

ASSEMBLY BILL

No. 515

Introduced by Assembly Member Lieber

February 20, 2007

An act to amend Section 142.3 of the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 515, as introduced, Lieber. Occupational safety and health.

Existing law provides that the Occupational Safety and Health Standards Board is the only agency in the state authorized to adopt, amend, or repeal occupational safety and health standards, and requires the board to adopt standards that are at least as effective as federal standards promulgated under the Occupational Safety and Health Act of 1970, within a specified time.

This bill would require the board to adopt standards, by specified deadlines, establishing permissible exposure limits (PEL) for workplace hazardous substances. This bill would further require that any PEL adopted by the board for a given substance be the same as the health-based occupational exposure level determined for that substance by the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency, unless there is clear and convincing evidence that the exposure level formulated by the OEHHA is not feasible. In addition, this bill would permit the Division of Occupational Safety and Health to prepare an assessment of the reasonable range of costs for an affected industry to implement a given standard and would permit the board to rebut the division's estimates regarding the economic feasibility of a proposed standard. The bill would also specifically authorize the board to set standards for

substances for which exposure standards have not been set by OEHHA, subject to specified procedures.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 142.3 of the Labor Code is amended to
2 read:

3 142.3. (a) (1) The board, by an affirmative vote of at least
4 four members, may adopt, amend, or repeal occupational safety
5 and health standards and orders. The board shall be the only agency
6 in the state authorized to adopt occupational safety and health
7 standards.

8 (2) (A) *The board shall adopt occupational safety and health*
9 *standards, pursuant to the schedule set forth in subparagraph (C),*
10 *for any workplace hazardous substance known to the state to cause*
11 *cancer or reproductive or developmental toxicity within the*
12 *meaning of the Safe Drinking Water and Toxic Enforcement Act*
13 *of 1986 (Chapter 6.6 (commencing with Section 25249.5) of*
14 *Division 20 of the Health and Safety Code) and for any workplace*
15 *substance known to cause a chronic health effect for which there*
16 *is an existing quantitative risk assessment prepared or published*
17 *by the Office of Environmental Health Hazard Assessment*
18 *(OEHHA) of the California Environmental Protection Agency.*
19 *Each standard shall include a permissible exposure level (PEL)*
20 *based on the following:*

21 (i) *For each carcinogen under consideration, the board shall*
22 *request from the OEHHA a health-based occupational exposure*
23 *level, which the OEHHA shall calculate based on existing OEHHA*
24 *quantitative risk assessments for that substance adjusted to account*
25 *for workplace exposure and other scientific factors relevant to*
26 *establishing a health-based occupational exposure level that would*
27 *result in no more than one excess cancer per one hundred thousand*
28 *workers. Additionally, the OEHHA shall calculate both of the*
29 *following:*

30 (I) *The cancer risk level associated with any existing PEL*
31 *previously adopted by the board.*

32 (II) *The cancer risk level associated with any occupational*
33 *exposure levels the board deems necessary for its deliberations,*

1 *including but not limited to any occupational exposure level that*
2 *the board adopts.*

3 *(ii) For each noncarcinogen for which the board is required by*
4 *this paragraph to adopt an occupational safety and health*
5 *standard, the board shall use from the OEHHA a health-based*
6 *occupational exposure level, which the OEHHA shall calculate*
7 *based on existing OEHHA quantitative risk assessments for that*
8 *substance adjusted to account for workplace exposure and other*
9 *scientific factors relevant to establishing a health-based*
10 *occupational exposure level. The OEHHA health-based*
11 *occupational exposure level for a noncarcinogen shall protect*
12 *against noncancer health effects including reproductive or*
13 *developmental harm, or chronic health effects including, but not*
14 *limited to, nerve, lung, or other organ system damage.*

15 *(iii) For a substance not described in clauses (i) and (ii) for*
16 *which the board believes it may be appropriate to set workplace*
17 *exposure standards, the board shall consider any information*
18 *available from the OEHHA, including any OEHHA health-based*
19 *occupational exposure level or other toxicological or*
20 *epidemiological information concerning the substance, before*
21 *setting a standard. If the board finds the substance is a carcinogen,*
22 *it shall set the standard to result in no more than one excess cancer*
23 *per one hundred thousand workers.*

