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Senator Thomas Umberg, Chair
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AB 701 (Lorena Gonzalez)
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SUBJECT

Warehouse distribution centers

DIGEST

This bill proposes a series of provisions designed to ensure that the use of job performance quotas at large warehouse facilities does not penalize workers for complying with health and safety standards or taking meal and rest breaks.

EXECUTIVE SUMMARY

Technological advances over the past few decades have transformed the shopping experience of consumers, who can now purchase goods online and anticipate their arrival at the doorstep in as little as a few hours. These advanced distribution systems operate through large, centralized warehouses where products are stored and then rapidly packaged for shipment. The demand for speed in these warehouses has led to the increasing use of workplace performance metrics and the imposition of work quotas that employees must meet or suffer adverse consequences, including potentially losing their jobs altogether. There is evidence strongly suggesting that the pressure to meet these quotas leads to significantly higher workplace injury rates. This bill aims to disrupt that dynamic through a series of provisions designed to ensure that the use of performance quotas at large warehouse facilities does not penalize workers for complying with health and safety standards or taking the meal and rest breaks to which they are lawfully entitled.

The bill is sponsored by the California Teamsters Public Affairs Council, the Los Angeles County Federation of Labor, and the Warehouse Worker Resource Center. Support comes from organized labor and workers' right advocates generally. Opposition comes from business interests and trade associations who argue that the bill is unnecessary and will result in increased litigation. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4-1.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Authorizes the promulgation and enforcement of workplace health and safety standards pursuant to the California Occupational Safety and Health Act. (Lab. Code § 6300 *et seq.*)

2) Requires the Division of Occupational Safety and Health (Cal/OSHA) to inspect, investigate, and issue citations to employers who violate health and safety laws and expose employees to workplace hazards, as specified. (Lab. Code § 6317.)

3) Requires every employer to furnish and use safety devices and safeguards; to adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render employment and place of employment safe and healthful; and to do every other thing reasonably necessary to protect the life, safety, and health of employees. (Lab. Code § 6401.)

4) Requires employers to provide employees with meal periods of not less than 30 minutes at specified intervals. (Lab. Code § 512.)

5) Requires employers in specified industries to provide workers with compensated 10 minute rest breaks at specified intervals. (8 C.C.R. §§ 11010-11060, 11090-11130, and 1150 at (12)(A); 8 C.C.R. §§ 11070 and 11080 at (12)(A) and (B); 8 C.C.R. § 11140 at (12); 8 C.C.R. § 11160 at (12)(A), (B), and (C).)

6) Requires employers in specified industries to provide outdoor employees with recovery periods to prevent heat exhaustion. (8 C.C.R. § 3395.)

7) Prohibits an employer from requiring an employee to work during a meal, rest or recovery period and specifies that if an employer fails to provide an employee a meal or rest or recovery period in accordance with state law, the employer must pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period was not provided. (Lab. Code § 226.7.)

8) Prohibits an employer from retaliating against an employee for filing a claim or complaint with the Labor Commissioner, instituting or causing to be instituted any proceeding relating to rights under the jurisdiction of the Labor Commissioner, or testifying in any such proceeding, complaining orally or in writing about unpaid wages, or otherwise exercising any of the rights provided under the Labor Code or Orders of the Industrial Welfare Commission, as specified. (Lab. Code § 98.6.)

9) Provides, under the Private Attorneys General Act of 2004 (PAGA), that any civil penalty that may be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of that employee and other current or former employees, as specified. (Lab. Code §§ 2698-2699.6.)

10) Requires an aggrieved employee or employee representative, prior to commencing a PAGA lawsuit for violations of occupational safety and health laws, to give notice of the alleged violation to Cal/OSHA by filing online and to the employer by mail. (Lab. Code § 2699.3(b)(1).)

11) Directs Cal/OSHA to inspect or investigate alleged occupational health and safety violations brought to its attention pursuant to (10), above. (Lab. Code § 2699.3(b)(2)(A).)

12) Prevents an employee from filing a PAGA lawsuit if, after an inspection pursuant to (11), above, Cal/OSHA issues a citation and the employer corrects the violation. (Lab. Code § 2699.3(b)(2)(A)(i).)

13) 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 healthful workplace for workers. (Lab. Code §§ 140-147.6.)

This bill:

1) Makes a series of findings and declarations to the effect that:
   a) technological advances have increased the number of warehouse workers who are subject to quantified work quotas and who face adverse action for failing to meet those quotas;
   b) these quotas generally do not allow workers time to comply with safety guidelines or to recover from strenuous activity;
   c) these quotas incentivize unsafe work environments and increase accidents;
   d) these quotas also affect warehouse workers' rate of compensation, since minimum wage increases lead to more demanding work quotas;
   e) these harms fall most heavily on people of color since warehouse workers are largely comprised of people of color.

2) Sets forth the following definitions, among others:
   a) "employee" means a nonexempt warehouse distribution center employee;
   b) "employee work speed data" means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota, including, but not limited to, quantities of tasks performed, quantities of

items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks;

c) "employee work speed data" does not include qualitative performance assessments, personnel records, or itemized wage statements, as specified, except for any content of those records that includes employee work speed data;

d) "employer" means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary service, or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in the state;
   i) specifies that for purposes of this definition, all employees of an employer's commonly controlled group shall be counted in determining the number of employees employed at a single warehouse distribution center or at one or more distribution centers in the state, as specified.

e) "quota" means a work standard under which an employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard.

f) "warehouse distribution center" means an establishment as defined by any of the following North American Industry Classification System (NAICS) Codes, however that establishment is denominated:
   i) 493110 for General Warehousing and Storage;
   ii) 423 for Merchant Wholesalers, Durable Goods;
   iii) 424 for Merchant Wholesalers, Nondurable Goods;
   iv) 454110 for Electronic Shopping and Mail-Order Houses;

3) Requires large warehouse employers to provide each employee, upon hire, with a written description of each quota to which the employee is subject.

