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UNFINISHED BUSINESS

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Bill No: SB 606  
Author: Gonzalez (D), et al.  
Amended: 9/2/21  
Vote: 21

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SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 3/22/21  
AYES: Cortese, Durazo, Laird, Newman  
NOES: Ochoa Bogh

SENATE JUDICIARY COMMITTEE: 9-2, 4/6/21  
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Stern,  
Wieckowski, Wiener  
NOES: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21  
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski  
NOES: Bates, Jones

SENATE FLOOR: 28-7, 6/2/21  
AYES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Durazo,  
Eggman, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, Limón,  
McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg,  
Wieckowski, Wiener  
NOES: Bates, Borgeas, Dahle, Grove, Jones, Ochoa Bogh, Wilk  
NO VOTE RECORDED: Dodd, Glazer, Hurtado, Melendez, Nielsen

ASSEMBLY FLOOR: 53-19, 9/8/21 - See last page for vote

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**SUBJECT:** Workplace safety: violations of statutes: enterprise-wide violations:  
egregious violations

**SOURCE:** Author

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**DIGEST:** This bill establishes a rebuttable presumption that an employer’s written policy that violates specified health and safety regulations exists at all of an employer’s worksites and adds a definition of “egregious violation” that carries specified additional penalties.

*Assembly Amendments:*

- 1) Remove a process by which an employer could apply for a stay of abatement for the issuance of an enterprise-wide citation. Instead, abatement may only be stayed as permitted under Section 362 of Title 8 of the California Code of Regulations.
- 2) Provides that an employer’s written policy or procedure does not form the basis for an enterprise-wide citation if it violates an emergency regulation adopted or amended within the last 30 days, commencing from the date of the vote of the standards board on the emergency regulation.
- 3) Changes a definition from “egregious employer” to “egregious violation” and defines it to mean a willful violation, as specified.
- 4) Require that the conduct underlying an egregious violation must have occurred within the five years preceding the citation. Once a violation is determined to be egregious, that determination remains in effect for five years.
- 5) Remove sections of this bill amending Labor Code Sections 6427, 6428 and 6430, instead leaving them as they are under existing law.
- 6) Clarify particular sections of SB 606 that do not apply to the Department of Corrections and Rehabilitation, the California Correctional Health Care Services, or the State Department of State Hospitals.
- 7) Define “catastrophe” for the purposes of the given paragraph, to mean inpatient hospitalization, regardless of duration, of three or more employees resulting from an injury illness or exposure caused by a workplace hazard or condition.

**ANALYSIS:**

Existing law:

- 1) Establishes Cal/OSHA within the Department of Industrial Relations (DIR), and gives Cal/OSHA the power, jurisdiction, and supervision over every place of employment in this state which is necessary to enforce and administer all

laws requiring places of employment to be safe, and requiring the protection of the life, safety, and health of every employee. (LAB §6300, et seq.)

- 2) Requires Cal/OSHA to issue a citation to an employer who it believes, upon inspection or investigation, has violated Section 25910 of the Health and Safety Code or any standard, rule or order of Division 1 of the Labor Code. Each citation must be in writing and must describe the nature of the violation, including a reference to the provision of the code, standard, rule, regulation, or order alleged to have been violated. The citation must also include a reasonable time for the abatement of the alleged violation. The period specified for abatement shall not commence running until the date the citation or notice is received or the date the return is made to the post office. (Labor Code §6317)
- 3) Allows Cal/OSHA to issue a “notice” in lieu of a citation for violations found in an inspection or investigation which meet either of the following requirements:
  - a) The violations do not have a direct relationship upon the health or safety of an employee.
  - b) The violations do not have an immediate relationship to the health or safety of an employee, and are of a general or regulatory nature. A notice in lieu of a citation may be issued only if the employer agrees to correct the violations within a reasonable time, as specified by the division, and agrees not to appeal the finding of the division that the violations exist. A notice issued pursuant to this paragraph shall have the same effect as a citation for purposes of establishing repeat violations or a failure to abate.
- 4) Requires employers to establish, implement and maintain an effective Injury and Illness Prevention Program that is written, except as specified, and shall include, among other things, the following elements:
  - a) A system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.
  - b) The employer’s methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.
  - c) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee’s job assignment.
  - d) The employer’s system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. (Labor Code §6401.7)

