
23 employer).

24 The employers listed in paragraphs (2) to (4),
25 inclusive, of this subdivision may be cited regardless of
26 whether their own employees were exposed to the
27 hazard.

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

35 ~~SEC. 11.~~

36 *SEC. 5.* Section 6423 of the Labor Code is amended to
37 read:

38 6423. Except where another penalty is specifically
39 provided, every employer and every officer,
40 management official, or supervisor having direction,

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

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

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

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

18 (d) Directly or indirectly, knowingly induces another
19 to commit any of the acts in subdivisions (a), (b), or (c).
20 Any violation of subdivision (a) is punishable by
21 imprisonment in the county jail for a period not to exceed
22 six months, or by a fine not to exceed five thousand dollars
23 (\$5,000), or by both that imprisonment and fine.

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

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

38 ~~SEC. 12.~~

39 SEC. 6. Section 6425 of the Labor Code is amended to
40 read:

1 6425. (a) Any employer and any employee having
2 direction, management, control, or custody of any
3 employment, place of employment, or of any other
4 employee, who willfully violates any occupational safety
5 or health standard, order, or special order, or Section
6 25910 of the Health and Safety Code, and that violation
7 caused death to any employee, or caused permanent or
8 prolonged impairment of the body of any employee, is
9 guilty of a public offense punishable by imprisonment in
10 a county jail for a term not exceeding one year, or by a fine
11 not exceeding one hundred thousand dollars (\$100,000),
12 or by both that imprisonment and fine; or by
13 imprisonment in the state prison for 16 months, or two or
14 three years, or by a fine of not more than two hundred
15 fifty thousand dollars (\$250,000), or by both that
16 imprisonment and fine; and in either case, if the
17 defendant is a corporation or a limited liability company,
18 the fine may not exceed ~~two million dollars (\$2,000,000)~~
19 *one million five hundred thousand dollars (\$1,500,000)*.

20 (b) If the conviction is for a violation committed
21 within seven years after a conviction under *subdivision*
22 *(b), (c), or (d)* of Section 6423 or subdivision (c) of
23 Section 6430, punishment shall be by imprisonment in
24 state prison for a term of 16 months, two, or three years,
25 or by a fine not exceeding two hundred fifty thousand
26 dollars (\$250,000), or by both that fine and imprisonment,
27 but if the defendant is a corporation or limited liability
28 company, the fine may not be less than five hundred
29 thousand dollars (\$500,000) or more than ~~three million~~
30 ~~dollars (\$3,000,000)~~; *two million five hundred thousand*
31 *dollars (\$2,500,000)*.

32 (c) If the conviction is for a violation committed
33 within seven years after a first conviction of the
34 defendant for any crime involving a violation of
35 subdivision (a), punishment shall be by imprisonment in
36 the state prison for two, three, or four years, or by a fine
37 not exceeding two hundred fifty thousand dollars
38 (\$250,000), or by both that fine and imprisonment, but if
39 the defendant is a corporation or a limited liability
40 company, the fine shall not be less than one million dollars

1 (\$1,000,000) but may not exceed ~~four million dollars~~
 2 ~~(\$4,000,000)~~ *three million five hundred thousand dollars*
 3 *(\$3,500,000).*

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

11 (e) As used in this section, “willfully” has the same
 12 definition as it has in Section 7 of the Penal Code. This
 13 subdivision is intended to be a codification of existing law.

14 (f) This section does not prohibit a prosecution under
 15 Section 192 of the Penal Code.

16 ~~SEC. 13.~~

17 *SEC. 7.* Section 6428 of the Labor Code is amended to
 18 read:

19 6428. Any employer who violates any occupational
 20 safety or health standard, order, or special order, or
 21 Section 25910 of the Health and Safety Code, if that
 22 violation is a serious violation, shall be assessed a civil
 23 penalty of up to twenty-five thousand dollars (\$25,000)
 24 for each violation. Employers who do not have an
 25 operative injury prevention program shall receive no
 26 adjustment for good faith of the employer or history of
 27 previous violations as provided in paragraphs (3) and (4)
 28 of subdivision (c) of Section 6319.

29 ~~SEC. 14.~~

30 *SEC. 8.* Section 6429 of the Labor Code is amended to
 31 read:

32 6429. Any employer who willfully or repeatedly
 33 violates any occupational safety or health standard, order,
 34 or special order, or Section 25910 of the Health and Safety
 35 Code, may be assessed a civil penalty of not more than
 36 seventy thousand dollars (\$70,000) for each violation, but
 37 in no case less than five thousand dollars (\$5,000) for each
 38 willful violation.

39 (b) Any employer who repeatedly violates any
 40 occupational safety or health standard, order, or special

1 order, ~~or any provision of this division relating to the~~
2 ~~health and safety of employees~~ or of Section 25910 of the
3 Health and Safety Code, shall not receive any adjustment
4 of a penalty assessed pursuant to this section on the basis
5 of the regulations promulgated pursuant to subdivision
6 (c) of Section 6319 pertaining to the good faith of the
7 employer or the history of previous violations of the
8 employer.

