

AMENDED IN SENATE AUGUST 1, 2007

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 515

Introduced by Assembly Member Lieber

February 20, 2007

An act to ~~amend Section 142.3 of~~ *add Section 144.6.5 to* the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 515, as amended, 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 declare the intent of the Legislature that the board set as its highest priority protection against the effects of those substances that may cause cancer or reproductive or developmental toxicity. This bill would also require the board to adopt standards establishing permissible exposure limits (PEL) for *toxic materials in the workplace hazardous substances that meet specified criteria*. This bill would further require that any PEL adopted by the board for a given substance ~~be the same as,~~ *to the extent feasible, correspond to* 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~~ *require OEHHA to submit to the board and to 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 a list of toxic materials that meet the criteria established by this bill, not later than February 1, 2008. The bill would authorize the division to convene one or more advisory committees, as specified. The bill would also require the Occupational Safety and Health Standards Board to submit, no later than April 1, 2008, to the Governor and the Legislature a plan and schedule for the adoption of standards and PELs.*

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Hazardous substances in the workplace can cause preventable
- 4 and life threatening health damage to workers *and their unborn*
- 5 *children* who are exposed to those substances.
- 6 (b) Workers have a right to be adequately protected from
- 7 hazardous substances that cause cancer and reproductive or
- 8 developmental toxicity, especially since work-related cancer may
- 9 not become manifest until many years after the worker leaves the
- 10 workplace, and some exposures can permanently impact workers'
- 11 ability to produce and raise healthy children.
- 12 (c) In order to best protect workers, it is the intent of the
- 13 Legislature that the Occupational Safety and Health Standards
- 14 Board set as its highest priority, *in the process of regulating toxic*
- 15 *materials*, protection against the effects of those substances that
- 16 may cause cancer or reproductive or developmental toxicity. *The*
- 17 *Legislature also recognizes the need to balance this priority with*
- 18 *the regulation of toxic materials that may be life-threatening or*
- 19 *cause serious disabling acute health effects. Among all these toxic*

1 hazardous substances, the board shall *also* give greater-attention
2 *priority* to substances that are in widespread use in California and
3 those that potentially pose the greatest *exposure* risk to workers.

4 SEC. 2. Section 142.3 of the Labor Code is amended to read:

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

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

22 (i) ~~For each carcinogen under consideration, the board shall
23 request from the OEHHA a health-based occupational exposure
24 level, which the OEHHA shall calculate based on existing OEHHA
25 quantitative risk assessments for that substance adjusted to account
26 for workplace exposure and other scientific factors relevant to
27 establishing a health-based occupational exposure level that would
28 result in no more than one excess cancer per 100,000 workers.
29 Additionally, the OEHHA shall calculate both of the 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,
34 including, but not limited to, any occupational exposure level that
35 the board adopts.~~

36 (ii) ~~For each noncarcinogen for which the board is required by
37 this paragraph to adopt an occupational safety and health standard,
38 the board shall use from the OEHHA a health-based occupational
39 exposure level, which the OEHHA shall calculate based on existing
40 OEHHA quantitative risk assessments for that substance adjusted~~

1 to account for workplace exposure and other scientific factors
2 relevant to establishing a health-based occupational exposure level.
3 The OEHHA health-based occupational exposure level for a
4 noncarcinogen shall protect against noncancer health effects
5 including reproductive or developmental harm, or chronic health
6 effects, including, but not limited to, nerve, lung, or other organ
7 system damage.

8 (iii) For a substance not described in clauses (i) and (ii) for
9 which the board believes it may be appropriate to set workplace
10 exposure standards, the board shall consider any information
11 available from the OEHHA, including any OEHHA health-based
12 occupational exposure level or other toxicological or
13 epidemiological information concerning the substance, before
14 setting a standard. If the board finds the substance is a carcinogen,
15 it shall set the standard to result in no more than one excess cancer
16 per 100,000 workers.