4) Provides that an employee shall not be required to meet a quota that prevents compliance with meal or rest periods or occupational health and safety laws in the Labor Code or division standards.

5) Prohibits an employer from taking adverse action against an employee for failure to meet a quota that:
   a) prevents compliance with meal or rest periods or occupational health and safety laws in the Labor Code or division standards; or
   b) was not disclosed to the employee upon hire.

6) Specifies that any actions taken by an employee to comply with occupational health and safety laws in the Labor Code or division standards shall be considered time on task and productive time for purposes of any quota or monitoring system, but clarifies that meal and rest breaks are not considered productive time unless the employee is required to remain on call.

7) Provides that if a current or former employee believes that meeting a quota caused a violation of their right to a meal or rest period or required them to violate any occupational health and safety laws or division standards, the employee has the right to request, and the employer must provide within 21 days from the date of the request, a written description of each quota to which the employee is subject and a copy of the most recent 90 days of the employee's own personal work speed data.

8) Specifies that if a former employee requests their own personal work speed data pursuant to (7), above, then the employer shall provide the work speed data for the 90 days prior to the employee's separation form the employer.

9) Establishes a rebuttable presumption of unlawful retaliation if an employer in any manner discriminates, retaliates, or takes any adverse action against any employee within 90 days of the employee doing either of the following:
   a) requesting information about a quota; or
   b) making a complaint related to a quota violation to the commissioner, the division, other local or state governmental agency, or the employer.

10) Requires the Labor Commissioner, when receiving an employee complaint for violations of these provisions, to provide each employee in the workplace a written notice containing all of the following information:
   a) the employee's right to report meal and rest period violations, or any violations under this part to the commissioner; and
   b) that the employer is prohibited from taking adverse action against any employee for reporting unsafe workplace conditions or participating in an investigation conducted by any enforcement agency.

11) Upon receiving a complaint regarding a violation of (3) through (9), above, authorizes a state or local enforcement entity to request or subpoena records of warehouse distribution center quotas and employee work speed data.

12) Gives the Labor Commissioner authority to adopt regulations relating to the procedures for an employee to make a complaint alleging a violation of (3) through (9), above.

13) Specifies that these provisions do not preempt any city, county, or city and county ordinances that provide equal or greater protection to employees covered by this part.

14) Authorizes a current or former employee to bring an action for injunctive relief to obtain compliance with these provisions, as specified, and may, upon prevailing in the action, recover costs and reasonable attorney's fees in that action.

15) Provides that in any action by a current or former employee that could be brought pursuant to the Labor Code Private Attorneys General Act of 2004 for violations of these provisions, the employer shall have the right to cure alleged violations, as specified.

16) Specifies that these provisions do not limit the authority of the Attorney General, a district attorney, or a city attorney, either upon their own complaint or the complaint of any person acting for themselves or the general public, to prosecute actions, either civil or criminal, for violations of this part, or to enforce the provisions thereof independently and without specific direction of the commissioner or the division.

17) Specifies that these provisions are severable, and if any provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

18) Requires the Division of Occupational Safety and Health (Cal/OSHA), by January 1, 2023, to propose a standard for adoption by the Occupational Safety and Health Standards Board (OSHSB) that minimizes the risk of musculoskeletal injuries and disorders among employees working in warehouse distribution centers.

19) Authorizes Cal/OSHA to subpoena and inspect records of warehouse distribution center quotas in connection with the development of a standard.

COMMENTS

1. Impetus for the bill

Technological advances over the past two decades have enabled a revolution in the sale and delivery of consumer goods. At the click of a button, the tap of a mobile phone, or simply by issuing commands to their smart speaker, consumers can now summon virtually any product they please to their doorstep within a matter of a few days, and sometimes in just a few hours.

It is not technology alone that has enabled this dramatic increase in the speed of delivery of consumer goods, however. A network of centralized storage and distribution centers is another essential component, and within those warehouses, a vast and growing workforce, much of it composed of people of color. The companies at the forefront of this revolution achieve their remarkable delivery times in part by ensuring that these warehouse employees are maximizing nearly every moment they

are on the job. The companies track the time that workers spend on task versus the time they are distracted or attending to other things. The companies also track how quickly and efficiently the workers are completing their tasks. These performance metrics are then utilized to develop work production quotas: threshold levels of performance that workers must meet or exceed in order to avoid punitive consequences such as suspension, demotion, or being fired.

The result is a workforce frequently straining to keep up. This bill is about those workers and the toll that the relentless focus on speed and efficiency takes on their bodies.

2. Evidence of high rates of workplace injury at warehouses with performance metrics and work quotas

Even in the absence of work quotas, warehouse jobs are a dangerous line of work. Data from the U.S. Bureau of Labor Statistics reveal that warehouse workers are injured almost twice as often as workers across the private sector.[1] There is compelling evidence, however, that warehouse work becomes significantly more dangerous when workers are under pressure to meet work quotas.

While the online sales giant Amazon is not the only business that uses performance metrics and work quotas, it is widely credited with (or blamed for, depending on one's viewpoint) pioneering their utilization in the warehouse context. Workplace injury data from Amazon therefore provides important insight into how such quotas impact worker health and safety.

According to an analysis of the company's own data provided to the Committee by the author, Amazon workers get injured on the job nearly twice as often as employees across the warehouse sector as a whole, and Amazon workers are three times as likely to get injured on the job when compared against employees from across the rest of the private sector.[2] These are not merely bee stings; many of the Amazon warehouse injuries are severe. According to Amazon records, about 75 percent of the reported injuries were musculoskeletal injuries such as sprains, strained muscles, and torn ligaments.[3] Close to 90 percent of these injuries forced the employees to miss work or accept restricted duties.[4] Among those who had to miss work to recuperate, the average time away from the job was five-and-a-half weeks.[5] The relentless push for speed at

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[1] *Table 1. Incidence Rates of Nonfatal Occupational Injuries and Illnesses by Industry and Case Types* (2018) U.S. Bureau of Labor Statistics https://www.bls.gov/iif/oshwc/osh/os/summ1_00_2018.htm (as of Jul. 8, 2021).
[2] *Packaging Pain: Workplace Injuries in Amazon's Empire* (Dec. 2019) The Athena Coalition https://www.amazonpackagingpain.org/the-report (as of Jul. 8, 2021) at p. 8.
[3] *Id*. at p. 10.
[4] *Id*. at p. 3.
[5] *Id*. at 12.

