

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 831 (Cortese)
Version: April 20, 2022
Hearing Date: April 26, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Motion picture productions: set safety: firearms: ammunition

DIGEST

This bill establishes new safety rules for motion picture production worksites, including conditions for the use of firearms, firearm-like devices, blanks, and ammunition as props. The bill contains training, reporting, and enforcement provisions as well.

EXECUTIVE SUMMARY

The tragic death of cinematographer Halyna Hutchins during filming of the movie “Rust” in October 2021 underscored the very real danger behind much of the violence depicted in the movies and on television. This bill seeks to establish new safety laws for the production of motion pictures, with a particular focus on the conditions in which firearms and ammunition –both real and imitation – can be used on set. At the broader level, the bill requires each production to have a dedicated supervisor of set safety, responsible for conducting an overall risk assessment prior to filming and for overseeing safety throughout the production. Narrower components of the bill include: (1) restrictions on when real and imitation firearms and ammunition may be used; (2) training requirements for any cast or crew members who will be in proximity to firearms on set; (3) a mandate to report any incidents involving firearms on set; and (4) a set of graduated penalties for violations depending on the level of seriousness and whether the violation has happened before. Finally, the bill directs the Occupational Health and Safety Division (CalOSHA) to develop regulations for motion picture production worksites consistent with the bill.

The bill is sponsored by the California International Alliance of Theatrical and Stage Employees Council, and the Directors Guild of America, who assert that it is needed to bolster workplace safety in an increasingly fast-paced, high-pressure industry. Opposition comes from a special effects and pyrotechnics trade organization that contends that existing law is sufficient if followed. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 5-0. If it passes out of this Committee, it will next be heard by the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Lab. Code §§ 6300 *et seq.*)
- 2) Establishes the Occupational Safety and Health Standards Board, within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthy workplace for workers. (Lab. Code §§ 140 - 147.6.)
- 3) Requires employers to establish, implement and maintain an effective Injury and Illness Prevention Program (IIPP) that must include, among other things, a system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices and the employer's methods and procedures for correcting those unsafe or unhealthy conditions and work practices in a timely manner. The IIPP must also include the employer's system for communicating with employees on occupational health and safety matters. (Lab. Code § 6401.7.)
- 4) 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. (Lab. Code § 6409.1.)
- 5) Requires Cal/OSHA to investigate a place of employment, with or without notice or hearings, if the division learns or has reason to believe that a job or place of employment is not safe or is injurious to the welfare of an employee based on a complaint received or on its own motion. Applies specified timeframes for the investigation if a complaint is deemed to allege a serious violation. (Lab. Code § 6309.)
- 6) Authorizes Cal/OSHA to issue citations to employers when it has evidence that an employee was exposed to a hazard in violation of any requirement enforceable by the division. (Lab. Code § 6400.)
- 7) Prohibits a person from discharging or in any manner discriminating against any employee because the employee, among other things, reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports

and records, or exercised any other rights protected by the federal Occupational Safety and Health Act, as specified. (Lab. Code § 6310.)

- 8) Prohibits employers from laying off or discharging an employee for refusing to perform work in violation of prescribed safety standards, where the violation would create a real and apparent hazard to the employee or the employee's co-workers. (Lab. Code § 6311.)
- 9) Authorizes any person who is at least 21 years of age to apply for an entertainment firearms permit from the DOJ, which enables the permitholder to possess firearms loaned to the permitholder for use as a prop in a motion picture, television, video, theatrical, or other entertainment production or event. (Pen. Code § 29500.)
- 10) Prohibits the DOJ from issuing an entertainment firearms permit unless the application includes specified information and records indicate that the applicant is not prohibited from possessing or receiving firearms pursuant to any federal, state or local law. (Pen. Code §§ 29505, 29510 & 29515.)
- 11) Provides that an entertainment firearms permit issued by the DOJ is valid for one year, and if at any time during that year the permit holder becomes prohibited from possessing or receiving firearms pursuant to any law, the permit is no longer valid. (Pen. Code § 29530(a), (b).)