17 (iv) Consistent with the requirements of Section 144.6, the
18 Division of Occupational Safety and Health may prepare an
19 assessment of the technical feasibility and the range of costs for
20 the industry to implement the OEHHA health-based occupational
21 exposure level in clause (i) and (ii) or an assessment of the
22 implications for worker safety and health of any standard proposed
23 pursuant to clause (iii). In doing so, the division may convene an
24 advisory committee or consider data or estimates from the industry,
25 experts, workers, or any others. This clause is not intended to
26 interfere with the role that regulatory advisory committees may
27 play in the development of occupational safety and health
28 regulations. If the division convenes an advisory committee
29 pursuant to this clause, the health-based occupational exposure
30 level, adjusted to account for workplace exposure and other
31 scientific factors relevant to establishing a health-based
32 occupational exposure level, shall be presented to the advisory
33 committee, which may, based on feasibility, recommend a
34 permissible exposure limit that is more or less protective. The
35 division shall forward to the board its own findings regarding the
36 technical feasibility of the OEHHA health-based occupational
37 exposure level with respect to clause (i) and (ii), or other PEL
38 proposed by the board pursuant to clause (iii), and a cost estimate
39 for achieving the lowest technically feasible occupational exposure
40 level.

1 ~~(v) The board may consider additional evidence presented by~~
2 ~~any interested person to rebut the division's estimates regarding~~
3 ~~feasibility formulated pursuant to clause (iv) and, in so doing, shall~~
4 ~~consider actual exposure monitoring data that is independently~~
5 ~~verified and that documents the lowest exposure level achievable~~
6 ~~using existing practices or controls. Feasibility includes the ability~~
7 ~~to measure workplace exposures at the proposed PEL as well as~~
8 ~~the ability of the industry to comply with that proposed PEL using~~
9 ~~new or existing technology.~~

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

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

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

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

39 ~~(3) The board shall adopt standards at least as effective as the~~
40 ~~federal standards for all issues for which federal standards have~~

1 been promulgated under Section 6 of the Occupational Safety and
2 Health Act of 1970 (P.L. 91-596) within six months of the
3 promulgation date of the federal standards and which, when
4 applicable to products which are distributed or used in interstate
5 commerce, are required by compelling local conditions and do not
6 unduly burden interstate commerce.

7 ~~(4) No standard or amendment to any standard adopted by the~~
8 ~~board that is substantially the same as a federal standard shall be~~
9 ~~subject to Article 5 (commencing with Section 11346) and Article~~
10 ~~6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of~~
11 ~~Division 3 of Title 2 of the Government Code. For purposes of~~
12 ~~this subdivision, “substantially the same” means identical to the~~
13 ~~federal standard with the exception of editorial and format~~
14 ~~differences needed to conform to other state laws and standards.~~

15 ~~(5) If a federal standard is promulgated and no state standard~~
16 ~~that is at least as effective as the federal standard is adopted by the~~
17 ~~board within six months of the date of promulgation of the federal~~
18 ~~standard, the following provisions shall apply unless adoption of~~
19 ~~the state standard is imminent:~~

20 ~~(A) If there is no existing state standard covering the same~~
21 ~~issues, the federal standard shall be deemed to be a standard~~
22 ~~adopted by the board and enforceable by the division pursuant to~~
23 ~~Section 6317. This standard shall not be subject to Article 5~~
24 ~~(commencing with Section 11346) and Article 6 (commencing~~
25 ~~with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title~~
26 ~~2 of the Government Code.~~

27 ~~(B) If a state standard is in effect at the time a federal standard~~
28 ~~is promulgated covering the same issue or issues, the board may~~
29 ~~adopt the federal standard, or a portion thereof, as a standard~~
30 ~~enforceable by the division pursuant to Section 6317; provided,~~
31 ~~however, if a federal standard or portion thereof is adopted which~~
32 ~~replaces an existing state standard or portion thereof, the federal~~
33 ~~standard shall be as effective as the state standard or portion~~
34 ~~thereof. No adoption of or amendment to any federal standard, or~~
35 ~~portion thereof, shall be subject to Article 5 (commencing with~~
36 ~~Section 11346) and Article 6 (commencing with Section 11349)~~
37 ~~of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government~~
38 ~~Code.~~

39 ~~(C) Any state standard adopted pursuant to subparagraph (A)~~
40 ~~or (B) shall become effective at the time the standard is filed with~~

1 the Secretary of State, unless otherwise provided, but shall not
2 take effect before the effective date of the equivalent federal
3 standard and shall remain in effect for six months unless readopted
4 by the board for an additional six months or superseded by a
5 standard adopted by the board pursuant to paragraph (3) of
6 subdivision (a).