Amazon also appears to affect workers in ways that would not necessary appear on an injury report. In response to a recent survey of California-based Amazon warehouse workers by the group Human Impact Partners, the majority of respondents reported worsening fatigue, anxiety, depression, weight loss or weight gain, pain, trouble sleeping, or headaches and migraines since starting work at Amazon.[6] After conducting an analysis of worker injury rates at Amazon in 2019, the Center for Investigative Reporting reached the conclusion that the company's "obsession with speed has turned its warehouses into injury mills."[7]

To make matters worse, the COVID-19 pandemic appears to have struck warehouse workers particularly hard. A UC Merced Community and Labor Center study found a 57 percent increase in deaths among warehouse workers last year, the highest increase in pandemic-related deaths of any industry in California.[8]

3. The solution proposed by the bill

This bill essentially sets down two key rules and then builds mechanisms around them to make sure they are enforceable. Those two key rules are set forth in proposed Labor Code Sections 2102 and 2103 of the bill. The first key rule is that warehouse employees must not be required to meet work quotas that prevent the employees from complying with occupation health and safety laws nor must workers meet work quotas that prevent them from taking the meal and rest breaks to which they are entitled by law. The second key rule is that any time warehouse workers spend taking action to comply with occupational health and safety laws should not be counted against their work performance quotas. The idea behind both rules is to ensure that warehouse workers are not cutting safety corners or forgoing the time to rest, recover, and attend to their body's needs.

The remainder of the bill is dedicated to making sure that warehouse workers have the means with which to enforce compliance with those two key rules.

First, the bill requires large warehouse employers to provide their workers, upon hire, with written descriptions of all the work quotas to which the workers will be subject, as well as what the consequences will be if the worker fails to meet those quotas. This ensures that the worker is aware of what quotas are in place from the outset. It also

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[6] *The Public Health Crisis Hidden in Amazon Warehouses* (Jan. 2021) Human Impact Partners https://humanimpact.org/hipprojects/amazon/?strategy=research (as of Jul. 8, 2021).
[7] Will Evans, *Behind the Smiles: Amazon's Internal Injury Records Expose the True Toll of Its Relentless Drive for Speed* (Nov. 25, 2019) Reveal: from the Center for Investigative Reporting https://revealnews.org/article/behind-the-smiles/ (as of Jul, 8, 2021).
[8] *Fact Sheet: The Pandemic's Toll on California Workers in High Risk Industries* (Apr. 2021) UC Merced Community and Labor Center https://clc.ucmerced.edu/sites/clc.ucmerced.edu/files/page/documents/fact_sheet_-_the_pandemics_toll_on_california_workers_in_high_risk_industries.pdf (as of Jul. 9, 2021).

presumably gives the worker the chance to bow out at the beginning if the worker finds the quota system too onerous.

Second, the bill gives any current and former employee who believes that meeting a quota caused them to miss meal or rest breaks or to violate occupational health and safety laws or Cal/OSHA standards, the opportunity to request copies of any quotas to which the worker was subject and 90 days of the employee's work speed data. Obtaining this information should enable the worker to evaluate the legitimacy of the worker's belief and document the nature and intensity of the work quotas. To ensure that at-will employees feel safe requesting this information, the bill goes on to establish a 90 day period following the request during which any adverse action that the employer takes against the employee is presumed to be retaliatory. The presumption is rebuttable, however, so employers will still be able to take disciplinary action against employees who underperform or misbehave.

Third, the bill provides a variety of potential avenues that workers can use to enforce their rights. The bill provides a narrow private right of action through which workers can seek injunctive relief in court to stop work quotas that are forcing the workers to take health and safety shortcuts. Alternatively, the bill enables workers to file administrative complaints with either the Labor Commissioner, in the case of meal and rest break violations, or Cal/OSHA in the case of health and safety violations. Relatedly, aggrieved workers would have the option, subject to the usual procedural prerequisites that apply to such actions, to seek relief on behalf of themselves and similarly situated employees through a claim pursuant to the Private Attorneys General Act (PAGA).

Fourth and finally, the bill calls for Cal/OSHA to develop a new set of health and safety standards specific to the context of warehouse work and taking into account the relationship between work quotas and the risk factors for musculoskeletal injuries.

The bill and standards developed pursuant to it may provide a blueprint for balancing the benefits of performance metrics against their inherent dangers. As time goes on, the technology for monitoring workplace performance will almost certainly get better, cheaper, and more versatile, enabling its use across an even broader range of industries and professions. These other industries are likely to run up against the same tensions addressed by this bill: how to harness the productivity gains that performance metrics promise without pushing the human capacity to work beyond what is safe for the human body.

4. Debate about the need for the bill overall

As an overarching matter, the opponents to this bill contend that employers already have sufficient financial incentive to avoid workplace injuries. Employers bear the cost of workplace injuries through the workers' compensation system, the argument goes,

and that should act as a sufficient deterrent against pushing the workforce to the point of, well, breaking. No bill is needed, the opposition says, because there is no need for government regulation where market-forces will solve the problem on their own.

