

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2738 (Luz Rivas)
Version: May 20, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Labor Code: alternative enforcement: occupational safety

DIGEST

This bill provides for the enforcement of workplace safety laws regarding the set up, operation, and tear down of live entertainment venues by public prosecutors, and makes various other changes to the public prosecutor statute and the workplace safety statute for live entertainment venues.

EXECUTIVE SUMMARY

In recent years, there have been numerous reports of unsafe work conditions at the set up, operation, and tear down of live entertainment events like concerts. The reports highlight stories of workers being seriously injured or dying across the state and country because of the poor workplace safety at these live entertainment events. In light of these reports, the California Legislature enacted AB 1775 in 2022 to require that live entertainment vendors and their subcontractors of live entertainment events at public venues verify that their workers have received workplace safety trainings and that lead workers are certified. AB 1775 also provided the California Division of Occupational Safety and Health with authority to investigate alleged violations of these rules, and issue citations to live entertainment vendors who are not in compliance with AB 1775's rules. However, in the year since AB 1775's enactment, stronger paths for enforcement and transparency are needed. In 2023, the Legislature enacted AB 594 to provide the Attorney General, city attorneys, county counsel, and district attorneys with the authority to prosecute civil and criminal violations of various sections of labor law. However, AB 594 did not initially include enforcement for workplace safety violations. This bill attempts to provide for greater enforcement of the workplace safety rules for live entertainment events at public venues by providing public prosecutors the authority to also enforce AB 1775's provisions. This bill also makes numerous changes to the public prosecutor provisions, including that a prevailing plaintiff in any case brought by a public prosecutor must be awarded reasonable attorney's fees. This bill

provides that the contracts between live entertainment vendors and contracting entities must provide for the contracting entity providing the names and training and certification credentials of the vendor and any subcontractor's employees. AB 2738 is sponsored by the California Labor Federation, supported by the California School Employees Association, and is opposed by the California Chamber of Commerce and other business groups. It passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4 to 1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code § 50.5.)
- 2) Establishes within the DIR the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC with ensuring a just day's pay in every workplace through robust enforcement of labor laws, including the investigation of complaints. (Labor Code §§ 79-107.)
- 3) Authorizes, until January 1, 2029, a public prosecutor to prosecute an action, either civil or criminal, for a violation of certain provisions of the labor code. (Labor Code §§ 181(a) and (e).)
- 4) Requires moneys recovered by public prosecutors to be applied first to payments, such as wages, damages, and other penalties, due to affected workers. Requires all civil penalties recovered by a public prosecutor in actions to be paid to the General Fund, unless otherwise specified. (Labor Code § 181(a).)
- 5) Authorizes the court to award a prevailing plaintiff in actions brought by a public prosecutor reasonable attorney's fees and costs, including expert witness fees and costs to the extent the LC would be entitled to such fees, as specified. (Labor Code § 181(c).)
- 6) Establishes the Division of Occupational Safety and Health (Cal/OSHA) within the DIR to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code § 6308.)
- 7) Requires that, if after inspection and investigation Cal/OSHA believes that an employer violated specified workplace safety laws and regulations, Cal/OSHA must issue a citation to the employer with reasonable promptness. The citation must provide a reasonable time by which the employer must abate the violation. Also

provides that Cal/OSHA may provide a notice, as specified, in lieu of a citation under certain circumstances. (Labor Code § 6317.)

- 8) Requires Cal/OSHA, if it has issued a citation or order, notify the employer of the citation or order, and provide the employer 15 working days from the receipt of the notice to notify the appeals board that they intend to contest the citation or order. (Lab. Code § 6319.)
- 9) 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. (Labor Code §§ 140-147.6)
- 10) Provides that a contracting entity shall require an entertainment events vendor to certify for its employees, and any subcontractors' employees, as part of the contract for production of any live event at its public events venue, that the employees and department heads or leads have taken specified Cal/OSHA or Occupational Safety and Health Administration (OSHA) trainings. (Labor Code § 9251(a))
- 11) Requires Cal/OSHA to enforce the entertainment vendor training provisions described above through the issuance of a citation and civil penalty, as specified, and provides that penalties for violations shall only be assessed against an entertainment events vendor, and shall not be assessed against an employee of an entertainment events vendor or an employee of a subcontractor. (Labor Code § 9252(b))

