

SB 1299 (CORTESE) – OPPOSE



April 3, 2024

TO: Members, Senate Labor, Public Employment and Retirement Committee

SUBJECT: **SB 1299 (CORTESE) FARMWORKERS: BENEFITS
OPPOSE – AS AMENDED MARCH 21, 2024**

The California Chamber of Commerce and the organizations listed respectfully **OPPOSE SB 1299 (Cortese)**. We are unaware of data to support the presumption proposed by **SB 1299**. Further, the presumption would apply even in situations where any link between the employer's conduct and a heat-related illness or injury is tangential, at best, and appears to mandate that WCAB evaluate employer compliance with regulations created by a different state agency.

There is No Evidence Supporting the Proposed Workers' Compensation Presumption

SB 1299 would create a presumption that a heat-related illness or injury is occupational if the employer fails to comply with any of the heat illness prevention standards in Sections 6721 or 3395 of Title 8 of the California Code of Regulations.¹ We are unaware of any data demonstrating that there is a need for a presumption for agricultural workers for heat-related illnesses and injuries.

Injuries occurring within the course and scope of employment are automatically covered by workers' compensation, regardless of fault. If there is ever a dispute in evidence, the law requires the evidence to be viewed in favor of the worker. As this Legislature and Administration have recognized many times, presumptions should be established *sparingly*. As this committee has said:

[T]he creation of presumptive injuries is an exceptional deviation that uncomfortably exists within the space of the normal operation of the California workers' compensation system. Rather than permit the existing system to operate in its normal course, the Legislature places its thumb on the scale: for these peace officers, for these injuries, employer must accept liability (barring unusual circumstances). As this essentially creates a set-aside microsystem within the larger workers' compensation system of automatic indemnity payments, the Legislature has historically decided to keep the number of presumed injuries and individuals who could qualify for such presumptions limited. If these exceptions were not limited, they would essentially consume and undermine the entire system, as it would create a situation where a small class of workers has more and more access to the workers' compensation system in a manner that other workers (some similarly situated) do not enjoy.²

This administration correctly noted in prior veto messages that presumptions should only be created where there is clear and convincing evidence of the need for one:

A presumption is not required for an occupational disease to be compensable. Such presumptions should be provided sparingly and should be based on the unique hazards or proven difficulty of establishing a direct relationship between a disease or injury and the employee's work. Although well-intentioned, the need for the presumption envisioned by this bill is not supported by clear and compelling evidence.³

Preliminary internal audits demonstrate that almost no heat-related claims are filed in the agriculture industry. One large entity that covers the agriculture industry only had 13 heat-related claims over the last five years. That is less than three heat-related claims per year. There is no evidence that the system is failing to function regarding these claims. If proponents of **SB 1299** have other data, we are happy to review it. But currently, we are unaware of any data supporting this bill.

The reason presumptions are so rarely enacted is because a presumption essentially forces an employer to cover an injury regardless of whether it does in fact fall under the purview of workers' compensation. For example, here the presumption would also apply even if the alleged violation was tangential to any potential injury. If just one supervisor did not receive the required training, the presumption would apply to any heat-related illness or injury for any employee, even one that has no interaction with that supervisor. And

¹ Proposed section 3212.81 provides that any injury "resulting" from an employer's failure to comply with applicable heat standards would fall under the presumption. If the worker has demonstrated that an injury "resulted" from their job, they have already met their burden of proof under the workers' compensation system and that injury would be covered without the need for a presumption.

² Senate Committee on Labor, Public Employment, and Retirement Analysis of SB 893 (2020)

³ AB 334 Veto Message (2022)

pursuant to proposed section 3212.81(b), it would apply to any illness or injury that develops during the pay period, which could be up to 31 days under Labor Code section 205.

Further, the bill does not include mechanics as far as how establishing applicability of the presumption would work. The bill does not specify how it would be determined that an employer did in fact violate the applicable provisions of heat illness prevention standard. If the bill contemplates that determination being made by the Workers Compensation Appeals Board (WCAB), we have strong concerns with imparting that responsibility on an entity that specializes in workers' compensation claims, not workplace safety.⁴

It is Unclear What the Proposed Fund Would Cover

While we appreciate the intent behind the proposed Farmworker Climate Change Heat Injury and Death Fund is to assist workers who suffer occupational injuries, it is unclear from the proposed language what the fund would cover. The language provides that it will fund "paying any administrative costs related to Section 3212.81". It is unclear if that is the workers' costs, which should not be necessary because those claims would be accepted and paid, or if it is the state's administrative costs. Further, the fund is coming from the Workers' Compensation Administration Revolving Fund. The Workers' Compensation Administration Revolving Fund is funded through workers' compensation assessments paid by all employers, including public entities. Generally, other industry-specific funds are funded by that industry alone.⁵

For these reasons, we respectfully **OPPOSE SB 1299**.

Sincerely,



Ashley Hoffman
Senior Policy Advocate
California Chamber of Commerce

Agricultural Council of California
American Property Casualty Insurance Association (APCIA)
Association of California Egg Farmers
Brea Chamber of Commerce
Building Owners and Managers Association (BOMA)
California Association of Joint Powers Authorities (CAJPA)
California Association of Wheat Growers
California Association of Winegrape Growers
California Bean Shippers Association
California Business Properties Association (CBPA)
California Chamber of Commerce
California Coalition on Workers' Compensation (CCWC)
California Cotton Ginners and Growers Association
California Farm Bureau
California Fresh Fruit Association
California Grain and Feed Association
California League of Food Producers (CLFP)
California Pear Growers Association
California Seed Association

⁴ A similar concern was raised in opposition to AB 594 (Maienschein) (2023), which originally authorized public prosecutors to enforce health and safety standards under the purview of Cal/OSHA. Amendments were taken to address those concerns because it is a specialized subject. See Assembly Committee on Judiciary Analysis of AB 594 (2023) at page 7.

⁵ For example, DIR has a Garment Restitution Fund for garment workers who are unable to collect unpaid wages. That is funded by registration fees paid by garment manufacturers.

California State Floral Association
California Strawberry Commission
Carlsbad Chamber of Commerce
Corona Chamber of Commerce
Cupertino Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Fontana Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
La Cañada Flintridge Chamber of Commerce
Long Beach Area Chamber of Commerce
Modesto Chamber of Commerce
NAIOP California
National Federation of Independent Business (NFIB)
Nisei Farmers League
Newport Beach Chamber of Commerce
Pacific Egg & Poultry Association
Rancho Mirage Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
Tulare Chamber of Commerce
West Ventura County Business Alliance
Western Agricultural Processors Association
Western Growers Association

cc: Legislative Affairs, Office of the Governor
Sunshine Borelli, Office of Senator Cortese
Alma Perez, Senate Labor, Public Employment and Retirement Committee
Cory Botts, Senate Republican Caucus
Scott Seekatz, Senate Republican Caucus

AH:am