9 ~~(e) Any past substantially similar violation by any~~
10 ~~employer occurring anywhere within the state within the~~
11 ~~previous five years of any occupational safety or health~~
12 ~~standard, order, or special order, or any provision of this~~
13 ~~division relating to the health and safety of employees or~~
14 ~~of Section 25910 of the Health and Safety Code, shall be~~
15 ~~used to establish whether a current serious violation is a~~
16 ~~repeat violation.~~

17 ~~(d)~~

18 (c) The division shall preserve and maintain records of
19 its investigations and inspections and citations for a
20 period of not less than seven years.

21 ~~SEC. 15.~~

22 *SEC. 9.* Section 6430 of the Labor Code is amended to
23 read:

24 6430. (a) Any employer who fails to correct a
25 violation of any occupational safety or health standard,
26 order, or special order, or Section 25910 of the Health and
27 Safety Code, within the period permitted for its
28 correction shall be assessed a civil penalty of not more
29 than ~~twenty five thousand dollars (\$25,000)~~ *fifteen*
30 *thousand dollars (\$15,000)* for each day during which the
31 failure or violation continues.

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

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

3 (c) Notwithstanding subdivision (a), any employer
4 who submits a signed statement affirming compliance
5 with the abatement terms pursuant to subdivision (b) of
6 Section 6320, and is found not to have abated the
7 violation, is guilty of a public offense punishable by
8 imprisonment in a county jail for a term not exceeding
9 one year, or by a fine not exceeding ~~one hundred~~
10 ~~thousand dollars (\$100,000)~~ *thirty thousand dollars*
11 *(\$30,000)*, or by both that fine and imprisonment; but if
12 the defendant is a corporation or a limited liability
13 company the fine shall ~~be not less than one hundred~~
14 ~~thousand dollars (\$100,000) but not exceed one million~~
15 ~~dollars (\$1,000,000)~~. ~~However, a court may impose a fine~~
16 ~~for a violation of this subdivision in an amount less than~~
17 ~~the minimum specified in this subdivision if the court~~
18 ~~finds that it is in the interest of justice to do so and states~~
19 ~~its findings and reasons on the record.~~ *not exceed three*
20 *hundred thousand dollars (\$300,000)*. *In determining the*
21 *amount of the fine to be imposed under this section, the*
22 *court shall consider all relevant circumstances, including,*
23 *but not limited to, the nature, circumstance, extent, and*
24 *gravity of the violation, any prior history of violations by*
25 *the defendant, the ability of the defendant to pay, and any*
26 *other matters the court determines the interests of justice*
27 *require. Nothing in this section shall be construed to*
28 *prevent prosecution under any law that may apply.*

29 ~~SEC. 16.~~

30 *SEC. 10.* Section 6432 of the Labor Code is amended
31 to read:

32 6432. (a) As used in this part, a “serious violation”
33 shall be deemed to exist in a place of employment if there
34 is a substantial probability that death or serious physical
35 harm could result from a violation, including, but not
36 limited to, circumstances where there is a substantial
37 probability that either of the following could result in
38 death or great bodily injury:

39 (1) A serious exposure exceeding an established
40 permissible exposure limit.

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

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.

15 ~~SEC. 17. Section 6434 of the Labor Code is repealed.~~

16 *SEC. 11. Section 6434 of the Labor Code is amended*
17 *to read:*

18 ~~6434. The civil penalties provided for in this chapter~~
19 ~~shall not be assessed against employers that are~~
20 ~~governmental entities.~~

21 (a) Any civil or administrative penalty assessed
22 pursuant to this chapter against a school district, county
23 board of education, county superintendent of schools,
24 charter school, community college district, California
25 State University, University of California, or joint powers
26 agency performing education functions shall be
27 deposited with the Workplace Health and Safety
28 Revolving Fund established pursuant to Section 78.

29 (b) Any school district, county board of education,
30 county superintendent of schools or charter school
31 community college district, California State University,
32 University of California, or joint powers agency
33 performing education functions may apply for a refund
34 of their civil penalty, with interest, if all conditions
35 previously cited have been abated, they have abated any
36 other outstanding citation, and if they have not been cited
37 by the division for a serious violation at the same school
38 within two years of the date of the original violation.
39 Funds not applied for within two years and six months of
40 the time of the original violation shall be expended as

1 *provided for in Section 78 to assist schools in establishing*
2 *effective occupational injury and illness prevention*
3 *programs.*

4 ~~SEC. 18.~~

5 SEC. 12. Section 6719 is added to the Labor Code, to
6 read:

7 6719. The Legislature reaffirms its concern over the
8 prevalence of repetitive motion injuries in the workplace
9 and reaffirms the Occupational Safety and Health
10 Standards Board's continuing duty to carry out Section
11 6357.

12 ~~SEC. 19.~~

13 SEC. 13. 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.