This bill:

- 1) Makes a series of findings and declarations regarding:
 - a) the particular importance of safety on movie production sets given the dangerous conditions and maneuvers involved;
 - b) the positive impact on overall safety that will result from the introduction of a mandatory safety supervisor on set;
 - c) the importance of following voluntary safety standards developed by the Industry-Wide Labor-Management Safety Committee, including its recommendations for safety with firearms and the use of blanks and ammunition; and
 - d) the preventability of tragic accidents involving firearms on set so long as safety measures are followed by trained, experienced, certified, and professional entertainment industry armorers.
- 2) Expresses the legislative intent behind the bill to raise safety standards on sets and regulate ammunition, blanks, and firearms that are capable of firing ammunition or blanks.
- 3) Disavows any legislative intent to do either of the following:

- a) adversely impact the employment or retention of craft employees responsible for handling firearms used in motion picture productions; or
 - b) preclude the use of firearms, replica, simulated, or inert prop firearms or to influence content in motion picture productions.
- 4) Defines a “set safety supervisor” as a person independent of the cast and crew who is not employed for any other role on the project; has autonomy and authority for overall safety on the set; has the authority to halt production for further review without being disciplined for exercising this authority in good faith; and who meets at least all of the following qualifications:
- a) at least five years’ experience on set in the film and television industry;
 - b) completion of a joint labor and management training on industry protocols, state and federal law, and best practices on set safety or equivalent accredited training;
 - c) completion of a 30-hour training program authorized by the federal Occupational Safety and Health Administration; and
 - d) qualified in assessing and mitigating workplace risk in the entertainment industry.
- 5) Requires a movie production employer to hire a qualified set safety supervisor to perform an overall risk assessment prior to the first day of production of a feature, an episode of a series, or a program, and to be on set daily to ensure cast and crew are not engaged in or exposed to an environment or activity that puts workers’ health and safety at risk.
- 6) Prohibits the use of firearms and blank ammunition containing gunpowder or any other explosive charge on a movie set except under the following conditions:
- a) under the custody and control of a qualified armorer, property master, or designee;
 - b) the armorer or the property master, if acting as armorer, is the only person authorized to hand that firearm to the performer or cast or crew member standing in for that performer during the scene and to collect the firearm upon completion of the activity;
 - c) the armorer, property master, or designee, has no other duties, responsibilities, or obligations during the time they are preparing for the use of a firearm, while the firearm is in the possession of the performer, and until firearms are no longer in use and have been locked away;
 - d) a safety meeting is conducted for any scene that will involve a firearm; and
 - e) the employer has ensured sufficient staffing of qualified armorers, property masters, or designees, reflective of the amount of firearm use in any particular scene.
- 7) Requires a qualified armorer, property master, or designee handling a firearm in the course of the motion picture production to meet specified qualifications.

- 8) Prohibits the use of ammunition on film, television, and commercial sets altogether, with narrow specified exceptions.
- 9) Requires movie production employers to document or report any incident involving a firearm or blank ammunition that occurs during a film or television production as specified, regardless of whether the incident results in injury, to specified people and entities, including the relevant union and CalOSHA.
- 10) Requires a motion picture production employer to ensure that any employee handling or in close proximity to firearms on set receives specified training.
- 11) Exempts security guards and peace officers on the perimeter of the set from the requirements of the bill.
- 12) Provides for a graduated set of civil penalties which may be imposed for violations depending on the severity, willfulness, and number of times that a violation has taken place, with adjustments for inflation.
- 13) Directs CalOSHA to develop motion picture production safety standards based upon this bill and empowers CalOSHA to enforce them.

COMMENTS

1. The impetus for the bill

The immediate impetus for this bill was the tragic death of cinematographer Halyna Hutchins during filming of the movie “Rust” on set in New Mexico in October 2021. According to a wrongful death lawsuit filed by her husband, Ms. Hutchins was shot by the movie’s co-producer and lead actor, Alec Baldwin. The shooting occurred when Mr. Baldwin was practicing drawing and aiming a revolver for an upcoming scene while crew members, including Ms. Hutchins, were preparing the camera for filming. The movie’s director, Joel Souza, was also hit by the bullet, but he survived. The lawsuit contends that Mr. Baldwin and the production overall breached numerous safety protocols in the run up to the shooting and that the armorer – the person responsible for the custody and use of firearms on set – was not sufficiently qualified for the job. Mr. Baldwin has denied responsibility for the shooting, saying he had relied on others on the set to ensure that the gun did not contain live ammunition.¹

Ms. Hutchins’ death has been well-publicized. According to the author and sponsors, however, it was not an isolated incident. In an increasingly fast-paced and high-

¹ Jacobs & Bowley. *Family of Slain Cinematographer Sues Alec Baldwin and ‘Rust’ Producers* (Feb. 15, 2022) New York Times <https://www.nytimes.com/2022/02/15/movies/rust-lawsuit-halyna-hutchins.html> (as of Apr. 18, 2022).

pressure industry, they suggest, injuries, fatalities, and near-misses happen all the time. As expressed by the sponsor of the bill:

The magic of film and television can obscure the dangers of working in motion picture production. Shooting is often outside and subject to all kinds of weather and terrain conditions. Workers are involved in stunts. Climbing, rigging, complex electrical set-up, explosions, car chases, loading and unloading heavy equipment and other potential threats to safety, many of which cannot be planned for in advance, and all of which can create potentially dangerous situations for workers.

