

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

AB 1775 (Ward)
Version: May 19, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Occupational safety: live events

DIGEST

This bill obligates the producers of live performance events to obtain certification from any business providing workers for the production that the workers have completed specified workplace safety training courses, with heightened requirements for supervisory employees.

EXECUTIVE SUMMARY

When live entertainment productions like concerts, musicals, plays, or circus acts come to town, the producers often hire local crews to set up and take down all of the necessary equipment and infrastructure. According to the author and sponsor of this bill, the work is particularly dangerous. Several workers have died, others suffered serious injuries, and there have been many close calls. This bill seeks to reduce the frequency of these sorts of workplace accidents at public entertainment venues. To accomplish this goal, the bill requires businesses that provide workers for these entertainment productions to certify to the production company that their workers have taken specified workplace safety trainings, including heightened training for department heads and leads, and that a sufficient number of workers are employed to safely set up, tear down, and operate the live event. The bill authorizes the California Occupational Health and Safety Administration (Cal/OSHA) to enforce these provisions through the imposition of civil penalties when a violation is found.

The bill is sponsored by the California International Alliance of Theatrical Stage Employees Council and a number of its local affiliates. Support comes from organized labor who believe the bill represents an important step for improving worker safety on live productions. There is no known opposition. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Assures safe and healthy working conditions for all Californians, pursuant to the California Occupational Safety and Health Act, by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health. (Lab. Code § 6300 *et seq.*)
- 2) Requires employers to establish, implement, and maintain an effective Injury and Illness Prevention Program (IIPP) which 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.)
- 3) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to propose, administer, and enforce occupational safety and health standards, among other things. (Lab. Code § 6300 *et seq.*)
- 4) Authorizes Cal/OSHA to issue citations to employers when Cal/OSHA has evidence that an employee was exposed to a hazard in violation of any requirement enforceable by the division, including the exposing, creating, and controlling employer. (Lab. Code § 6400.)
- 5) 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 (29 U.S.C. § 651 *et seq.*), as specified. (Lab. Code § 6310.)
- 6) Prohibits an employee from being laid off or discharged 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 their fellow employees. Any employee who is laid off or discharged in violation of this right shall have a right of action for lost wages for the time the employee is without work as a result of the layoff or discharge. (Lab. Code § 6311.)

- 7) Provides that a person who, after receiving notice to evacuate or leave, willfully and knowingly directs an employee to remain in, or enter, an area closed due to a menace to the public health or safety as set forth in Section 409.5 of the Penal Code shall be guilty of a misdemeanor. (Lab. Code § 6311.5.)
- 8) Establishes, under Skilled & Trained Workforce (STW) provisions, qualification requirements for the building and construction workforce on certain projects. Contractors and subcontractors who violate STW requirements can face civil penalties of up to \$10,000 per month and be prohibited from bidding on, being awarded, or performing work on a public works contract. (Pub. Contract Code § 2600-2603.)

This bill:

- 1) Defines, among other terms, the following:
 - a) "contract" means an existing event and reservation agreement between a contracting entity and an entertainment events vendor to produce a live event at a public facility;
 - b) "contracting entity" means a body that contracts with an entertainment events vendor to set up, produce, and tear down a live event at a public events venue;
 - c) "entertainment events vendor" means a private company that contracts to set up, produce, and tear down a live event and includes any subcontractor employer involved in the event production;
 - d) "Entertainment Technical Certification Program" means the industry and labor nongovernmental program of the Entertainment Services and Technology Association that grants certification to a worker who has demonstrated mastery as an entertainment technician;
 - e) "OSHA-10" means the United States Department of Labor's Occupational Safety and Health Administration's Outreach Training Program 10-hour course;
 - f) "OSHA-10/General Entertainment Safety" means the United States Department of Labor's Occupational Safety and Health Administration's 10-hour course on workplace health customized for the entertainment and exhibition industries;
 - g) "OSHA-30" means the United States Department of Labor's Occupational Safety and Health Administration's 30-hour course; and
 - h) "public events venue" means a state-operated fairground, county fairground, state park, California State University, University of California, or auxiliary organization-run facility that hosts live events.
- 2) Obligates a contracting entity to require an entertainment events vendor to certify for their employees, and any subcontractors' employees, as part of the contract for production of any live event at their venue, all of the following:

- a) employees of entertainment events vendors involved in the setting up, tearing down, or production of a live event at the venue have completed the OSHA-10 or the OSHA-10/General Entertainment Safety training, as applicable to their occupation;
 - b) one of the following applies:
 - i. heads of departments and leads have completed the OSHA-30 training, and they are certified through the Entertainment Technician Certification Program or another certification program, as specified by the division;
 - ii. the entertainment events vendor meets the conditions for a skilled and trained workforce; and
 - c) a sufficient number of workers are employed to safely set up, tear down, and operate the live event.
- 3) Requires an entertainment events vendor to certify in writing, and as part of the contract, that they have verified the training completion and certification requirements of all employees that will work on the event.
 - 4) Provides that the above requirements do not apply to direct employees of the public events venue.
 - 5) Provides that an entertainment events vendor that violates these provisions shall have 30 days to cure a violation that Cal/OSHA determines is not a serious violation. If the violation is not cured within 30 days, then the violation shall be a serious violation subject to a civil penalty of up to one thousand dollars (\$1,000) for each violation.
 - 6) Specifies that penalties shall only be assessed against an entertainment events vendor and not against an employee of an entertainment events vendor or an employee of a subcontractor for not completing the training or certification required.
 - 7) Specifies that the entertainment events vendor citation under these provisions is in addition to any other penalties authorized under Title 8 of the California Code of Regulations.
 - 8) Specifies that nothing in these provisions relieves an employer from conducting any other training required under Title 8 of the CA Code of Regulations.
 - 9) Requires Cal/OSHA to deposit the funds assessed pursuant to these provisions in the Occupational Safety and Health Fund.
 - 10) Provides that these provisions, or any related health and safety standard, does not prevent or limit an employer, contracting entity, or entertainment events vendor from adopting stricter safety standards.

- 11) Makes findings and declarations regarding the serious workplace hazards faced by workers that set up and tear down temporary staging for live entertainment events.

COMMENTS

1. Evidence of the problem the bill is intended to address

According to the author and sponsor of this bill, set-up and tear down of equipment and infrastructure for live entertainment events is an especially dangerous line of work. They point 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.

2. Counter-measures proposed by this bill

The intent of this bill is to reduce the likelihood of further workplace accidents, injuries, and fatalities in the context of live entertainment events by requiring additional workplace safety training and a sufficient number of personnel onsite to get the job done safely.

The bill initially puts the onus for ensuring compliance with these training and staffing sufficiency requirements on whatever entity is putting on the live entertainment. Under the bill, when that entity contracts with other businesses (referred to in the bill as vendors) to provide the labor to set-up, run, and tear down the event, that entity is responsible for obtaining certain certifications from those businesses.

With regard to workplace safety training, the businesses must certify that all of their employees who will be involved in the set-up, production, and tear down have received at least 10 hours of workplace safety training. This can take the form of either the general 10-hour OSHA safety course or a 10-hour OSHA safety course designed especially for the entertainment and exhibition industries. The businesses must also certify that their heads of departments and leads have taken the 30-hour OSHA course for supervisors or that the business qualifies as a skilled and trained workforce, meaning that a legally specified percentage of the workers graduated from an

apprenticeship program in the construction and building trades. (Pub. Contract Code § 2600-2603.)

With regard to staffing adequacy, the business must certify that a sufficient number of workers are employed to safely set up, tear down, and operate the live event.

3. Enforcement, due process, and constitutional considerations

Enforcement of the bill would fall to Cal/OSHA. The bill authorizes Cal/OSHA to impose civil penalties of up to \$1,000 for each serious violation of the requirements set forth in Comment 2, above. However, before Cal/OSHA could impose such penalties, the business vendor for the set-up, production, and tear down of a live event would have a 30-day window in which to cure any violations, presumably by obtaining the required certifications from the vendor, or by insisting that the vendor hire more workers.

