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AMENDED IN SENATE JULY 8, 2021
AMENDED IN SENATE JUNE 29, 2021
AMENDED IN SENATE JUNE 28, 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.~~

This bill would require the division to develop, periodically update, and distribute to employers training materials in English, Spanish, and pictograms for agricultural employees relating to wildfire smoke safety topics, including employee rights and access to, and use of, personal protective equipment. The bill would require the training to be provided periodically by employers and supervisors of agricultural employees, and that the frequency be established by regulations adopted by the board and based upon regional wildfire risk.

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:

1 131021. (a) The Legislature finds that having access to a
2 statewide stockpile of personal protective equipment in the event
3 of a pandemic, wildfire smoke event, or other health emergency
4 is vital to the health and safety of its health care and essential
5 workers, as well as the general population, which both relies on
6 this workforce and is susceptible to disease transmission should
7 members of this workforce needlessly be infected with
8 transmissible disease.

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

10 (1) “Department” means the State Department of Public Health.

11 (2) “Office” means the Office of Emergency Services.

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

14 (A) An agricultural occupation, as defined in Wage Order No.
15 14 of the Industrial Welfare Commission.

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

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

21 (4) “Essential workers” means primary and secondary school
22 workers, workers at detention facilities, as defined in Section 9500
23 of the Penal Code, in-home support providers, childcare providers,
24 government workers whose work with the public continues
25 throughout the crisis, and workers in other positions that the State
26 Public Health Officer or the Director of the Office of Emergency
27 Services deems vital to public health and safety, as well as
28 economic and national security, including, but not limited to,
29 agricultural workers.

30 (5) “Health care worker” means any worker who provides direct
31 patient care and services directly supporting patient care, including,
32 but not limited, to physicians, pharmacists, clinicians, nurses, aides,
33 technicians, janitorial and housekeeping staff, food services
34 workers, and nonmanagerial administrative staff.

35 (6) “Personal protective equipment” or “PPE” means protective
36 equipment for eyes, face, head, and extremities, protective clothing,
37 respiratory devices, and protective shields and barriers, including,
38 but not limited to, N95 and other filtering facepiece respirators,
39 elastomeric air-purifying respirators with appropriate particulate
40 filters or cartridges, powered air purifying respirators, disinfecting

1 and sterilizing devices and supplies, medical gowns and apparel,
2 face masks, surgical masks, face shields, gloves, shoe coverings,
3 and the equipment identified by or otherwise necessary to comply
4 with Section 5199 of Title 8 of the California Code of Regulations.

5 (7) “Provider” means a licensed clinic, as described in Chapter
6 1 (commencing with Section 1200), an outpatient setting, as
7 described in Chapter 1.3 (commencing with Section 1248) of, a
8 health facility as described in Chapter 2 (commencing with Section
9 1250) of, or a county medical facility, as described in Chapter 2.5
10 (commencing with Section 1440) of, Division 2, a home health
11 agency, a physician’s office, a professional medical corporation,
12 a medical partnership, a medical foundation, a rural health clinic,
13 as defined in Section 1395x(aa)(2) of Title 42 of the United States
14 Code, or a federally qualified health center, as defined in Section
15 1395x(aa)(4) of Title 42 of the United States Code, and any other
16 entity that provides medical services in California.

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

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

23 (d) The department shall also establish guidelines for
24 procurement, management, and distribution of PPE from the
25 department. The department and office shall consider the
26 recommendations of the Personal Protective Equipment Advisory
27 Committee created pursuant to subdivision (f) in developing these
28 guidelines. At a minimum, the guidelines shall take into account
29 all of the following:

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

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

36 (3) The amount of each type of PPE that would be required for
37 all health care workers and essential workers in the state during a
38 90-day pandemic or other health emergency, including, but not
39 limited to, wildfire smoke events.