The growing popularity of and demand for programming on a diverse array of media platforms has compressed schedules and increased the pressure to meet too often unrealistic delivery dates, making sets less safe. There are long days and irregular schedules as productions are rushed to meet deadlines, that in turn accelerate the pace of work in an environment where fatigue caused by unsafe hours and unpredictable schedules is common. All this increases the likelihood that safety may take a back seat to making production deadlines resulting in accidents.

Thus, while the death of Ms. Hutchins provides the immediate impetus for the bill, its intent is to address broader concerns around safety on motion picture production sets.

2. The solution proposed by this bill

This bill proposes a series of measures intended to improve safety protocols on motion picture production sets. The focus is primarily on the use of firearms and ammunition on set, but some aspects of the proposed measures extend more broadly.

First, the bill would require movie production employers to hire a designated “set safety supervisor” responsible exclusively for conducting an overall risk assessment prior to the first day of production and for overseeing worker health and safety during each day of production. Only people with specified training and experience in workplace safety in the context of the entertainment industry would be qualified for the role. It is unclear how many individuals currently exist who would meet these qualifications. The bill emphasizes that the set safety supervisor must be given the authority to call production to a halt for further safety review without being subject to discipline for doing so.

Second, the bill sets forth limitation on when firearms and blanks can be used on motion picture production sets. In essence, firearms and blanks could only be used if kept strictly under the control of a qualified armorer – a crew member trained and

dedicated to safe and proper handling of weapons – at nearly all times. The armorer would have to hand the firearm in question directly to the performer or crew member using it and take it back as soon as the performer or crew member is finished with it. Except in very narrow and specific circumstances, the bill prohibits the use of actual ammunition on motion picture production sets altogether.

Third, the bill requires a motion picture production employer to ensure that any employee handling or in close proximity to firearms on set receives specialized training. Specifically, the employer is supposed to make sure that such employees go through the Contract Services Administration Trust Fund (CSATF) Firearms Safety Course for the Entertainment Industry or its equivalent. According to CSATF, that course “covers regulations and rules that apply to firearms and ammunition in the entertainment industry; the types of guns, firearms, and ammunition used for entertainment purposes; and safe practices when guns of any type are used on set.”²

Fourth, the bill requires motion picture production employers to document or report any incident involving a firearm or blank ammunition that occurs on set, regardless of whether the incident results in injury. Among others, the employers would have to report the incident to the relevant union and to Cal/OSHA.

Finally, the bill directs Cal/OSHA to develop workplace safety standards for motion picture production sets based off of the content of the bill.

3. Comparison with existing motion picture production safety protocols

Writing in opposition to this bill, the Alliance of Special Effects and Pyrotechnic Operators (ASEPO) argues that safety protocols on California motion picture production sets are already sufficient. Though it has not taken a position on this bill, the Motion Picture Association (MPA) provided the Committee with an outline of the primary “regulations, industry standards and practices to which productions adhere for the health and safety of cast and crew.”

These include the Injury and Illness Prevention Program (IIPP) that all California employers are legally required to develop. (Lab. Code § 6401.7.) An IIPP requires the identification of people who will be responsible for implementing the safety plan. (Lab. Code § 6401.7(a)(1). IIPP’s also require periodic inspections to be performed to identify unsafe conditions and practices. (Lab. Code § 6401.7(a)(2).) These requirements are similar in some ways to the role of the set safety supervision proposed by this bill. However, a set safety supervisor would have to be on set daily and, perhaps most significantly, would have the autonomous authority to halt production in order to protect the safety and welfare of the cast and crew.

² *Course Descriptions*. Contract Services Administration Trust Fund https://www.csatf.org/sppdesc-course_descriptions/ (as of Apr. 18, 2022).

According to the MPA, on motion picture production sets involving unionized labor:

[t]he Producers and Unions participate in the Industry-wide Labor Management Safety Committee (“Safety Committee”) which meets monthly to address safety issues that arise on production. The Safety Committee has issued more than 40 Safety Bulletins that are utilized as a guide for many elements of the production process to ensure that production is conducted in a safe manner.

