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AMENDED IN SENATE JUNE 29, 2021
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AMENDED IN ASSEMBLY MAY 24, 2021
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CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 73

**Introduced by Assembly Members Robert Rivas, Eduardo Garcia,
Lorena Gonzalez, and Kalra**
(Principal coauthor: Senator Caballero)
**(Coauthors: Assembly Members Aguiar-Curry, Bloom,
Cristina Garcia, Luz Rivas, Santiago, Stone, and Wood)**

December 7, 2020

An act to amend Section 131021 of the Health and Safety Code, and to add Part 12 (commencing with Section 9110) to Division 5 of the Labor Code, relating to employment safety, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 73, as amended, Robert Rivas. Health emergencies: employment safety: agricultural workers: wildfire smoke.

(1) Existing law establishes the State Department of Public Health (department) to implement various programs throughout the state

relating to public health, including licensing and regulating health facilities and control of infectious diseases. Existing law requires the department and the Office of Emergency Services, in coordination with other state agencies, to, upon appropriation and as necessary, establish a personal protective equipment (PPE) stockpile. Existing law requires the department to establish guidelines for the procurement, management, and distribution of PPE, taking into account, among other things, the amount of each type of PPE that would be required for all health care workers and essential workers, as defined, in the state during a 90-day pandemic or other health emergency.

This bill would specifically include wildfire smoke events among health emergencies for these purposes. The bill would include agricultural workers, as defined, in the definition of essential workers.

Existing law also establishes the Personal Protective Equipment Advisory Committee (committee), consisting of representatives from, among other groups, an association representing skilled nursing facilities, a statewide association representing physicians, 2 representatives of labor organizations that represent health care workers, and 2 representatives of labor organizations that represent essential workers, as defined, to make recommendations to the department for the development of guidelines for the procurement, management, and distribution of PPE, as specified.

This bill would include agricultural workers within the definition of essential workers, and would require the committee to, in addition, include a representative of a labor organization representing agricultural workers and a representative of an organization that represents agricultural employers. The bill would also require the department to report to the Legislature regarding the PPE stockpile within 6 months of the effective date of these provisions.

(2) Existing law establishes the Division of Occupational Safety and Health and the Occupational Safety and Health Standards Board within the Department of Industrial Relations and sets forth their powers and duties relating to the adoption of health and safety standards for workers. Under existing law, certain violations of a standard, order, or special order pursuant to these provisions are crimes.

Existing regulations of the division protect employees exposed to wildfire smoke and include control by respiratory protective equipment among the methods to control harmful exposure.

This bill would, among other things, require the division to designate wildfire smoke strike teams within the appropriate regional offices and

authorize the division to deploy the teams to enforce wildfire smoke protection regulations under specified conditions with regard to agricultural workplaces and agricultural employees.

The bill would require the division, by January 1, 2023, to develop and distribute a sample template document providing prescribed air quality training and information, including, but not limited to, how to use N95 respirators safely. The bill would require employers to periodically conduct the training. The bill would, in addition, commencing January 1, 2023, require refresher training during wildfire smoke emergencies and prior to distribution of the respirators. The bill would require the template and training be consistent with regulations adopted by the board.

Because a violation of certain safety and health standards or orders constitutes a crime, this 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 131021 of the Health and Safety Code
2 is amended to read:

3 131021. (a) The Legislature finds that having access to a
4 statewide stockpile of personal protective equipment in the event
5 of a pandemic, wildfire smoke event, or other health emergency
6 is vital to the health and safety of its health care and essential
7 workers, as well as the general population, which both relies on
8 this workforce and is susceptible to disease transmission should
9 members of this workforce needlessly be infected with
10 transmissible disease.

11 (b) The following definitions apply for purposes of this section:

12 (1) "Department" means the State Department of Public Health.

13 (2) "Office" means the Office of Emergency Services.

1 (3) “Agricultural worker” means a person employed in any of
2 the following:

3 (A) An agricultural occupation, as defined in Wage Order No.
4 14 of the Industrial Welfare Commission.

5 (B) An industry preparing agricultural products for the market,
6 on the farm, as defined in Wage Order No. 13 of the Industrial
7 Welfare Commission.

8 (C) An industry handling products after harvest, as defined in
9 Wage Order No. 8 of the Industrial Welfare Commission.

10 (4) “Essential workers” means primary and secondary school
11 workers, workers at detention facilities, as defined in Section 9500
12 of the Penal Code, in-home support providers, childcare providers,
13 government workers whose work with the public continues
14 throughout the crisis, and workers in other positions that the State
15 Public Health Officer or the Director of the Office of Emergency
16 Services deems vital to public health and safety, as well as
17 economic and national security, including, but not limited to,
18 agricultural workers.

19 (5) “Health care worker” means any worker who provides direct
20 patient care and services directly supporting patient care, including,
21 but not limited, to physicians, pharmacists, clinicians, nurses, aides,
22 technicians, janitorial and housekeeping staff, food services
23 workers, and nonmanagerial administrative staff.