- 5) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid. A report must be filed within five days after the employer obtains knowledge of the injury or illness. In addition to this report, in every case involving a serious injury or illness, or death, the employer is required to make an immediate report to Cal/OSHA by telephone or email. (Labor Code §6409.1)
- 6) Requires an employer to notify all employees within one business day of learning of potential exposure to COVID-19 and provide affected workers and their exclusive representative (if applicable) with written notice of the exposure, information about accessible federal and state sick leave programs, and a reminder of existing anti-discrimination and anti-retaliation protections. (Labor Code §6409.6)
- 7) Requires an employer to notify a local public health agency within 48 hours if an employer is notified that the number of COVID-19 cases are high enough to classify the exposure as an outbreak. (Labor Code §6409.6)
- 8) Prohibits an employer from discharging an employee or discriminating, retaliating against, or taking any adverse action against any employee or applicant for employment because the employee or applicant filed a bona fide complaint or claim relating to that employee's employment rights. Further prohibits an employer from retaliating against an employee because of a written or oral complaint that the employee is owed unpaid wages, or because the employee has testified or is about to testify in a proceeding resulting from a code violation. (Labor Code §98.6)

This bill:

- 1) Establishes a rebuttable presumption that an employer who has multiple worksites has committed an enterprise-wide violation if either of the following are true:
  - a) The employer has a written policy or procedure that violates 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, any provision of this division, or any standard, rule, order, or regulation established pursuant to Division 5 of the Labor Code.
  - b) Cal/OSHA has evidence of a pattern or practice of the same violation or violations involving more than one of the employer's worksites.

- 2) Prohibits Cal/OSHA from issuing a notice instead of a citation if either of the following are true:
  - a) The employer's violations are serious, willful, or arise from a failure to abate.
  - b) The number of first instance violations found in the inspection, other than serious, willful or repeated violations, is 10 or more violations.
- 3) Requires Cal/OSHA to issue a citation to an egregious employer who Cal/OSHA believes to have willfully violated an occupational safety or health standard.
- 4) Defines "egregious violation" to mean a willful violation, where one or more of the following is true about the employer in question:
  - a) The employer, intentionally through voluntary action or inaction, made no reasonable effort to eliminate the known violation.
  - b) The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses.
  - c) The violations resulted in persistently high rates of worker injuries or illnesses.
  - d) The employer has an extensive history of prior violations of this section of Labor Code.
  - e) The employer has intentionally disregarded their health and safety responsibilities.
  - f) The employer's conduct, taken as a whole, amounts to clear bad faith in performance of their duties to provide occupational safety to their employees.
  - g) The employer has committed a large number of violations so as to undermine the effectiveness of any safety and health program that might be in place.
  - h) The conduct underlying an egregious violation must have occurred within the five years preceding the citation. Once a violation is determined to be egregious, that determination remains in effect for five years.
  - i) This section does not apply to the Department of Corrections and Rehabilitation, the California Correctional Health Care Services, or the State Department of State Hospitals
- 5) Requires the Cal/OSHA appeals board to issue an enterprise-wide order of abatement to an employer if it found by Cal/OSHA that the employer committed an enterprise-wide violation.

- 6) Provides that the application to the superior court accompanied by affidavit showing that Cal/OSHA has grounds to issue an egregious violation citation is enough to warrant the immediate granting of a temporary restraining order, up to the court's discretion.
- 7) Requires that any employer who commits an enterprise-wide violation may be assessed a civil penalty of not more than \$123,709.

## Comments

*Need for this bill?* Since 1973, California has granted investigatory authority to Cal/OSHA two years after the forming of Federal OSHA in 1971. Broadly, Cal/OSHA's statutory duty is to promulgate workplace safety standards that employers in California must adhere to, from the removal of toxic substances to ergonomic standards to worksite accommodations. Cal/OSHA is also tasked with responding to worker complaints and investigating worksites where there is evidence that standards are not being met and, if necessary, penalizing employers who fail to meet standards and put their workers in unnecessary danger.