Some of these bulletins address the use of firearms, ammunition, and explosives on motion picture production sets. In this regard then, one of the main functions of this bill would be to impose similar protocols on non-union production sets.

Finally, whereas all employers in California are required to report any serious workplace injuries or illnesses (Lab. Code § 6409.1), this bill goes further by requiring that any incident involving a firearm must be reported to Cal/OSHA regardless of whether or not an injury occurred.

4. Considerations specific to the bill’s legal enforcement provisions

This Committee’s primary policy jurisdiction over this bill has to do with its legal enforcement provisions. Under the bill, any violation of its proposed safety standards can subject the employer to civil penalties. Those civil penalties begin at \$13,277 for violations found not to be serious and go up to \$132,765 for willful and repeated violations. The bill provides for those figures to rise in line with inflation.

The bill authorizes Cal/OSHA to enforce the provisions of the bill and the Cal/OSHA standards that are to be developed. Because the bill’s provisions appear in the Labor Code, they could also be enforced by any aggrieved employee stepping into the shoes of Cal/OSHA pursuant to the Private Attorney General Act (PAGA). (Lab. Code §§ 2698 *et seq.*) It is important to note, however, that PAGA plaintiffs seeking to enforce workplace safety standards are subject to certain prerequisites. (Lab. Code § 2699.3(b).) Specifically, before a PAGA plaintiff can bring a lawsuit arising from a violation of a Cal/OSHA statute or standards, that plaintiff must first notify Cal/OSHA of the alleged violation. Cal/OSHA is then obligated to investigate the allegation. If Cal/OSHA finds that a violation has taken place, Cal/OSHA issue a citation to the employer. Provided that the employer corrects the violation, no PAGA suit may be brought. The plaintiff may only proceed with the PAGA lawsuit if Cal/OSHA declines to issue a citation and a court later agrees that Cal/OSHA should have issued a citation. (Lab. Code § 2699.3(b).)

The imposition of any penalty for violation of a law raises due process considerations. Both the state and federal constitutions prohibit the government from depriving anyone

of property – in this case the money associated with paying a penalty – without adequate procedural protections to ensure the deprivation is not arbitrary or unfair. (U.S. Const., Amend. 14, §1; Cal. Const., art. I, §7(a).) In this instance, the penalties would be imposed by Cal/OSHA, which has a robust set of administrative law procedures that it follows whenever it proposes to fine employers for workplace safety violations. (*See, e.g.*, Lab. Code §§ 6308-6309; 6317, & 6319.) Accordingly, this bill does not raise procedural due process concerns.

The award of monetary damages as punishment can, at extremes, raise substantive due process concerns. In other words, even if the procedure for determining whether or not a defendant has to pay is sufficient, monetary penalties can still violate due process if they are set up in ways that might bias the entity imposing the fines. (*Ward v. Village of Monroeville* (1972) 409 U.S. 57.) Where the penalties do not impact the compensation of the people imposing them and where any revenue from the penalties only makes up a small fraction of the imposing entity's overall budget, no constitutional due process concerns arise. (*Marshall v. Jerrico, Inc.* (1980) 446 U.S. 238, 243). In the case of this bill, Cal/OSHA salaries and benefits are entirely unrelated to the amount that the agency takes in in penalties and the size of the fine are minimal in comparison to Cal/OSHA's overall budget. For these reasons, this bill does not appear to raise substantive due process concerns.

The imposition of civil penalties can also violate constitutional prohibition on excessive fines. (U.S. Const., 8th Amend; Cal. Const., art. I, § 17.) Whether a civil penalty is excessive depends on its proportionality to the underlying. (*United States v. Bajakajian* (1998) 524 U.S. 321, 334.) In the case of this bill, the civil penalties graduate upward in relationship to the seriousness of the violation, whether the violation was willful, and how often it occurred. More significantly, the penalty amounts set forth in the bill are maximums; Cal/OSHA would retain the authority to impose lesser amounts where appropriate. Ultimately, an employer could challenge a specific Cal/OSHA fine imposed pursuant to this bill as excessive in proportion to the violation in question, but the bill on its face does not appear to raise constitutional concern.