24 (6) “Personal protective equipment” or “PPE” means protective
25 equipment for eyes, face, head, and extremities, protective clothing,
26 respiratory devices, and protective shields and barriers, including,
27 but not limited to, N95 and other filtering facepiece respirators,
28 elastomeric air-purifying respirators with appropriate particulate
29 filters or cartridges, powered air purifying respirators, disinfecting
30 and sterilizing devices and supplies, medical gowns and apparel,
31 face masks, surgical masks, face shields, gloves, shoe coverings,
32 and the equipment identified by or otherwise necessary to comply
33 with Section 5199 of Title 8 of the California Code of Regulations.

34 (7) “Provider” means a licensed clinic, as described in Chapter
35 1 (commencing with Section 1200), an outpatient setting, as
36 described in Chapter 1.3 (commencing with Section 1248) of, a
37 health facility as described in Chapter 2 (commencing with Section
38 1250) of, or a county medical facility, as described in Chapter 2.5
39 (commencing with Section 1440) of, Division 2, a home health
40 agency, a physician’s office, a professional medical corporation,

1 a medical partnership, a medical foundation, a rural health clinic,
2 as defined in Section 1395x(aa)(2) of Title 42 of the United States
3 Code, or a federally qualified health center, as defined in Section
4 1395x(aa)(4) of Title 42 of the United States Code, and any other
5 entity that provides medical services in California.

6 (8) “Stockpile” means the personal protective equipment
7 stockpile created pursuant to subdivision (c).

8 (c) Within one year of the effective date of this section, the
9 department and office, in coordination with other state agencies,
10 shall establish a PPE stockpile, upon appropriation and as
11 necessary.

12 (d) The department shall also establish guidelines for
13 procurement, management, and distribution of PPE from the
14 department. The department and office shall consider the
15 recommendations of the Personal Protective Equipment Advisory
16 Committee created pursuant to subdivision (f) in developing these
17 guidelines. At a minimum, the guidelines shall take into account
18 all of the following:

19 (1) The various types of PPE that may be required during a
20 pandemic or other health emergency, including, but not limited
21 to, wildfire smoke events.

22 (2) The shelf life of each type of PPE that may be obtained from
23 the department and how to restock a portion of each type of PPE
24 to ensure the procurements consist of unexpired PPE.

25 (3) The amount of each type of PPE that would be required for
26 all health care workers and essential workers in the state during a
27 90-day pandemic or other health emergency, including, but not
28 limited to, wildfire smoke events.

29 (4) Lessons learned from previous pandemics and state
30 emergencies, including, but not limited to, supply procurement,
31 management, and distribution.

32 (5) Guidance on how to define essential workers based upon
33 different hazards.

34 (6) Geographical distribution of PPE storage.

35 (7) Guidance on how to establish policies and standards for PPE
36 surge capacity to ensure that workers have access to an adequate
37 supply of PPE during a pandemic or other health emergency,
38 including, but not limited to, wildfire smoke events.

39 (8) The policies and funding that would be required for the state
40 to establish a PPE stockpile.

1 (9) How distribution from any procurement shall be prioritized
2 in the event that there is insufficient PPE to meet the needs of
3 providers or employers of essential workers, including
4 consideration of the following:

5 (A) The provider or employer is in a location with a high share
6 of low-income residents.

7 (B) The provider or employer is in a medically underserved
8 area, as designated by the United States Department of Health and
9 Human Services, Health Resources and Services Administration.

10 (C) The provider or employer disproportionately serves a
11 medically underserved population, as designated by the United
12 States Department of Health and Human Services, Health
13 Resources and Services Administration.

14 (D) The provider or employer is in a county with a high infection
15 rate or high hospitalization rate related to the declared emergency.

16 (e) The development of the guidelines shall be informed by the
17 recommendations of the Personal Protective Equipment Advisory
18 Committee pursuant to subdivision (f). The guidelines shall not
19 establish policies or standards that are less protective or prescriptive
20 than any federal, state, or local law on PPE standards.

21 (f) The Personal Protective Equipment Advisory Committee is
22 hereby established. The advisory committee shall consist of the
23 following:

24 (1) One representative of an association representing multiple
25 types of hospitals and health systems.

26 (2) One representative of an association representing skilled
27 nursing facilities.

28 (3) One representative of an association representing primary
29 care clinics.

30 (4) One representative of a statewide association representing
31 physicians.

32 (5) Two representatives of labor organizations that represent
33 health care workers.

34 (6) Two representatives of labor organizations that represent
35 nonagricultural essential workers, as defined by paragraph (4) of
36 subdivision (b).

37 (7) One representative of a labor organization that represents
38 agricultural workers, as defined by paragraph (3) of subdivision
39 (b).

1 (8) One representative of an organization that represents
2 agricultural employers.

3 (9) One representative from the personal protective equipment
4 manufacturing industry.

5 (10) One consumer representative.

6 (11) One representative from an association representing
7 counties.

8 (12) One representative from the State Department of Public
9 Health.

10 (13) One representative from the Office of Emergency Services.

11 (14) One representative from the Emergency Medical Services
12 Authority.

13 (15) One representative from the State Department of Social
14 Services.