This argument makes logical sense in theory, but as the data discussed in Comment 1, above, suggests, it does not appear to be born out in practice. If the market alone would address high rights of workplace injury, then one could expect to see workplace injury rates at companies like Amazon starting to fall at some point. Instead, injury rates in Amazon warehouses apparently increased by 33 percent between 2016 and 2019.[9] It appears that Amazon, at least, may have made the market-based decision that avoiding workplace injuries is more costly than maintaining the delivery speeds for which it is famous.[10] If that is true, then government regulation may be important to address the problem, or at least to alter the market incentives sufficiently to ensure that high rates of workplace injury do not simply become an acceptable cost of doing business.

5. Points of contention

A broad coalition of employers and business trade organization stand in opposition to the bill. These employers by and large accept that performance metrics and work quotas should not be so extreme that they lead to workplace injuries or encroach on workers' meal and rest breaks. Nonetheless, they object to the bill for a variety of reasons detailed below.

The author, sponsors, and opposition stakeholders have been negotiating productively about many aspects of the bill. The author has taken numerous amendments thus far in the process and proposes to offer further amendments in this Committee to address additional opposition concerns. Those amendments are described below in association with the point of contention that they address. It is Committee staff's understanding that, with the offer of these latest amendments, the California Chamber of Commerce is prepared to remove its "Job Killer" tag from the legislation, thought the Chamber will remain in opposition to the bill.

a. Definition and scope of health and safety laws under the bill

As it arrived in the Senate, this bill simply stated that employers could not impose quotas on workers that prevent the workers from complying with any "health or safety

[9] Will Evans, *How Amazon Hid Its Safety Crisis* (Sep. 29, 2020) Center for Investigative Reporting https://revealnews.org/article/how-amazon-hid-its-safety-crisis/ (as of Jul. 8, 2021).
[10] Media investigations into Amazon's labor practices have revealed evidence that Amazon has made a deliberate choice to encourage turnover its workforce rather than attempting to retain it. *See, generally,* Kantor, Weisse, & Ashford. *The Amazon That Customers Don't See* (Jun. 15, 2021) New York Times *https://www.nytimes.com/interactive/2021/06/15/us/amazon-workers.html?campaign_id=9&emc=edit_nn_20210615&instance_id=33021&nl=the-morning&regi_id=58969296&segment_id=60700&te=1&user_id=6c79040202efda0ffbe151eb1f55f08d* (as of Jul. 7, 2021).

laws." Opponents raised concerns, understandably, about how broadly that phrase could be interpreted. Did it encompass things like Center for Disease Control guidelines and local public health edicts? Might it include provisions within the Fair Employment and Housing Act? The open-ended nature of the phrase might have left employers uncertain of their rights and responsibilities and invited litigation testing the boundaries.

Amendments taken by the author in the Senate Labor, Public Employment and Retirement Committee largely addressed these concerns by clarifying that the statutes in question are "occupational health and safety laws in the Labor Code" as well as Cal/OSHA standards. This definition makes it much clearer exactly what laws employers must bear in mind when establishing quotas. It should avoid legal disputes over the bill's scope.

Unfortunately, due to the speed with which the bill needed to be passed from the last policy committee to this one, the new phrase "occupation health and safety laws in the Labor Code or division standards" was not incorporated uniformly across the bill. The author therefore proposes to offer amendments in Committee that ensure that the new, narrower scope is reflected throughout the bill.

b. Procedural prerequisites for filing a PAGA claim under the bill

The potential interaction of the California Private Attorneys General Act, or "PAGA," with this bill has, to this point at least, been a significant source of contention among the stakeholders. PAGA authorizes employees to sue their employers on behalf of the state for Labor Code violations committed against an employee and the employee's co-workers. (Lab. Code §§ 2698-2699.5.) In PAGA lawsuits, the employee plaintiff acts as a stand-in for the Labor Commissioner. In this way, PAGA acts as a force multiplier for the Labor Commissioner. Alone, the Labor Commissioner does not have sufficient capacity to enforce all Labor Code violations across the state. PAGA incentivizes aggrieved employees and their attorneys to bring cases that the Labor Commissioner otherwise could not. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-981.) As a result, PAGA achieves much broader enforcement of California Labor Code violations, and fear of exposure to liability under PAGA promotes greater compliance with California's legal protections for workers.

Critics of PAGA, however, contend that its powers can easily be abused, especially by what they view as unscrupulous plaintiffs' attorneys. In the hands of these attorneys, these critics assert, PAGA enables "gotcha" lawsuits in which employers find themselves tied up in expensive litigation and confronting significant penalties and attorney's fees awards for what they feel are very technical or trivial violations.

As a result of these criticisms, there are now procedural prerequisites that potential PAGA plaintiffs must comply with before they can file PAGA lawsuits to enforce

certain sections of the Labor Code. (Lab. Code § 2699.3.) In effect, these procedural prerequisites provide mechanisms for employers to get notification about and try to cure or otherwise address whatever the alleged violation is before it becomes the subject of a lawsuit. The prerequisites also often an opportunity to the administrative agencies tasked with enforcing the Labor Code, the Labor Commissioner and Cal/OSHA, can step in and take over the matter.

The opposition to this bill have expressed concern that, as it appears in print, the bill might exempt or limit the ability of employers to utilize the PAGA prerequisites to spare themselves from PAGA liability. As explained by the California Chamber of Commerce, the fear is that, though AB 701 expressly states that employers shall have the "right to cure" under the PAGA statute, that "right to cure" is:

> only one of the procedural requirements presently applied by 2699.3. As a basic canon of statutory interpretation, specifically referencing one element implicitly excludes others that are not mentioned. Applying that to AB 701's language, the specific mention of the "right to cure" under Section 2699.3 excludes the other requirements of 2699.3 - which would negate the presently existing safeguards for PAGA claims in law. (Internal citations and footnote omitted.)