Of specific relevance to SB 606 is the promulgation of OSHA Instruction CPL 2.80, issued on October 19, 1990. This instruction laid out the basis of the "egregious or violation-by-violation penalty procedure". The thinking behind this approach was included in the instruction and stated that:

"Over the past several years, in a limited number of cases OSHA has alleged a separate violation and proposed a separate penalty for each instance of noncompliance with OSHA recordkeeping regulations, with the safety and health standards, and with the General Duty Clause [Section 5(a)(1) of the Occupational Safety and Health Act (the Act)]. The resulting large aggregate penalties are part of a compliance strategy which improves the efficiency and effectiveness of the agency and conserves its limited resources... The large proposed penalties that accompany violation-by-violation citations are not, therefore, primarily punitive nor exclusively directed at individual sites or workplaces; they serve a public policy purpose; namely, to increase the impact of OSHA's limited enforcement resources."

(OSHA Instruction CPL 2.80 October 21, 1990, Directorate of Compliance Programs)

Put simply, the egregious penalty procedure on the federal level involves charging an employer who has displayed an unwillingness to take proper steps to ensure workplace safety with separate instances of violations of OSHA standards, rather

than one blanket violation for all instances. This results in a much higher penalty, especially for larger employers, and serves as a powerful incentive for the egregious employer and other employers who might otherwise not prioritize ensuring their worksites meet OSHA standards.

SB 606 attempts to codify this egregious violation standard at the state level and give Cal/OSHA the ability to stack penalties in cases where an employer has willfully and negligently refused to keep up safety standards. Furthermore, SB 606 gives Cal/OSHA the ability to seek an order of abatement against an employer-wide policy or practice that violates the Health and Safety Code and presumes that a written policy that an employer holds is policy at all worksites. This can be integral, as it allows Cal/OSHA to act quickly to prevent an egregious employer from continuing to operate multiple unsafe worksites and potentially prevent further injuries.

There are a few small areas of concern that could be addressed. While the egregious employer standard exists within Federal OSHA, the language of that federal standard is different from the one contained within SB 606, as are the penalties associated with Federal OSHA standards. This could result in different outcomes for the policies. Finally, the rebuttable presumption that a written policy by an employer is the case at all worksites under the control of that employer applies to all violations of health and safety code, as well as labor code. This is a wide expansion in coverage and could require additional training for OSHA staff. The author could consider expanding to select portions of those codes, to ease in enforcement and compliance.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, costs of approximately \$1.2 million in the first year and ongoing costs, likely in the millions of dollars, to DOSH to bolster enforcement of labor law violations (Special Fund). DOSH notes that utilizing enterprise-wide citations, egregious employer citations and aggregated citations is a significant enhancement of existing enforcement procedures, which would likely trigger additional complex appeals and litigation from employers. DOSH also anticipates needing significant additional attorney and support staff resources to amend existing regulations and promulgate new ones to ensure consistent application of enforcement authority.

**SUPPORT:** (Verified 9/8/21)

Alliance of Californians for Community Empowerment Action  
Asian Americans Advancing Justice - California

California Alliance for Retired Americans  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Employment Lawyers Association  
California Federation of Teachers AFL-CIO  
California Food and Farming Network  
California Immigrant Policy Center  
California Institute for Rural Studies  
California Labor Federation, AFL-CIO  
California Nurses Association  
California Professional Firefighters  
California Rural Legal Assistance Foundation, Inc..  
California State Council of Service Employees International Union  
Californians for Pesticide Reform  
Center on Policy Initiatives  
Central California Environmental Justice Alliance  
Central Coast Alliance United for A Sustainable Economy  
Centro Binacional Para El Desarrollo Indígena Oaxaqueno  
Ceres Community Project  
Comite Civico Del Valle  
Consumer Attorneys of California  
Courage California  
Ecology Center  
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO  
Environmental Working Group  
Equal Rights Advocates  
Fibershed  
Koreatown Immigrant Workers Alliance  
Latino Coalition for A Healthy California  
Leadership Counsel for Justice & Accountability  
Legal Aid At Work  
Lideres Campesinas  
Marin Food Policy Council  
National Employment Law Project  
National Lawyers Guild San Francisco Bay Area Chapter  
National Young Farmers Coalition  
Pesticide Action Network North America  
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO  
Restaurant Opportunities Centers of California  
Roots of Change