5. Arguments in support of the bill

According to the author:

Tragic accidents like the one that occurred on the set of "Rust" are preventable, but only when safety measures are followed. SB 831 began as a response to the tragedy on the Rust set. But it has evolved, through numerous discussions I have had with the unions and guilds representing workers in the entertainment industry, into legislation that addresses the broader issue of overall health and safety on sets. The magic of film and television can obscure the dangers of working in motion picture productions. Shooting is

often outside, subject to all kinds of weather and terrain conditions where workers can be involved in anything from stunts, complex electrical set up, car crashes, and even explosions all while working long and irregular hours. Workers in the entertainment industry deserve the right to go to work and be safe while making a living. Senate Bill 831 establishes clear, enforceable safety standards to protect workers on film and television productions.

As sponsor of the bill, the California International Alliance of Theatrical and Stage Employees Council writes:

SB 831 [...] establishes clear, enforceable safety standards to protect workers on film and television productions. It restricts the use of live ammunition on set, mandates sufficient staffing of qualified personnel when firearms are on set, and requires that only crew with specified industry training, experience and qualifications manage firearms during production. Most importantly, the bill recognizes that ensuring the overall health and safety on sets requires on the ground oversight. Each professional on a set is uniquely focused on their job—armorers for firearm safety, stunt coordinators for stunts, lighting crew, rigging, hair and makeup, drivers and so on. However, there is no designated person on set whose sole responsibility is to ensure the overall safety of the cast and crew. This bill requires employers to have to have a trained and qualified Safety Supervisor on all production unit. They will be tasked with conducting pre-production and will be on set every day to ensure the health and safety of cast, crew, and everyone involved in the production.

In support, the Screen Actors Guild – American Federation of Television & Radio Artists writes:

The tragedy on the Rust set has brought the issue of safety on film and television productions front and center and we applaud the author for tackling this issue holistically. The reality is that sets are very dangerous workplaces for all involved and it is necessary for the state to step in, just as it does in other dangerous industries, to establish clear and enforceable guidelines to protect the workforce. Having an independent safety supervisor, looking at all the risks and addressing them pre-production is critical to a safer working environment. Equally important are clear and enforceable rules around the use of firearms.

6. Arguments in opposition to the bill

In opposition to the bill, the Alliance of Special Effects and Pyrotechnic Operators, Inc., writes:

We appreciate and fully support efforts to prevent accidents such as the tragedy that claimed the life of Halyna Hutchins on the set of "Rust" in New Mexico last October. However, SB-831 would not have prevented this tragedy that occurred in another state, and the language within it will negatively impact motion picture production here in California where we have already successfully addressed such issues from within the industry itself.

SUPPORT

California International Alliance of Theatrical and Stage Employees Council (sponsor)

Directors Guild of America (sponsor)

American Society of Cinematographers

Entertainment Union Coalition

International Alliance of Theatrical and Stage Employees, Local 16

International Alliance of Theatrical and Stage Employees, Local 33

International Alliance of Theatrical and Stage Employees, Local 44

International Alliance of Theatrical and Stage Employees, Local 80

International Alliance of Theatrical and Stage Employees, Local 119

International Alliance of Theatrical and Stage Employees, Local 504

International Alliance of Theatrical and Stage Employees, Local 521

International Alliance of Theatrical and Stage Employees, Local 600

International Alliance of Theatrical and Stage Employees, Local 695

International Alliance of Theatrical and Stage Employees, Local 705

International Alliance of Theatrical and Stage Employees, Local 706

International Alliance of Theatrical and Stage Employees, Local 728

International Alliance of Theatrical and Stage Employees, Local 729

International Alliance of Theatrical and Stage Employees, Local 800

International Alliance of Theatrical and Stage Employees, Local 839

International Alliance of Theatrical and Stage Employees, Local 871

International Alliance of Theatrical and Stage Employees, Local 884

International Alliance of Theatrical and Stage Employees, Local 892

Independent Studio Services

LiUNA! Local 724

Los Angeles County Federation of Labor

San Francisco Labor Council

San Mateo Labor Council

Screen Actors Guild - American Federation of Television and Radio Artists

Teamster Local 399

OPPOSITION

Alliance of Special Effects and Pyrotechnic Operators, Inc.

RELATED LEGISLATION

Pending Legislation: SB 829 (Portantino, 2022) authorizes the use of a firearm on a production of a motion picture if the firearm is used with blanks and remains under the supervision of an armorer at all times, as specified. The bill also establishes training requirements associated with the use of firearms in the production of motion pictures. SB 829 is currently pending consideration before the Senate Governmental Organization Committee.

Prior Legislation: None known.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement (Ayes 5, Noes 0)