To address the concern that the bill in print could be read as creating a loophole enabling plaintiffs to make an end run around the prerequisites for bringing a PAGA lawsuit, the author proposes to offer amendments in Committee that make clear that the bill preserves existing procedural prerequisites for enforcement of Cal/OSHA standards.

c. Frequency of employee requests for work quota and work speed records

The bill enables workers to examine the quotas to which they are subject, as well as to request work speed records. Looking over these records should allow workers who believe that the quotas are pushing them to the point of having to take shortcuts with health and safety to assess that claim and, if appropriate, document the problem when filing a complaint.

While it makes policy sense for a current warehouse employee to be able to access this information from time to time, there is no obvious policy rationale for enabling a former employee to request this data more than once. If allowed to demand repeated sets of work quota and work speed documentation, a disgruntled former warehouse employee could also exploit that opportunity in order to, in effect, harass the company.

To address this issue, the author proposes to offer an amendment in Committee limiting former warehouse employees to a single request for their work speed and work quota documentation.

d. Can the rebuttable presumption of retaliation be triggered repeatedly?

Existing law states that California employers are not supposed to retaliate against their employees for exercising workplace rights. (Lab. Code §§ 98.6 and 1102.5) In practice, however, most workers are skittish about asking too many questions or demanding too much from their employer, since they rely on their jobs to put food on their families' tables and keep roofs over their families' heads. California is an at-will employment state, meaning that unless a worker is covered by an agreement (most often a collective bargaining agreement) to the contrary, the worker can be let go at any time for any lawful reason and without explanation.

In order to help ensure that warehouse workers are not too fearful to invoke the protections that this bill would afford, the bill includes additional anti-retaliation protections that would apply for 90 days immediately after a worker either: (1) requested work speed and work quota information; or (2) made a formal complaint alleging that the work quotas are preventing compliance with health and safety laws or forcing the workers to forgo meal or rest breaks. During that 90 day period, any adverse action that the employer takes against the employee would be presumed to be retaliatory and, therefore, unlawful. However, the presumption would be rebuttable. To overcome it, all the employer has to do is provide a lawful justification for why the employer took the action against the employee.

A rebuttable presumption of this nature ascribes motivation to the adverse action without the need for evidence of it, at least until the employer offers a different, non-retaliatory basis for its action. Absent the rebuttable presumption, the employee would bear the initial burden of convincing the Labor Commission or a court that there is a causal link between the worker's attempt to address workplace safety concerns and the adverse action taken. Proving the employer's motivations will often be exceedingly difficult for the worker. The idea behind shifting the burden to the employer is to force the employer to take extra care to make sure that there is a valid, non-retaliatory basis for any adverse action taken against an employee in the wake of something like a request for better protective equipment or making a report to Cal/OSHA.

Opponents of rebuttable presumptions of retaliation often make the argument that such presumptions give bad employees impunity to run wild in the workplace. Yet, it is to account for such situations that the presumption is *rebuttable*. For example, a worker caught stealing the day after filing a report with Cal/OSHA or the Labor Commissioner would be covered by the rebuttable presumption of retaliation, but if the worker was indeed caught stealing, the employer need not hesitate to fire that worker because the rebuttable presumption can easily be refuted in such a case. The rebuttable presumption

is not intended to operate, and would not serve, to protect a worker actually caught stealing or anything similarly obvious and egregious.

The purpose behind the rebuttable presumption is to make it more difficult for an employer to *invent* a pretext to fire a worker who has just filed a Cal/OSHA complaint, thereby getting rid of the worker, the problem, and the associated potential for liability. The rebuttable presumption achieves that effect because it forces the employer to back up its story with valid evidence that the worker truly did something wrong. In other words, temporarily shifting the burden of proof to the employer does not prevent firing workers who misbehave; it just requires that the employer demonstrate that the misbehavior is the genuine reason for the firing.

As the opposition points out, however, the bill in print creates the possibility that a worker could create for themselves what is in effect a permanent rebuttable presumption of retaliation. Since the presumption lasts for 90 days and is triggered by a request for work speed data, a conniving worker could make sure to request more work speed data on the 89th day of the period to which the rebuttable presumption applies, thus renewing it for an additional 90 days, and so on, in perpetuity. It does not appear to have been the intention of the author to enable the possibility of a permanent rebuttable presumption of retaliation in this way.

To address the issue, the author proposes to offer amendments in Committee that limit the application of the rebuttable presumption of retaliation to once per calendar year. A worker could still ask to see their work quota and work speed information more than once a year, but they would only get the added protection of the rebuttable presumption of retaliation for one 90-day period each calendar year, starting from the moment of the first request. This should achieve a reasonable balance between offering the job security that a worker needs to be able to meaningfully exercise the rights under the bill while giving assurance to employers that they will not permanently have to bear the burden of justifying any adverse actions they may take against that employee.

e. The scope of injunctive relief that courts could provide to individual workers

The bill in print contains a narrow mechanism through which individual workers could bring a lawsuit in court to enforce their right to be free of work quotas that force them to take health and safety shortcuts. Pursuant to that limited mechanism, a worker's exclusive remedy is injunctive relief, though they can also recover their attorney's fees and costs if they prevail.

To the opposition, the specter of open-ended injunctive relief is worrisome, however. The opponents express concern that courts might wind up issuing orders that micromanage working conditions at various warehouses; something courts are obviously not in the best position to do. To assuage this concern, the author proposes to offer amendments in Committee that limit the injunctive relief that courts could grant

under the bill to suspension of the offending quota and any adverse action that resulted from enforcement of that quota. This amendment should still enable workers to enforce their rights under the bill without putting employers in the problematic position of having the courts dictate to them how they should manage their warehouse workforce.

f. Other opposition concerns

While the proposed amendments described above address many opposition concerns about the bill, the opponents remain convinced that a few aspects of the bill remain problematic. In brief, the opposition has two primary ongoing concerns.