- 1 (4) Lessons learned from previous pandemics and state
2 emergencies, including, but not limited to, supply procurement,
3 management, and distribution.
- 4 (5) Guidance on how to define essential workers based upon
5 different hazards.
- 6 (6) Geographical distribution of PPE storage.
- 7 (7) Guidance on how to establish policies and standards for PPE
8 surge capacity to ensure that workers have access to an adequate
9 supply of PPE during a pandemic or other health emergency,
10 including, but not limited to, wildfire smoke events.
- 11 (8) The policies and funding that would be required for the state
12 to establish a PPE stockpile.
- 13 (9) How distribution from any procurement shall be prioritized
14 in the event that there is insufficient PPE to meet the needs of
15 providers or employers of essential workers, including
16 consideration of the following:
- 17 (A) The provider or employer is in a location with a high share
18 of low-income residents.
- 19 (B) The provider or employer is in a medically underserved
20 area, as designated by the United States Department of Health and
21 Human Services, Health Resources and Services Administration.
- 22 (C) The provider or employer disproportionately serves a
23 medically underserved population, as designated by the United
24 States Department of Health and Human Services, Health
25 Resources and Services Administration.
- 26 (D) The provider or employer is in a county with a high infection
27 rate or high hospitalization rate related to the declared emergency.
- 28 (e) The development of the guidelines shall be informed by the
29 recommendations of the Personal Protective Equipment Advisory
30 Committee pursuant to subdivision (f). The guidelines shall not
31 establish policies or standards that are less protective or prescriptive
32 than any federal, state, or local law on PPE standards.
- 33 (f) The Personal Protective Equipment Advisory Committee is
34 hereby established. The advisory committee shall consist of the
35 following:
- 36 (1) One representative of an association representing multiple
37 types of hospitals and health systems.
- 38 (2) One representative of an association representing skilled
39 nursing facilities.

- 1 (3) One representative of an association representing primary
2 care clinics.
- 3 (4) One representative of a statewide association representing
4 physicians.
- 5 (5) Two representatives of labor organizations that represent
6 health care workers.
- 7 (6) Two representatives of labor organizations that represent
8 nonagricultural essential workers, as defined by paragraph (4) of
9 subdivision (b).
- 10 (7) One representative of a labor organization that represents
11 agricultural workers, as defined by paragraph (3) of subdivision
12 (b).
- 13 (8) One representative of an organization that represents
14 agricultural employers.
- 15 (9) One representative from the personal protective equipment
16 manufacturing industry.
- 17 (10) One consumer representative.
- 18 (11) One representative from an association representing
19 counties.
- 20 (12) One representative from the State Department of Public
21 Health.
- 22 (13) One representative from the Office of Emergency Services.
- 23 (14) One representative from the Emergency Medical Services
24 Authority.
- 25 (15) One representative from the State Department of Social
26 Services.
- 27 (g) The Director of the Office of Emergency Services or their
28 designee shall appoint the representatives from paragraphs (1)
29 through (11), inclusive, of subdivision (f).
- 30 (h) The Personal Protective Equipment Advisory Committee
31 shall make recommendations to the office and department
32 necessary to develop the guidelines required pursuant to
33 subdivision (d).
- 34 (i) Nothing in this section alters an employer's duty to provide
35 respirators as required by Section 5141.1 of Title 8 of the California
36 Code of Regulations.
- 37 (j) The department shall report to the Legislature, within six
38 months of the effective date of the amendments to this section
39 made by the act adding this subdivision, with regard to the amount
40 of PPE in the stockpile, the amount of PPE from the stockpile that

1 has been used, and the amount of anticipated future usage. The
2 report shall be made pursuant to Section 9795 of the Government
3 Code.

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

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7
8

PART 12. AGRICULTURAL WORKERS

9 9110. (a) For purposes of this section, the following terms
10 have the following meanings:

11 ~~(1) "AQI" means air quality index and refers to the method used~~
12 ~~by the United States Environmental Protection Agency to report~~
13 ~~air quality on a real-time basis, utilizing the chart in subdivision~~
14 ~~(b) of Section 5141.1 of Title 8 of the California Code of~~
15 ~~Regulations.~~

16 ~~(2)~~

17 (1) "Agricultural employee" means a person employed in any
18 of the following:

19 (A) An agricultural occupation, as defined in Wage Order No.
20 14 of the Industrial Welfare Commission.

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

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

26 ~~(3)~~

27 (2) "Board" means the Occupational Safety and Health
28 Standards Board.