This bill:

- 1) Provides that a public prosecutor may enforce the specified sections of the Labor Code, or enforce any other provisions of the Labor Code as specifically authorized.
- 2) Specifies that moneys recovered by a public prosecutor in such an enforcement action be first applied to payments, damages, and other penalties due to affected workers, then to attorney's fees and costs if authorized, and that remaining funds must be divided equally between the General Fund, the state and the public prosecutor's office to be used to support labor law enforcement, unless otherwise specified in code.
- 3) Requires, instead of permits, that the court award reasonable attorney's fees and costs, as specified, to a prevailing plaintiff in an action brought by a public prosecutor.
- 4) Requires that the contract between an entertainment events vendor and a contracting entity provide in writing that the entertainment events vendor must furnish, upon hiring for the live event, the contracting entity with both: the names of

the employees of the entertainment events vendor and the names of employees of any subcontractors; and what training or certification the employee has completed and the date of the certification.

- 5) Specifies that the contracting entity may use or disclose to third parties the names of employees and their certifications for the purpose of carrying out the contracting entity's duties under the contract, including but not limited to verifying the employee's training and certification. Prohibits the contracting entity from disclosing the employees' information for purposes unrelated to the contracting entity's duties under the contract.
- 6) Provides that a penalty for a violation of the requirements for safety certifications may only be assessed against an entertainment events vendor, public events venue, or a contracting entity, as defined.
- 7) Provides that the requirements for safety and certifications for live entertainment venues may be enforced by a public prosecutor pursuant to the provisions that provide public prosecutors authority to enforce labor law.
- 8) Asserts that it is in the public interest to ensure that information concerning executed contracts by state and local agencies is available to the public, and furthers the Constitutional right to public access to the meetings of public bodies.

COMMENTS

1. Author's statement

According to the author:

Workplaces should be safe environments for employees to perform their tasks without the risk of injury. However, accidents and injuries can still occur despite safety measures being in place. Setting industry standards is necessary to protect our workers but laws must be coupled with enforcement mechanisms to protect workers effectively.

AB 2738 strengthens enforcement tools by increasing transparency of contractual agreements to protect stage production workers from injuries when operating live events held at public venues.

Specifically, this bill requires entertainment vendors to disclose to public venues that they must use certified and trained stage production workers in their contracts for live events in California. Additionally, it expands the existing authority of local public agencies to specifically enforce this section of the labor code and sections set forth in AB 594.

2. A lack of safety at live entertainment venue workplaces

California law regulates all workplaces in the state to ensure that employees have a safe and healthful workplace. Under California's workplace safety laws, employers must have Injury and Illness Prevention Programs, provide employees training regarding workplace safety and policies, and procedures for identifying and correcting unsafe conditions in the workplace. Employers must meet standards of safety set by the California Division of Occupational Safety and Health (Cal/OSHA), and often must have licenses or permits from Cal/OSHA to conduct certain activities, such as construction. Cal/OSHA also responds to and investigates complaints of violations of workplace safety, and issues citations and orders for violations of workplace safety laws and regulations. This regime of laws and regulations ensures that workers can be protected from injury and death while on the job, even in hazardous industries.

In 2022, the Legislature passed AB 1775 to address particular workplace safety hazards encountered by workers helping set up and tear down the equipment and infrastructure for live entertainment events like concerts. These events often include stages, lighting, and metal structures or scaffolding that can be heavy and dangerous. AB 1776 was passed after reports of numerous incidents of workers being seriously injured or dying while working on such live entertainment events. According to the Senate Judiciary Committee Analysis of AB 1775:

[The author points] to a series of recent incidents in which workers died, suffered serious injury, or only narrowly escaped those terrible outcomes while working on entertainment events of this variety. They cite, for example, three separate stage collapses in Indiana, Ottawa, and Tulsa, respectively, in 2011, and a 2019 incident in which, a lead rigger fell 60 feet and died while setting up a stage for the Coachella Valley Music and Arts Festival. To these troubling accidents, the Assembly Labor and Employment Committee's analysis of the bill adds that seven people died and 58 were injured in 2011 when strong winds knocked metal scaffolding and stage equipment into a packed crowd at the Indiana State Fair in Indianapolis. And at an outside theater in Massachusetts recently, another calamity was apparently only averted when sound crew members walked out to demand safer working conditions after enduring 13 hour days working in heavy rains and thunderstorms.¹

AB 1775 attempted to protect workers on such live entertainment events by imposing requirements on vendors who provide the employees to complete set up, operation, and tear down of the sets and infrastructure of live entertainment events at public events venues like a state-operated fairground, state park, or California State University. It requires that the entity putting on the event must require the entertainment events vendor that provides the labor for the event to certify both that: its

¹ Senate Judiciary Committee, Analysis: AB 1775 (Jun. 24, 2022).

employees and those of any subcontractor have completed specified workplace safety trainings; and that the heads of departments or leads have completed additional trainings and are certified through the Entertainment Technician Certification Program, or meet the conditions for a skilled and trained workforce. (Lab. Code § 9251.) Entertainment vendors must certify in writing as part of the contract with the contracting entity that they have verified the training completion and certification requirements of all employees who will work setting up, operating, or tearing down the event. AB 1775 also provided for an enforcement mechanism. It required that Cal/OSHA enforce its provisions by issuing citations for violations of the training and certification requirements, along with civil penalties. AB 1775 allows for an appeal process for any citation or penalty consistent with current Cal/OSHA appeals, which provide the employer 15 days to appeal a citation. AB 1775 also specified that any penalties assessed for violations of its requirements may only be assessed upon the entertainment events vendors, and not on any employee. (Lab. Code § 9252(d).)

It is also worth noting that violations of the rules created by AB 1775 can also be enforced through an action by an employee themselves through California's Private Attorneys' General Act (PAGA). (Lab. Code § 2698 et seq.) However, employees attempting to enforce workplace safety standards through a PAGA action must meet certain prerequisites that include notifying Cal/OSHA and having Cal/OSHA investigate the allegation. The employee may only bring a suit if Cal/OSHA declines to issue a citation, and the court agrees that Cal/OSHA should have issued one. (Lab. Code § 2699.3(b).)

3. AB 594's alternative method of enforcing California's labor laws

In 2023, the Legislature enacted AB 594 (Maienschein, Ch. 659, Stats. 2023) to address the lack of enforcement of the state's labor laws. AB 594 clarified that public prosecutors, defined to include the Attorney General, a district attorney, a city attorney, a county counsel, or any other city or county prosecutor, can prosecute a civil or criminal violation of specified provisions of the Labor Code. (Lab. Code § 181(b).) This power was provided independent of the DIR's own authority to enforce the labor laws, though AB 594 required that public prosecutors provide a 14-day notice to DSLE before prosecuting an action. (Lab. Code § 181(d).) AB 594 allowed a public prosecutor to seek injunctive relief for certain labor law violations, in addition to any other remedy otherwise available. Any funds recovered through a prosecution by a public prosecutor must first be applied to payments and damages due to the aggrieved worker, and any civil penalties recovered must be paid into the state's General Fund, unless otherwise specified in the Labor Code. A public prosecutor is limited to bringing a prosecution related to a labor code violation within the prosecutor's geographic jurisdiction, except for prosecutors with statewide jurisdiction or other specified authority. As passed, AB 594 limited public prosecutors to enforcing wage and hour laws and those for specific occupations under Division 2 of the Labor Code, and the Labor Code provisions related

to the classification of workers and the obligations and rights of employers and employees. AB 594 included a sunset date of January 1, 2029.