The first concern relates to the bill's requirement that the time taken by workers to attend to health and safety concerns must not count against workers' performance quotas. While not necessarily objectionable in concept, the opposition claims that the performance metrics used in the industry do not necessarily operate in ways that would enable them to comply. To the degree this implies that the companies' performance metrics are unable to distinguish between time-off-task and time spent in furtherance of health and safety goals, that fact alone may be problematic. It appears to support the author and sponsors' contention that workers will be penalized for time-off-task when they are in fact engaged in productive and important activity, just activity directed at health and safety concerns rather than moving goods.

The second ongoing opposition concern has to do with the bill's requirement that Cal/OSHA develop new health and safety standards specific to the context of large warehouses and the relationship between risk factors for musculoskeletal injuries and the use of production quotas. The opponents argue that it is unnecessary for Cal/OSHA to produce such standards since it has some standards relating to warehouse work and the avoidance of musculoskeletal injuries in the context of repetitive motion already. Moreover, the opposition asserts that warehouses vary tremendously from one to the next, to a blanket set of standards will not necessarily fit well with every warehouse. In response, the author and sponsors contend that it is especially critical, in light of the high rate of injuries documented, to have a set of standards that specifically addresses the interplay between production quotas and workplace injuries.

6. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- clarify the definition and scope of the "health and safety laws" referred to in the bill by substituting in the phrase "occupational health and safety laws in the Labor Code or division standards" consistently throughout;

- ensure that the rebuttable presumption of retaliation cannot be invoked indefinitely by limiting its application to just the first request that a worker makes for their work quota or work speed data documentation in a calendar year;
- ensure that potential PAGA plaintiffs must comply with all applicable procedural prerequisites before filing a PAGA lawsuit including, when required, giving the opportunity to cure and investigation of the claim by Cal/OSHA;
- limit the injunctive relief that a court could award to a plaintiff under the bill to suspension of the work quota that constitutes the violation as well reversing any adverse action taken against employees to enforce that quota; and
- restrict former employees to a single request for work quota and personal work speed data.

A mock-up of the amendments in context is attached to this analysis.

7. Arguments in support of the bill

According to the author:

> Over the last year, Californians have relied on warehouse employees more than ever to distribute food and supplies that have kept the state going throughout the COVID-19 pandemic. However, increased demand for online retail corporations to provide the fastest deliveries at the lowest cost has created a race to the bottom and accelerated the decline in warehouse working conditions. Corporations like Amazon have collected record profits during the pandemic, while their warehouse employees have been expected to do more, go faster, and work harder without clear safety standards in place. It's no surprise that such brutal production quotas have contributed to soaring rates of serious workplace injuries for warehouse employees. It's unacceptable for the largest and wealthiest employers in the country to put workers' bodies and lives at risk just so consumers can get next-day delivery. AB 701 would strengthen warehouse workers' rights against arbitrary and abusive work quota systems by requiring companies to disclose work quotas to employees and state agencies, and require Cal/OSHA to adopt a standard that minimizes on-the-job injuries for employees working under strict production quotas. The bill would also specifically prohibit an employer from retaliating against or firing an employee for failing to meet a quota that would not allow a worker to comply with health and safety laws.

As sponsors of the bill, the California Teamsters Public Affairs Council, the Los Angeles County Federation of Labor, and Warehouse Workers Resource Center jointly write:

> Warehouse workers have an injury rate almost twice the average of other private sector workers. Injuries have increased significantly as warehouses have instituted new pace of work requirements to facilitate just-in-time delivery. Workers are monitored by algorithms and punished for failing to meet quotas that are inherently dangerous. These quotas not only result in widespread injuries, but they also incentivize unsafe work speeds. […] These backbreaking conditions have significant implications for communities of color with warehouse workers in California being fifty-four percent Latino and ten percent Black. Many workers see no other job options and feel they must accept unsafe conditions to keep a roof over their heads. These are the workers least likely to have adequate health insurance or any safety net when they are unable to work due to injury.
>
> AB 701 would help to protect warehouse workers by requiring employers to disclose quotas and pace of work standards to workers and state enforcement agencies. It would prohibit employers from counting time that workers spend complying with health and safety laws as "time off task." It would also direct Cal/OSHA to create a standard to minimize injuries among warehouse workers and provide stronger rights and protections against arbitrary and abusive work quota systems.

In support, a coalition of 29 workers rights, immigrant rights, organized labor, and public interest legal organizations writes:

> The rapid growth of online shopping and on-demand delivery has supercharged the dangers for warehouse workers, bringing increasingly brutal work speeds and soaring serious injury rates, in particular at booming e-commerce giants such as Amazon and Walmart, which are also now the two largest private employers in California. The growth in business is only speeding up conditions inside warehouses. Amazon warehouse workers complain of relentless quotas and crushing workloads, managed through a system of constant surveillance. To keep up with Amazon, Walmart and other competitors have been forced to also offer two-day and next-day delivery, leading to a dangerous rise in quotas and time pressures. […] California must demand better from these companies. The biggest employers impact conditions across the industry. […] If we raise standards at the biggest companies, we can create good jobs throughout the industry, particularly in the communities that need them most.

8. Arguments in opposition to the bill

In opposition to the bill in print, a coalition of 24 business and trade associations led by the California Chamber of Commerce writes:

> […] AB 701 […] will: (1) expand the California Labor Code's Private Attorneys General Act (PAGA) via a loophole to PAGA's procedural requirements, (2) create a duplicative Cal/OSHA regulation on repetitive motion injuries; (3) authorize private injunctive actions related to state regulations that are already being enforced by agencies; and (4) will create a perpetual presumption of retaliation for employees, among other problematic provisions for warehouse employers. Most importantly, AB 701 will cause these litigation risks for employers without actually improving any safety for employees.
>
> To be clear – we are not opposed to compliance with existing legal protections related to health and safety (of which AB 701 adds none). Our opposition stems from the overbroad standards contained in AB 701 and the litigation which it will bring on warehouses (and customers in their supply chains) across the state.

The opposition's more specific concerns are addressed in Comment 5, above.

