

CONCURRENCE IN SENATE AMENDMENTS

AB 2321 (Ortega)

As Amended August 27, 2026

Majority vote

SUMMARY

Revises case investigation, review and referral procedures for the Division of Occupational Safety and Health (Cal/OSHA) and its Bureau of Investigations (BOI) to follow when responding to workplace injuries, illnesses, exposures or fatalities; revises procedures for case referral to prosecuting authorities; imposes misdemeanor penalties for interfering with a Cal/OSHA investigation; and requires first responders to notify the county district attorney whenever they are called to an accident in which there is a serious injury or illness, serious exposure or death.

Senate Amendments

- 1) Impose the penalty of a misdemeanor for willful interference with a Cal/OSHA investigation, as specified.
- 2) Strike the five-year pilot program which would have transferred investigative responsibilities from the BOI to the district attorneys in Alameda and Santa Clara counties for workplace health and safety violations that result in death in those counties.
- 3) Strike the provision authorizing monies in the Occupational Safety and Health Fund or the Labor and Workforce Development Fund to be expended by the Alameda County District Attorney and the Santa Clara County District Attorney, upon appropriation, for the support of the activities these entities perform related to investigating and prosecuting such violations.
- 4) Require the BOI to *promptly* investigate cases in its jurisdiction.
- 5) Require the BOI to investigate any accident where there is serious illness or serious exposure to five or more employees.
- 6) Require the BOI to investigate any accident in which there is a serious injury or illness, or a serious exposure, for which Cal/OSHA issues a citation of a willful violation.
- 7) Require the BOI to review Cal/OSHA inspection reports involving a serious violation if there have been serious illnesses or serious exposures to one to four employees and to *promptly* investigate those cases in which the BOI finds criminal violations may have occurred.
- 8) Require the BOI to *promptly*, rather than *immediately*, refer the results of an investigation to the appropriate prosecuting authority, and remove the requirement that the BOI notify the appropriate prosecuting authority without the prosecuting authority first requesting notice if the BOI determines that there is legally insufficient evidence of a criminal violation.
- 9) Require Cal/OSHA to immediately notify the appropriate prosecuting authority upon learning of an accident in which there is a serious injury or illness, or serious exposure, to five or more employees, death, or request for prosecution by a division representative.

- 10) Revise the procedures for the BOI to refer cases that may involve criminal conduct to the appropriate prosecuting authority in lieu of or in cooperation with an investigation by the BOI, as specified.
- 11) Require the BOI to report to the Legislature cases involving fatalities for which a prosecuting authority declined to prosecute, as specified.
- 12) Authorize the chief of Cal/OSHA to share certain information obtained in connection with any inspection or proceeding with law enforcement officers or prosecutors, as specified.
- 13) Require a state, county, or local fire or police agency, whenever they are called to an accident involving a serious injury or illness, serious exposure, or death of an employee, to immediately, in addition to notifying Cal/OSHA, notify the district attorney's office in the county where the incident occurred.
 - a) Require Cal/OSHA to immediately notify the BOI and the appropriate prosecuting authority of the accident, regardless of the means by which Cal/OSHA received notification of the accident.
- 14) Make clarifying, technical and conforming changes.

COMMENTS

In 2024, Assemblymember Ortega requested an audit of Cal/OSHA, which was completed in July 2025.¹ The audit found numerous operational issues at the division, stemming largely from understaffing and antiquated processes. Among the audit's findings were:

- 1) 82% of complaints were inspected via letter, without real consequences for noncompliant employers.
- 2) When Cal/OSHA did conduct on-site inspections, its inspectors did not consistently document effective reviews of employers' injury and illness prevention programs.
- 3) When Cal/OSHA identified hazards and cited employers, it did not always document whether those employers had abated the hazards.
- 4) Cal/OSHA often assessed employers less than the violations warranted, and often did not document a clear rationale for further reducing fines in post-citation negotiations with employers.
- 5) Key Cal/OSHA policy documents have not been revised in years, and the division relies on paper-based case files.

¹ The Division of Occupational Safety and Health: Process Deficiencies and Staffing Shortages Limit Its Ability to Protect Workers. California State Auditor. <https://www.auditor.ca.gov/wp-content/uploads/2025/07/2024-115-Report.pdf>

With regards to the BOI, the auditor found that understaffing and process deficiencies are hindering the bureau's ability to review and investigate cases that may involve criminal conduct and prepare them for prosecution.