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 may 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 impose penalties 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 would generate from these penalties and the size of the fine is 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 violation. (*United States v. Bajakajian* (1998) 524 U.S. 321, 334.) In the case of this bill, the \$1,000 per violation penalty is a maximum; 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 does not appear to raise constitutional concern on its face.

4. Arguments in support of the bill

According to the author:

Workers that set up Staging for Live Events at arenas, fairgrounds and outdoor venues face serious workplace hazards. They handle electrical equipment in all weather conditions, including excessive heat, rain and windy conditions, work on rigging at great heights, and must deal with setting up stages often on unknown surfaces, such as damp ground, sand, hot asphalt and many other surfaces. There is a history of accidents, injuries and even fatalities of workers responsible for setting up and breaking down events. Mostly due to the lack of health and safety laws to protect workers within this sector of the entertainment industry. AB 1775 set an industry-wide health and safety training standard for live events at publicly owned and operated venues. Specifically, the bill requires that vendors that produce live events at those venues ensure all workers on the production have completed a federal OSHA-10 workplace safety course.

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

The workers that set up and tear down staging, including lighting systems, sound systems, video walls and other scenic elements for live events at arenas, stadiums, fairgrounds, and outdoor venues,

face serious workplace hazards. They work with complex systems in all types of weather conditions, including excessive heat, rain, and wind. They work with scaffolding and rigging systems at great heights and must deal with setting up stages often on unknown surfaces, such as damp ground, sand, hot asphalt, and many other surfaces. There is a history of accidents, injuries and even fatalities of workers performing such work, often due to the lack of knowledge, training and experience with established safety protocols and best practices within this sector of the entertainment industry. [...] AB 1775 is a critically important first step towards setting a Live Event industry health and safety standard to prevent accidents and fatalities before they happen.

SUPPORT

California IATSE Council (sponsor)

IATSE Local 16 (sponsor)

IATSE Local 33 (sponsor)

IATSE Local 44 (sponsor)

IATSE Local 50 (sponsor)

IATSE Local 80 (sponsor)

IATSE Local 107 (sponsor)

IATSE Local 119 (sponsor)

IATSE Local 122 (sponsor)

IATSE Local 134 (sponsor)

IATSE Local 158 (sponsor)

IATSE Local 442 (sponsor)

IATSE Local 600 (sponsor)

IATSE Local 611 (sponsor)

IATSE Local 614 (sponsor)

IATSE Local 695 (sponsor)

IATSE Local 705 (sponsor)

IATSE Local 728 (sponsor)

IATSE Local 729 (sponsor)

IATSE Local 768 Theatrical Wardrobe Union (sponsor)

IATSE Local 784 (sponsor)

IATSE Local 874 (sponsor)

IATSE Local 884 (sponsor)

IATSE Local B18 (sponsor)

California Labor Federation

California Professional Firefighters

California State Association of Electrical Workers

City of San Diego

Contra Costa Central Labor Council

Entertainment Union Coalition
Nathan Fletcher, Supervisor, District 4, County of San Diego
Todd Gloria, Mayor, City of San Diego
Kern Inyo Mono Central Labor Council
Laborers Local 724
Los Angeles County Federation of Labor
San Diego & Imperial Counties Labor Council
San Francisco Labor Council
San Mateo County Central Labor Council
Teamsters Local 399
United Domestic Workers - AFSCME Local 3930
United Food and Commercial Workers Western States Council
Western States Council Sheet Metal, Air, Rail and Transportation
Stephen Whitburn, Councilmember, City of San Diego

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 0)
Assembly Floor (Ayes 65, Noes 8)
Assembly Appropriations Committee (Ayes 13, Noes 3)
Assembly Labor and Employment Committee (Ayes 7, Noes 0)