SUPPORT

California Teamsters Public Affairs Council (sponsor)
Los Angeles County Federation of Labor (sponsor)
Warehouse Workers Resource Center (sponsor)
Alliance of Californians for Community Empowerment
Bet Tzedek
Blue Green Alliance
California Employment Lawyers Association
California Immigrant Policy Center
California Labor Federation, AFL-CIO
California Professional Firefighters
California Rural Legal Assistance Foundation
California Teachers Association
California Work & Family Coalition
Center for Workers' Rights
Center on Policy Initiatives
Central Coast Alliance United for A Sustainable Economy
Centro Legal de la Raza

CLEAN Carwash Campaign
Clergy and Laity United for Economic Justice
Coalition for Humane Immigrant Rights
Communications Workers of America, District 9
Communities for a Better Environment
Courage Campaign
Democratic Socialists of America - Los Angeles
Dolores Huerta Foundation
East Bay Alliance for a Sustainable Economy
Entertainment Union Coalition
Five Counties Central Labor Council
Garment Worker Center
Human Impact Partners
Inland Empire Labor Council
International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, California Council
International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Local 80
Instituto de Educación Popular del Sur de California
International Longshore & Warehouse Union, Local 26
Jobs to Move America
Koreatown Immigrant Workers Alliance
Los Angeles Alliance for A New Economy
National Day Laborer Organizing Network
National Employment Law Project
National Immigration Law Center
City of Oakland
Organize Sacramento
Partnership for Working Families
People's Collective for Economic Justice
People's Collective for Environmental Justice
Public Counsel
Santa Clara Wage Theft Coalition
Libby Schaaf, Mayor, City of Oakland
Service Employee International Union, California State Council
Southern California Coalition for Occupational Safety & Health
Teamsters Local 396
TechEquity Collaborative
United Food and Commercial Workers, Western States Council
United for Respect
University Council-American Federation of Teachers
Wage Justice Center
Wage Theft Coalition Santa Clara
Working Partnerships USA

Worksafe

OPPOSITION

Auto Care Association
California Automotive Wholesalers' Association
California Beer and Beverage Distributors
California Business Properties Association
California Chamber of Commerce
California Farm Bureau
California Framing Contractors Association
California Grocers Association
California Hispanic Chamber of Commerce
California League of Food Producers
California Manufacturers & Technology Association
California Retailers Association
California Trucking Association
Civil Justice Association of California
Family Business Association of California
Greater Riverside Chamber of Commerce
International Council of Shopping Centers
International Warehouse Logistics Association
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Moreno Valley Chamber of Commerce
NAIOP, the Commercial Real Estate Development Association
Orange County Business Council
San Gabriel Valley Economic Partnership
Southwest California Legislative Council
Western Growers Association

RELATED LEGISLATION

Pending Legislation: SB 62 (Durazo, 2021) prohibits the use of piece-rate pay in the garment industry, with specified exceptions, in order, among other things, to address injuries resulting from high speed production.

Prior Legislation:

AB 3056 (Gonzalez, 2020) would have prohibited employers from counting any of the following towards the time required for a warehouse employee to complete a quota: 1) accessing and using a restroom, hydration, or hand-washing station; 2) documenting or reporting a Labor Code violation; or 3) taking a legally mandated break. AB 3056 died on the Senate Floor.

AB 1513 (Williams, Ch. 754, Stats. 2015) codified court decisions requiring piece rate employers must be compensated separately and distinctly for nonproductive time (rest breaks, recovery periods, and time under the employer's control during which the employee is not producing "pieces").

SB 435 (Padilla, Ch. 435, Stats. 2013) prohibited an employer from making an employee work during a recovery period. The bill also extended to recovery periods the existing law that an employer must pay an employee one additional hour of pay at the employee's regular rate of compensation for each work day that a meal or rest period is not provided.

AB 2509 (Steinberg, Ch. 876, Stats. 2000) required employers to pay employees one hour's pay for each workday that the employee is required to work during a meal or rest period.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 1)
Assembly Floor (Ayes 52, Noes 19)
Assembly Appropriations Committee (Ayes 12, Noes 4)
Assembly Labor and Employment Committee (Ayes 5, Noes 2)

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Amended Mock-up for 2021-2022 AB-701 (Lorena Gonzalez (A))

Mock-up based on Version Number 96 - Amended Senate 7/7/21
Submitted by: Griffiths, SJUD

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

(a) The rapid growth of just-in-time logistics and same- and next-day consumer package delivery, and advances in technology used for tracking employee productivity, have led to a rise in the number of warehouse and distribution center workers who are subject to quantified work quotas.

(b) Warehouse and distribution center employees who work under those quotas are expected to complete a quantified number of tasks within specific time periods, often measured down to the minute or second, and face adverse employment action, including suspension or termination, if they fail to do so.

(c) Those quotas generally do not allow for workers to comply with safety guidelines or to recover from strenuous activity during productive work time, leaving warehouse and distribution center employees who work under them at high risk of injury and illness.

(d) The quotas under which warehouse and distribution center employees regularly work also affect their compensation. California and many cities require employers to pay their employees a minimum-wage rate. Warehouse and distribution center employees who work under a quota, however, do not receive the full benefit of minimum wages if their quota is increased to make up for the direct or indirect effect of a minimum-wage increase.

(e) Quotas in occupations that are already physically demanding not only increase accidents, but they also incentivize unsafe work. The workforce in warehouse and logistics is largely comprised of people of color who depend upon these jobs to provide for their families and often see no alternative but to prioritize quota compliance over their own safety.

SEC. 2. Part 8.6 (commencing with Section 2100) is added to Division 2 of the Labor Code, to read:

PART 8.6. Warehouse Distribution Centers

2100. As used in this part:

(a) "Commissioner" means the Labor Commissioner.

(b) "Defined time period" means any unit of time measurement equal to or less than the duration of an employee's shift, and includes hours, minutes, and seconds and any fraction thereof.