4. AB 2738 allows the workplace safety laws for live entertainment venues to be enforced by public prosecutors

AB 2738 proposes to increase the enforcement of AB 1775's safety training and certification programs through a variety of changes to the relevant sections of the Labor Code, and by allowing for enforcement through the public prosecutor regime created by AB 594. AB 2738 alters the live entertainment safety provisions to allow that any penalties assessed by DLSE for a violation of the employee training and certification requirements may be assessed against a public events venue and the contracting entity, in addition to the entertainment events vendor. AB 2738 also specifies that a contract between the contracting entity and the entertainment events vendor must include a requirement that the entertainment events vendor furnish the contracting entity with the names and details of any training or certification of its employees and those employees of any subcontractor. For this provision, AB 2738 specifies that the contracting entity may share this employee information with third parties for the purpose of carrying out the contracting entity's duties, including to verify an employee's training and certification. However, the contracting entity is prohibited from sharing the information for any purpose unrelated to the contracting entity's duties under the contract with the entertainment events vendor.

AB 2738 also makes some changes to the AB 594 public prosecutor regime, in addition to extending to public prosecutors the authority to enforce the entertainment events rules of AB 1775. It reworks how any monies a public prosecutor recovered may be disbursed, providing that, after providing for wages, damages, and other penalties due to affected workers, any moneys then must cover attorney's fees and costs that are otherwise authorized to be recovered. For the remaining funds, AB 2738 specifies that they be divided evenly between the state's General Fund and the public prosecutor's office to support labor law enforcement, instead of just provided to the General Fund. Lastly, AB 2738 makes the award of reasonably attorney's fees and costs mandatory for prevailing parties, rather than permissive.

The author argues that these provisions are necessary because mechanisms are needed to ensure that public venues are verifying certification of the entertainment event workers when contracting for set up, operation, and tear down services for such events. They argue that the temporary nature of the contracts around such events, and the lack of transparency for whether workers are actually certified makes enforcement difficult. Contractors and their workers often move to other venues once the event, that may only last one night, is over. In addition, the author argues that these additional enforcement mechanisms are necessary due to the fact that enforcement agencies like Cal/OSHA have high rates of vacancies for positions for completing enforcement activities. Indeed,

Cal/OSHA currently reports a vacancy rate of 29%.² Through these changes, the author argues that AB 2738 will strengthen enforcement of the labor laws and the safety of entertainment events vendors, and will increase the transparency needed to protect workers. The author also asserts that AB 2738's provision making reasonable attorney's fees mandatory for public prosecutors when the plaintiff prevails is necessary because, without attorney's fees, public prosecutors are not able to invest the time and resources necessary into labor cases without risk their departments' budgets. Accordingly, making reasonably attorney's fees mandatory for prevailing plaintiffs will allow public prosecutors to actually take on labor enforcement prosecutions.

5. Arguments in support

According to the California Labor Federation, which is the sponsor of AB 2738:

AB 1775 (Ward), Chapter 759 of 2022, set an industry-wide safety standard for staging and live events production. Safety training and certification is a simple, cost-effective strategy to protect workers and the public. AB 1775 codified requirements to ensure workers had those trainings and was designed to not only protect workers setting up events, but also the public attending the event.

Workers that set up, operate, and tear down live events face serious workplace hazards. They work with complex systems in all types of weather conditions, and there is a history of accidents, injuries, and even fatalities of workers performing such work, often due to a lack of training or knowledge of best safety practices. A lack of safety training is not just dangerous for workers, but also for event attendees. Electrical failures, stage collapses, falling video screens, or many other accidents could harm or injure the public attending events when there is a failure to follow safety protocol.

The law offers adequate protections but lacks the enforcement mechanisms that reflect the nature of the transitory live event industry. The lack of transparency in contracting makes verification of compliance difficult, if not impossible, given the temporary nature of the industry. Most events are for only a night or a week, and after that workers move on to other venues, making enforcement investigations nearly impossible. A violation may occur in one venue in one city on a Friday, and then the entertainment vendor packs up and is in another city on the Saturday setting up a different event.

The challenges to enforcement come at a time when the live event industry is booming. Post-pandemic live events are increasing not just in frequency, but at the range of venues hosting events. Everything from the Taylor Swift tour to

² Cal/OSHA, *Data on Cal/OSHA Staffing*, Dept. of Industrial Relations (May 2024), available at <https://www.dir.ca.gov/dosh/DOSH-Recruitment-Hiring.html>.

concerts at the new Snapdragon Stadium at SDSU to local bands playing at the county fairgrounds are increasing. The increase in events also means an increased likelihood that vendors may fail to ensure all workers are properly trained and certified. This can lead to failure to follow safety protocols and an increased chance of accidents.