15 (g) The Director of the Office of Emergency Services or their
16 designee shall appoint the representatives from paragraphs (1)
17 through (11), inclusive, of subdivision (f).

18 (h) The Personal Protective Equipment Advisory Committee
19 shall make recommendations to the office and department
20 necessary to develop the guidelines required pursuant to
21 subdivision (d).

22 (i) Nothing in this section alters an employer's duty to provide
23 respirators as required by Section 5141.1 of Title 8 of the California
24 Code of Regulations.

25 (j) The department shall report to the Legislature, within six
26 months of the effective date of the amendments to this section
27 made by the act adding this subdivision, with regard to the amount
28 of PPE in the stockpile, the amount of PPE from the stockpile that
29 has been used, and the amount of anticipated future usage. The
30 report shall be made pursuant to Section 9795 of the Government
31 Code.

32 SEC. 2. Part 12 (commencing with Section 9110) is added to
33 Division 5 of the Labor Code, to read:

34

35 **PART 12. AGRICULTURAL WORKERS**

36

37 9110. (a) For purposes of this section, the following terms
38 have the following meanings:

39 (1) "AQI" means air quality index and refers to the method used
40 by the United States Environmental Protection Agency to report

1 air quality on a real-time basis, utilizing the chart in subdivision
2 (b) of Section 5141.1 of Title 8 of the California Code of
3 Regulations.

4 (2) “Agricultural employee” means a person employed in any
5 of the following:

6 (A) An agricultural occupation, as defined in Wage Order No.
7 14 of the Industrial Welfare Commission.

8 (B) An industry preparing agricultural products for the market,
9 on the farm, as defined in Wage Order No. 13 of the Industrial
10 Welfare Commission.

11 (C) An industry handling products after harvest, as defined in
12 Wage Order No. 8 of the Industrial Welfare Commission.

13 (3) “Board” means the Occupational Safety and Health
14 Standards Board.

15 (4) “PM 2.5” means particulate matter that is 2.5 microns or
16 smaller.

17 (5) “Wildfire” means an unplanned, unwanted wildland fire,
18 including unauthorized human-caused fires, escaped wildland fire
19 use events, escaped prescribed fire projects, and all other wildland
20 fires when the objective is to extinguish the fire.

21 (b) (1) The division shall designate “wildfire smoke strike
22 teams” within the appropriate regional offices. These teams may
23 be deployed to inspect agricultural workplaces for compliance
24 with Section 5141.1 of Title 8 of the California Code of
25 Regulations when both of the following conditions apply:

26 (A) The current AQI for PM 2.5 is 151 or greater, regardless of
27 the AQI for other pollutants.

28 (B) The wildfire conditions in the region are such that it would
29 be reasonable to anticipate that agricultural employees within the
30 region may be exposed to wildfire smoke.

31 (2) Nothing in this section directs the division to delay
32 inspections or investigations of hazards, violations, complaints,
33 or accidents that a regional manager or district manager determines
34 would be more likely to cause death or serious physical harm than
35 violations of Section 5141.1 of Title 8 of the California Code of
36 Regulations.

37 (c) (1) By January 1, 2023, the division shall develop, and shall
38 thereafter distribute, a sample template document providing specific
39 air quality training and information in both English and Spanish
40 on all of the following issues:

1 (A) What resources employers use to determine unhealthy air
2 quality.

3 (B) What type of personal protective equipment agricultural
4 employees are entitled to when working in hazardous air quality
5 conditions.

6 (C) How to use N95 respirators safely.

7 (D) Signs and symptoms of illness related to unhealthy air
8 exposure and respirator failure or issues.

9 (E) The right of an employee to request and obtain medical
10 treatment without fear of reprisal.

11 (2) The information shall be designed to be easily understood
12 by agricultural employees from a variety of ethnic and cultural
13 backgrounds, and various education levels, including the use of
14 pictograms, as necessary. The information shall be made widely
15 and easily accessible throughout the year, including in physical
16 formats at the worksite and via the division’s internet website.

17 (3) The training shall be provided *periodically* by the employers
18 ~~for all management staff and agricultural employees periodically.~~
19 *and supervisors of agricultural employees.* The frequency shall
20 be established by regulations adopted by the board and shall be
21 based upon the regional wildfire risk.

22 (4) The information provided in the sample template document
23 developed pursuant to this subdivision shall be consistent with
24 applicable workplace safety regulations adopted by the board.

25 (d) Commencing January 1, 2023, in addition to the periodic
26 training required in subdivision (c), during a wildfire smoke
27 emergency and prior to distribution of the N95 respirators, an
28 agricultural employer shall conduct refresher training, as developed
29 by regulations adopted by the board, for ~~all managers and~~
30 *agricultural employees and supervisors of agricultural employees,*
31 specifically focused on the safe and effective use of the N95
32 respirators.

33 SEC. 3. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

3 SEC. 4. This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or safety within
5 the meaning of Article IV of the California Constitution and shall
6 go into immediate effect. The facts constituting the necessity are:

7 In order to protect the health and safety of essential agricultural
8 workers from smoke inhalation during what has become an
9 extended wildfire season, it is necessary that this act take effect
10 immediately.