(c) "Division" means the Division of Occupational Safety and Health.

(d) "Employee" means a nonexempt employee who works at a warehouse distribution center.

(e) (1) "Employee work speed data" means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota, including, but not limited to, quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks.

(2) "Employee work speed data" does not include qualitative performance assessments, personnel records, or itemized wage statements pursuant to Section 226, except for any content of those records that includes employee work speed data as defined in this part.

(f) "Employer" means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary service, or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in the state. For purposes of this definition, all employees of an employer's commonly controlled group, as that term is defined in Section 25105 of the Revenue and Taxation Code, shall be counted in determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers in the state.

(g) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(h) "Quota" means a work standard under which an employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and

under which the employee may suffer an adverse employment action if they fail to complete the performance standard.

(i) "Warehouse distribution center" means an establishment as defined by any of the following North American Industry Classification System (NAICS) Codes, however that establishment is denominated:

(1) 493110 for General Warehousing and Storage.

(2) 423 for Merchant Wholesalers, Durable Goods.

(3) 424 for Merchant Wholesalers, Nondurable Goods.

(4) 454110 for Electronic Shopping and Mail-Order Houses.

2101. Each employer shall provide to each employee, upon hire, a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota.

2102. An employee shall not be required to meet a quota that prevents compliance with meal or rest periods, or occupational health and safety laws in the Labor Code or division standards. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

2103. (a) Any actions taken by an employee to comply with occupational health and safety laws in the Labor Code or division standards shall be considered time on task and productive time for purposes of any quota or monitoring system.

(b) Notwithstanding subdivision (a), consistent with existing law, meal and rest breaks are not considered productive time unless the employee is required to remain on call.

2104. (a) (1) If a current or former employee believes that meeting a quota caused a violation of their right to a meal or rest period or required them to violate any occupational health and safety laws in the Labor Code or division standards, they have the right to request, and the employer shall provide, a written description of each quota to which the employee is subject and a copy of the most recent 90 days of the employee's own personal work speed data.

(2) If a former employee requests a written description of the quotas to which they were subject and a copy of their own personal work speed data pursuant to paragraph (1), the employer shall provide 90 days of the former employee's quotas and personal work

speed data for the 90 days prior to the date of the employee's separation from the employer.

(3) A former employee is limited to one request pursuant to this subdivision.

(b) An employer that receives a written or oral request for information pursuant to subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.

(c) Nothing in this section requires an employer to use quotas or monitor work speed data. An employer that does not monitor such data has no obligation to provide it.

2105. For purposes of this part, there shall be a rebuttable presumption of unlawful retaliation if an employer in any manner discriminates, retaliates, or takes any adverse action against any employee within 90 days of the employee doing either of the following:

(a) Initiating the employee's first request in a calendar year for~~Requesting~~ information about a quota or personal work speed data pursuant to subdivision (a) of Section 2104.

(b) Making a complaint related to a quota alleging any violation of Sections 2101 to 2104, inclusive, to the commissioner, the division, other local or state governmental agency, or the employer.

2106. For purposes of this part, if any employee files a complaint with the commissioner alleging violations under this part, the commissioner shall provide each employee in the workplace a written notice containing all of the following information:

(a) The employee's right to report meal and rest period violations, or any violations under this part to the commissioner.

(b) The employer's prohibition from taking adverse action against any employee for reporting unsafe workplace conditions or participating in an investigation conducted by any enforcement agency.

2107. Upon receiving a complaint regarding a violation of this part, a state or local enforcement entity may request or subpoena the records of warehouse distribution center quotas and employee work speed data.

2108. The commissioner shall have authority to adopt regulations relating to the procedures for an employee to make a complaint alleging a violation of this part.

2109. This part does not preempt any city, county, or city and county ordinances that provide equal or greater protection to employees covered by this part.

2110. A current or former employee may bring an action for injunctive relief to obtain compliance with Sections 2101 to 2104, inclusive, and may, upon prevailing in the

action, recover costs and reasonable attorney's fees in that action. In any action involving a quota that prevented the compliance with regulations promulgated by the Standards Board, the injunctive relief shall be limited to suspension of the quota and any adverse action that resulted from its enforcement.

2111. In any action by a current or former employee that could be brought pursuant to the Labor Code Private Attorneys General Act of 2004 (Part 13 (commencing with Section 2698)) for violations of this part, the employer shall have the right to cure alleged violations as set forth in Section 2699.3. For any action alleging a violation of any occupational health and safety laws in the Labor Code or division standards contained in or interpreting Division 5 of the Labor Code (commencing with Section 6300), the current or former employee must comply with the applicable procedural requirements of subdivision (b) of section 2699.3.

2112. This part does not limit the authority of the Attorney General, a district attorney, or a city attorney, either upon their own complaint or the complaint of any person acting for themselves or the general public, to prosecute actions, either civil or criminal, for violations of this part, or to enforce the provisions thereof independently and without specific direction of the commissioner or the division.

2113. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. Section 6726 is added to the Labor Code, to read:

6726. (a) By January 1, 2023, the division shall propose to the standards board for the board's review and adoption a standard that minimizes the risk of musculoskeletal injuries and disorders among employees working in warehouse distribution centers, as defined in subdivision (i) of Section 2100. The standard shall be based on, but not be limited to, work pace, work activity levels, recovery time, repetitive motions, forceful exertions, twisting and bending, and other factors and evidence-based recommendations related to musculoskeletal injuries and disorders. The standard shall address, among other considerations, the relationship between quotas and risk factors for musculoskeletal injuries and disorders in warehouse distribution centers that employ production quotas.

(b) The division may subpoena and inspect records of warehouse distribution center quotas pursuant to its authority under Sections 6304.5, 6313, and subdivision (c) of Section 6314. The standards board may subpoena and inspect records of warehouse distribution center quotas in connection with the development of standards under subdivision (a).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local

agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.