29 ~~(4) "PM 2.5" means particulate matter that is 2.5 microns or~~
30 ~~smaller.~~

31 ~~(5)~~

32 (3) "Wildfire" means an unplanned, unwanted wildland fire,
33 including unauthorized human-caused fires, escaped wildland fire
34 use events, escaped prescribed fire projects, and all other wildland
35 fires when the objective is to extinguish the fire.

36 ~~(b) (1) The division shall designate "wildfire smoke strike~~
37 ~~teams" within the appropriate regional offices. These teams may~~
38 ~~be deployed to inspect agricultural workplaces for compliancee~~
39 ~~with Section 5141.1 of Title 8 of the California Code of~~
40 ~~Regulations when both of the following conditions apply:~~

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

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

6 ~~(2) Nothing in this section directs the division to delay~~
7 ~~inspections or investigations of hazards, violations, complaints,~~
8 ~~or accidents that a regional manager or district manager determines~~
9 ~~would be more likely to cause death or serious physical harm than~~
10 ~~violations of Section 5141.1 of Title 8 of the California Code of~~
11 ~~Regulations.~~

12 ~~(e) (1) By January 1, 2023, the division shall develop, and shall~~
13 ~~thereafter distribute, a sample template document providing specific~~
14 ~~air quality training and information in both English and Spanish~~
15 ~~on all of the following issues:~~

16 ~~(A) What resources employers use to determine unhealthy air~~
17 ~~quality.~~

18 ~~(B) What type of personal protective equipment agricultural~~
19 ~~employees are entitled to when working in hazardous air quality~~
20 ~~conditions.~~

21 ~~(C) How to use N95 respirators safely.~~

22 ~~(D) Signs and symptoms of illness related to unhealthy air~~
23 ~~exposure and respirator failure or issues.~~

24 ~~(E) The right of an employee to request and obtain medical~~
25 ~~treatment without fear of reprisal.~~

26 ~~(2) The information shall be designed to be easily understood~~
27 ~~by agricultural employees from a variety of ethnic and cultural~~
28 ~~backgrounds, and various education levels, including the use of~~
29 ~~pictograms, as necessary. The information shall be made widely~~
30 ~~and easily accessible throughout the year, including in physical~~
31 ~~formats at the worksite and via the division's internet website.~~

32 ~~(3) The training shall be provided periodically by the employers~~
33 ~~for agricultural employees and supervisors of agricultural~~
34 ~~employees. The frequency shall be established by regulations~~
35 ~~adopted by the board and shall be based upon the regional wildfire~~
36 ~~risk.~~

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

1 ~~(d) Commencing January 1, 2023, in addition to the periodic~~
 2 ~~training required in subdivision (c), during a wildfire smoke~~
 3 ~~emergency and prior to distribution of the N95 respirators, an~~
 4 ~~agricultural employer shall conduct refresher training, as developed~~
 5 ~~by regulations adopted by the board, for all agricultural employees~~
 6 ~~and supervisors of agricultural employees, specifically focused on~~
 7 ~~the safe and effective use of the N95 respirators.~~

8 *(b) The division shall develop and periodically update, and*
 9 *distribute to employers, training materials in English, Spanish,*
 10 *and pictograms for agricultural employees relating to wildfire*
 11 *smoke safety topics, including, but not limited to, employee rights,*
 12 *air quality safety, and access to, and use of, personal protective*
 13 *equipment.*

14 *(c) The training shall be provided periodically by the employers*
 15 *for agricultural employees and supervisors of agricultural*
 16 *employees. The frequency shall be established by regulations*
 17 *adopted by the board and shall be based upon the regional wildfire*
 18 *risk.*

19 SEC. 3. No reimbursement is required by this act pursuant to
 20 Section 6 of Article XIII B of the California Constitution because
 21 the only costs that may be incurred by a local agency or school
 22 district will be incurred because this act creates a new crime or
 23 infraction, eliminates a crime or infraction, or changes the penalty
 24 for a crime or infraction, within the meaning of Section 17556 of
 25 the Government Code, or changes the definition of a crime within
 26 the meaning of Section 6 of Article XIII B of the California
 27 Constitution.

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

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