24 *(iv) Consistent with the requirements of Section 144.6, the*
25 *Division of Occupational Safety and Health may prepare an*
26 *assessment of the technical feasibility and the range of costs for*
27 *the industry to implement the OEHHA health-based occupational*
28 *exposure level or an assessment of the implications for worker*
29 *safety and health of any standard proposed pursuant to clause*
30 *(iii). In doing so, the division may convene an advisory committee*
31 *or consider data or estimates from the industry, experts, workers,*
32 *or any others. The division shall forward to the board its own*
33 *findings regarding the technical feasibility of the OEHHA*
34 *health-based occupational exposure level, or other PEL proposed*
35 *by the board pursuant to clause (iii), and a cost estimate for*
36 *achieving the lowest technically feasible occupational exposure*
37 *level.*

38 *(v) The board may consider additional evidence to rebut the*
39 *division's estimates regarding feasibility formulated pursuant to*
40 *clause (iv) and, in so doing, shall consider actual exposure*

1 monitoring data that is independently verified and that documents
2 the lowest exposure level achievable using existing practices or
3 controls. Feasibility includes the ability to measure workplace
4 exposures at the proposed PEL as well as the ability of the industry
5 to comply with that proposed PEL using new or existing
6 technology.

7 ~~(2)~~

8 (B) (i) For those standards required by this paragraph, there
9 is a rebuttable presumption that a PEL adopted by the board shall
10 be the same as the OEHHA health-based occupational exposure
11 level prepared based on existing OEHHA scientific risk
12 assessments in order to achieve both of the following:

13 (I) Ensure that the state's scientific risk assessment process for
14 toxic agents is consistently and uniformly used, applied, and
15 implemented in workplaces.

16 (II) Ensure, by the board's exercise of its authority as set forth
17 in Section 144.6, that no employee will suffer material impairment
18 of health or functional capacity even if the employee has regular
19 exposure to a hazard regulated by that standard for the period of
20 his or her working life.

21 (ii) A PEL adopted by the board may be less protective than the
22 OEHHA health-based occupational exposure level if there is clear
23 and convincing evidence that the OEHHA health-based
24 occupational exposure level is not feasible as described in clause
25 (v) of subparagraph (A). When adopting a PEL for a carcinogen
26 that differs from the OEHHA health-based occupational exposure
27 level, the board shall disclose the level of cancer risk associated
28 with the PEL it is adopting, as well as its rationale. When adopting
29 a PEL for a noncarcinogen that differs from the OEHHA
30 health-based occupational exposure level, the board shall disclose
31 the ratio between the PEL it is adopting and the OEHHA
32 health-based occupational exposure level in order to assess the
33 change in the hazard level to which workers will be exposed as
34 well as its rationale. For substances for which the board proposes
35 a PEL pursuant to clause (iii) of subparagraph (A), the board shall
36 disclose its rationale for choosing the final PEL adopted.

37 (C) The board shall adopt the standards specified in this
38 paragraph as provided in this subparagraph.

39 (i) By January 1, 2010, the board shall adopt revised or new
40 standards for any workplace hazardous substance for which there

1 *exists on January 1, 2008, a quantitative risk assessment prepared*
2 *or published by the OEHHA if that substance is known to the state*
3 *to cause cancer or reproductive or developmental toxicity within*
4 *the meaning of the Safe Drinking Water and Toxic Enforcement*
5 *Act of 1986 (Chapter 6.6 (commencing with Section 25249.5) of*
6 *Division 20 of the Health and Safety Code) or if OEHHA has*
7 *identified the substance as causing long term or chronic health*
8 *effects, including nerve, lung, or other organ system damage.*

9 *(ii) Within one year of the date the OEHHA forwards to the*
10 *board a health-based occupational exposure level, the board shall*
11 *adopt a standard based on a new or revised quantitative risk*
12 *assessment prepared or published by the OEHHA for any*
13 *workplace hazardous substance that is known to the state to cause*
14 *cancer or reproductive or developmental toxicity within the*
15 *meaning of the Safe Drinking Water and Toxic Enforcement Act*
16 *of 1986 (Chapter 6.6 (commencing with Section 25249.5) of*
17 *Division 20 of the Health and Safety Code) or that the OEHHA*
18 *has identified as causing long term or chronic health effects,*
19 *including nerve, lung, or other organ system damage.*

20 (3) The board shall adopt standards at least as effective as the
21 federal standards for all issues for which federal standards have
22 been promulgated under Section 6 of the Occupational Safety and
23 Health Act of 1970 (P.L. 91-596) within six months of the
24 promulgation date of the federal standards and which, when
25 applicable to products which are distributed or used in interstate
26 commerce, are required by compelling local conditions and do not
27 unduly burden interstate commerce.