The Praxis Project  
Transit Workers Union California State Conference  
Unite Here International Union, AFL-CIO  
United Food and Commercial Workers, Western States Council  
Utility Workers Union of America, AFL-CIO  
Warehouse Worker Resource Center  
Western Center on Law & Poverty  
Working Partnerships USA  
Worksafe

**OPPOSITION:** (Verified 9/8/21)

Acclamation Insurance Management Services  
African American Farmers of California  
Allied Managed Care  
American Pistachio Growers  
American Staffing Association  
Association of California Healthcare Districts  
Auto Care Association  
California Apartment Association  
California Association of Health Facilities  
California Association of Joint Powers Authorities  
California Association of Sheet Metal & Air Conditioning Contractors National  
Association  
California Association of Winegrape Growers  
California Attractions and Parks Association  
California Beer and Beverage Distributors  
California Builders Alliance  
California Building Industry Association  
California Business Properties Association  
California Business Roundtable  
California Chamber of Commerce  
California Cotton Ginners and Growers Association  
California Farm Bureau  
California Framing Contractors Association  
California Fresh Fruit Association  
California Grocers Association  
California Hospital Association  
California Landscape Contractor's Association  
California League of Food Producers  
California Railroads

California Restaurant Association  
California Retailers Association  
California Special Districts Association  
California Staffing and Recruiting Association  
California State Association of Counties  
California Travel Association  
CAWA - Representing the Automotive Parts Industry  
Cemetery and Mortuary Association of California  
Civil Justice Association of California  
Coalition of Small and Disabled Veteran Businesses  
El Dorado County Chamber of Commerce  
El Dorado Hills Chamber of Commerce  
Elk Grove Chamber of Commerce  
Family Business Association of California  
Family Winemakers of California  
Flasher Barricade Association  
Folsom Chamber of Commerce  
Housing Contractors of California  
National Federation of Independent Business  
Nisei Farmers League  
Official Police Garages of Los Angeles  
Public Risk Innovation, Solutions, and Management  
Rancho Cordova Chamber of Commerce  
Residential Contractors Association  
Roseville Area Chamber of Commerce  
Sacramento Regional Builders Exchange  
Southwest California Legislative Council  
United Chamber Advocacy Network  
Western Agricultural Processors Association  
Western Car Wash Association  
Western Electrical Contractors Association  
Western Growers Association  
Western Steel Council  
Yuba Sutter Chamber of Commerce

**ARGUMENTS IN SUPPORT:** WorkSafe writes, “All California workers deserve real protections from COVID-19 and other workplace hazards. Yet, during this health and safety crisis, Worksafe works directly with employees who face unacceptable risks at work every day, and fear asserting their health and safety rights due to the ever-impending threat of employer retaliation. The single biggest obstacle in addressing that threat is Cal/OSHA’s lack of necessary tools to hold

large employers accountable for their workplace health and safety violations. Passing SB 606 will help solidify employee rights, and also increase accountability for employers who fail to comply with labor laws and guidelines to protect vulnerable populations from workplace hazards.”

**ARGUMENTS IN OPPOSITION:** The California Chamber of Commerce writes, “Employers across California are already struggling to comprehend and keep up with rapidly-changing state and local health guidelines related to COVID-19, as well as a new and rapidly-evolving COVID-19 ETS. At the same time, Cal/OSHA is already working hard to educate, explain, and enforce the COVID-19 ETS (as well as all their other regulations). SB 606 will not improve this situation – it will only add confusion and duplication with its provisions and catch well-intentioned employers in its vaguely-defined net of penalties and litigation.”

ASSEMBLY FLOOR: 53-19, 9/8/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon  
NOES: Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Nguyen, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron  
NO VOTE RECORDED: Cooley, Cooper, Daly, Frazier, Gray, Grayson, Mayes, Salas

Prepared by: Jake Ferrera / L., P.E. & R. / (916) 651-1556  
9/8/21 21:33:29

\*\*\*\* END \*\*\*\*