The BOI is responsible for directing investigations for every case in which there is a fatality or a serious injury to five or more employees, or a request for prosecution from a Cal/OSHA representative. The BOI is required, in investigating these cases, to look for criminal conduct and refer to local prosecutors any cases in which such conduct is found. Local prosecutors ultimately decide whether to take cases to court and handle the prosecution. The BOI must also review Cal/OSHA inspection reports for cases in which there is a serious injury to one to four employees or a serious exposure, and is authorized to investigate and refer such cases in which it finds there may have been criminal conduct.

However, between 2019 and 2022, the BOI referred just 1.7% of cases in its jurisdiction for criminal prosecution.

According to the author, "One reason for the low referral rate is that, while the BOI has the ability to immediately investigate the cases in its jurisdiction, it often waits until the close of the Cal/OSHA inspection before doing so, wasting critical time needed to obtain evidence and witness statements. Local prosecuting authorities can request that they investigate these cases in lieu of, or in conjunction with, the BOI. However, to do so, the prosecuting authorities must receive prompt notice of such cases; currently, many do not."

The audit further found that the BOI lacks written policies and procedures for reviewing cases and deciding whether to investigate or refer them for prosecution. The auditor provided numerous examples of cases it reviewed in which BOI investigators did not adequately document their rationale for referring, or not referring, a case to prosecutors. Furthermore, the BOI does not routinely receive necessary information from Cal/OSHA inspectors about cases that the bureau is required to review for possible criminal conduct.

According to the Author

"This Legislature has worked tirelessly to pass some of the strongest worker protections in the country. However, these laws are meaningless if not enforced. AB 2321 will make important reforms to the BOI's processes, as well as facilitate meaningful collaboration with public prosecutors to ensure criminally-liable employers are held accountable and future criminal conduct is deterred."

Arguments in Support

The California Federation of Labor Unions, AFL-CIO states that "The Division of Occupational Safety and Health's (Cal/OSHA) shortcomings have been documented extensively, including in the recent state audit of the division that was requested by Assemblymember Ortega in 2024. The audit found numerous operational issues within Cal/OSHA, stemming largely from inadequate staffing and antiquated processes. Due to these deficiencies, Cal/OSHA is unable to fully meet its mandate to investigate and prevent workplace injuries, incidents, and fatalities."

Arguments in Opposition

The California Chamber of Commerce is opposed and states that "Under current law, if a willful violation of a safety standard by an employee or employer causes death or prolonged impairment, then that employee or employer is guilty of a crime. AB 2321 would broaden this criminal liability so that it occurs whenever any "serious injury" occurs – which can be as minor

as a cut to a finger! This will put far more employees and employers at risk of criminal charges for what has been (and should be) a workplace safety issue with no clear justification!"

FISCAL COMMENTS

Note: the fiscal analysis may not reflect the most recent version of the bill.

According to the Senate Appropriations Committee:

- 1) The Department of Industrial Relations (DIR) would incur one-time implementation costs of an unknown amount for Cal/OSHA and BOI to develop required case review, referral, and case transmittal procedures, and likely minor ongoing costs for the BOI to report additional staffing vacancy information (Occupational Safety and Health Fund).
- 2) By imposing specified new duties on the District Attorneys of Santa Clara and Alameda Counties, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs. The magnitude is unknown, but could exceed \$50,000 per year (General Fund).
- 3) This bill may result potentially significant cost pressures to the courts; the magnitude is unknown (Trial Court Trust Fund (TCTF)). The specific number of new actions that could be filed under the bill also is unknown; however, it generally costs about \$10,500 per day to operate a courtroom. Courts are not funded on the basis of workload, and increased pressure on TCTF may create a need for increased funding for courts from the General Fund. The enacted 2026-27 budget includes \$70 million in ongoing support from the General Fund to continue to backfill TCTF for revenue declines.

VOTES:

ASM LABOR AND EMPLOYMENT: 5-0-2

YES: Ortega, Elhawary, Kalra, Lee, Ward

ABS, ABST OR NV: Lackey, Chen

ASM APPROPRIATIONS: 11-3-1

YES: Wicks, Aguiar-Curry, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

NO: Hoover, Dixon, Tangipa

ABS, ABST OR NV: Ta

ASSEMBLY FLOOR: 55-17-8

YES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Rogers, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

NO: Alanis, Ávila Fariás, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Jeff Gonzalez, Hadwick, Hoover, Johnson, Macedo, Patterson, Sanchez, Tangipa, Wallis

ABS, ABST OR NV: Flora, Gallagher, Lackey, Muratsuchi, Celeste Rodriguez, Michelle Rodriguez, Blanca Rubio, Ta

UPDATED

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