28 ~~(3)~~

29 (4) No standard or amendment to any standard adopted by the
30 board that is substantially the same as a federal standard shall be
31 subject to Article 5 (commencing with Section 11346) and Article
32 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of
33 Division 3 of Title 2 of the Government Code. For purposes of
34 this subdivision, “substantially the same” means identical to the
35 federal standard with the exception of editorial and format
36 differences needed to conform to other state laws and standards.

37 ~~(4)~~

38 (5) If a federal standard is promulgated and no state standard
39 that is at least as effective as the federal standard is adopted by the
40 board within six months of the date of promulgation of the federal

1 standard, the following provisions shall apply unless adoption of
2 the state standard is imminent:

3 (A) If there is no existing state standard covering the same
4 issues, the federal standard shall be deemed to be a standard
5 adopted by the board and enforceable by the division pursuant to
6 Section 6317. This standard shall not be subject to Article 5
7 (commencing with Section 11346) and Article 6 (commencing
8 with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title
9 2 of the Government Code.

10 (B) If a state standard is in effect at the time a federal standard
11 is promulgated covering the same issue or issues, the board may
12 adopt the federal standard, or a portion thereof, as a standard
13 enforceable by the division pursuant to Section 6317; provided,
14 however, if a federal standard or portion thereof is adopted which
15 replaces an existing state standard or portion thereof, the federal
16 standard shall be as effective as the state standard or portion
17 thereof. No adoption of or amendment to any federal standard, or
18 portion thereof shall be subject to Article 5 (commencing with
19 Section 11346) and Article 6 (commencing with Section 11349)
20 of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government
21 Code.

22 (C) Any state standard adopted pursuant to subparagraph (A)
23 or (B) shall become effective at the time the standard is filed with
24 the Secretary of State, unless otherwise provided, but shall not
25 take effect before the effective date of the equivalent federal
26 standard and shall remain in effect for six months unless readopted
27 by the board for an additional six months or superseded by a
28 standard adopted by the board pursuant to paragraph~~(2)~~ (3) of
29 subdivision (a).

30 (D) Any standard adopted pursuant to subparagraph (A), (B),
31 or (C), shall be published in Title 8 of the California Code of
32 Regulations in a manner similar to any other standards adopted
33 pursuant to paragraphs (1), (2), and~~(2)~~ (3) of subdivision (a) of
34 this section.

35 (b) The State Building Standards Commission shall codify and
36 publish in a semiannual supplement to the California Building
37 Standards Code, or in a more frequent supplement if required by
38 federal law, all occupational safety and health standards that would
39 otherwise meet the definition of a building standard described in
40 Section 18909 of the Health and Safety Code adopted by the board

1 in the State Building Standards Code without reimbursement from
2 the board. These occupational safety and health standards may
3 also be published by the Occupational Safety and Health Standards
4 Board in other provisions in Title 8 of the California Code of
5 Regulations prior to publication in the California Building
6 Standards Code if that other publication includes an appropriate
7 identification of occupational safety and health standards contained
8 in the other publication.

9 (c) Any occupational safety or health standard or order
10 promulgated under this section shall prescribe the use of labels or
11 other appropriate forms of warning as are necessary to ensure that
12 employees are apprised of all hazards to which they are exposed,
13 relevant symptoms and appropriate emergency treatment, and
14 proper conditions and precautions for safe use or exposure. Where
15 appropriate, these standards or orders shall also prescribe suitable
16 protective equipment and control or technological procedures to
17 be used in connection with these hazards and shall provide for
18 monitoring or measuring employee exposure at such locations and
19 intervals and in a manner as may be necessary for the protection
20 of employees. In addition, where appropriate, the occupational
21 safety or health standard or order shall prescribe the type and
22 frequency of medical examinations or other tests which shall be
23 made available, by the employer or at his or her cost, to employees
24 exposed to such hazards in order to most effectively determine
25 whether the health of such employee is adversely affected by this
26 exposure.

27 (d) The results of these examinations or tests shall be furnished
28 only to the Division of Occupational Safety and Health, the State
29 Department of Health Services, any other authorized state agency,
30 the employer, the employee, and, at the request of the employee,
31 to his or her physician.

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