AB 594 (Maienschein), Chapter 659 of 2023, expanded enforcement options for workers and strengthened the tools available to enforcement agencies to better respond to widespread wage theft and other labor law violations. It expanded local enforcement agencies' ability to enforce labor laws and seek injunctive relief to expedite enforcement.

AB 2738 builds on AB 594's model to expand the existing authority of local public agencies to enforce AB 1775 and clarifies that all parties, including public venues, are accountable for ensuring worker and public safety at live events. It also allows local public prosecutors to retain fifty percent of civil penalties collected through labor law enforcement and requires courts to award a prevailing plaintiff reasonable attorney's fees and costs. This ensures a sustainable funding mechanism for labor local law enforcement so they can act to protect workers in their jurisdiction.

The bill also increases transparency by requiring that entertainment vendors disclose specified information in their contracts for live events to aid in compliance and enforcement if necessary. The disclosure is also a reminder to entertainment vendors of their responsibility under the law.

6. Arguments in opposition

According to the California Chamber of Commerce, which is opposed to AB 2738:

Current law allows certain public prosecutors to bring forward Labor Code claims. Among other concerns, in enacting AB 594 (Maienschein) (2023) there was concern that public entities will likely contract out with private law firms for this litigation. March 18, 2024 amendments to AB 2738 would require courts to award a winning plaintiff's legal fees and associated costs. This legislation poses significant risks to the integrity of our legal system and could potentially lead to exploitation by private law firms who may contract with public prosecutors to pursue this litigation.

The current discretion given to courts to award fees to prevailing plaintiffs helps ensure that justice is served for legitimate grievances rather than financial gain. Due to the considerable expense associated with litigating Labor Code claims, most employers are prone to settle cases, much like they currently do with

private attorneys. It's worth noting that over the past decade, for example, California employers have paid at least \$10 billion in PAGA settlements.

Mandating the award of prevailing plaintiff fees and costs creates a dangerous precedent that could financially incentivize the filing of meritless lawsuits. For this reason, we respectfully OPPOSE AB 2738.

SUPPORT

California Labor Federation (sponsor)
California School Employees Association, AFL-CIO

OPPOSITION

California Association for Health Services At Home
California Association of Health Facilities
California Attractions and Parks Association
California Business Properties Association
California Chamber of Commerce
California Farm Bureau
California Farm Labor Contractor Association
California Financial Services Association
California League of Food Producers
California Lodging Industry Association
California Restaurant Association
California State Council of The Society for Human Resource Management (CALSHRM)
Civil Justice Association of California
Construction Employers' Association
Family Business Association of California
Housing Contractors of California
Independent Lodging Industry Association.
National Federation of Independent Business
Valley Industry and Commerce Association (VICA)
Western Electrical Contractors Association
Western Growers Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 594 (Maienschein, Ch. 659, Stats. 2023) authorized the Attorney General, district attorneys, city attorneys, county counsel, or any other city prosecutors to enforce

specified provisions of the Labor Code, as specified. Provided for its provisions to be repealed on January 1, 2029.

AB 1775 (Ward, Ch. 759, Stats. 2022) established health and safety training standards and certification requirements for employees contracted to complete the set up, operation, and tear down of live entertainment events at publicly owned and operated venues. Required that the live entertainment vendors that produce the live events at those venues ensure and certify that all workers on the production have completed a federal workplace safety course, and that leads of departments have completed additional trainings and are certified by Cal/OSHA. Provides for enforcement through penalties assessed by Cal/OSHA.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 1)

Assembly Floor (Ayes 49, Noes 10)

Assembly Appropriations Committee (Ayes 11, Noes 4)

Assembly Judiciary Committee (Ayes 9, Noes 2)

Assembly Labor and Employment Committee (Ayes 5, Noes 2)