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

12 (b) The State Building Standards Commission shall codify and
13 publish in a semiannual supplement to the California Building
14 Standards Code, or in a more frequent supplement if required by
15 federal law, all occupational safety and health standards that would
16 otherwise meet the definition of a building standard described in
17 Section 18909 of the Health and Safety Code adopted by the board
18 in the California Building Standards Code without reimbursement
19 from the board. These occupational safety and health standards
20 may also be published by the Occupational Safety and Health
21 Standards Board in other provisions in Title 8 of the California
22 Code of Regulations prior to publication in the California Building
23 Standards Code if that other publication includes an appropriate
24 identification of occupational safety and health standards contained
25 in the other publication.

26 (e) Any occupational safety or health standard or order
27 promulgated under this section shall prescribe the use of labels or
28 other appropriate forms of warning as are necessary to ensure that
29 employees are apprised of all hazards to which they are exposed,
30 relevant symptoms and appropriate emergency treatment, and
31 proper conditions and precautions for safe use or exposure. Where
32 appropriate, these standards or orders shall also prescribe suitable
33 protective equipment and control or technological procedures to
34 be used in connection with these hazards and shall provide for
35 monitoring or measuring employee exposure at such locations and
36 intervals and in a manner as may be necessary for the protection
37 of employees. In addition, where appropriate, the occupational
38 safety or health standard or order shall prescribe the type and
39 frequency of medical examinations or other tests which shall be
40 made available or paid for by the employer for employees exposed

1 to such hazards in order to most effectively determine whether the
2 health of those employees is adversely affected by this exposure.

3 ~~(d) The results of these examinations or tests shall be furnished~~
4 ~~only to the Division of Occupational Safety and Health, the State~~
5 ~~Department of Health Services, any other authorized state agency,~~
6 ~~the employer, the employee, and, at the request of the employee,~~
7 ~~to his or her physician.~~

8 *SEC. 2. Section 144.6.5 is added to the Labor Code, to read:*

9 *144.6.5. (a) For the purposes of this section, the following*
10 *definitions apply:*

11 *(1) "Health-based occupational exposure limit" and*
12 *"health-based OEL" mean the level of an airborne contaminant*
13 *in the workplace that, based on employee health considerations,*
14 *is not anticipated to cause or contribute to adverse health effects*
15 *or that does not pose any significant risk to health.*

16 *(2) "OEHHA" means the Office of Environmental Health*
17 *Hazard Assessment in the California Environmental Protection*
18 *Agency.*

19 *(3) "Permissible exposure limit" and "PEL" have the same*
20 *meaning as defined in Section 5155 of Title 8 of the California*
21 *Code of Regulations.*

22 *(b) The board shall adopt occupational health and safety*
23 *standards, and shall place among its highest priorities the adoption*
24 *of occupational health and safety standards, including a*
25 *permissible exposure limit, for any toxic material that meets all*
26 *the following criteria:*

27 *(1) The material is likely to be used in the workplace.*

28 *(2) The material is a substance known to the state to cause*
29 *cancer or reproductive or developmental toxicity within the*
30 *meaning of the Safe Drinking Water and Toxic Enforcement Act*
31 *of 1986 (Chapter 6.6 (commencing with Section 25249.5) of*
32 *Division 20 of the Health and Safety Code).*

33 *(3) A quantitative risk assessment for the material has been*
34 *prepared or published by OEHHA.*

35 *(c) (1) Each PEL adopted by the board shall be set at a level*
36 *that, to the extent feasible, corresponds with the health-based OEL*
37 *recommended by OEHHA pursuant to subdivision (e). In setting*
38 *the level of the PEL, the board shall place primary emphasis on*
39 *attainment of the highest degree of health and safety protection*
40 *for the employee and, to the extent technically and economically*

1 *feasible, shall avoid any significant risk to employee health. There*
2 *is a rebuttable presumption that any PEL adopted pursuant to this*
3 *subdivision shall be the same as the corresponding health-based*
4 *OEL.*

5 (2) *For the purposes of determining the technical and economic*
6 *feasibility of compliance with the proposed PEL, the board shall*
7 *consider the cost of compliance to the industry as a whole, using*
8 *best available technology and engineering controls and changes*
9 *in operational practices.*

10 (d) *Not later than February 1, 2008, OEHHA shall submit to*
11 *the division and the board a list of those toxic materials that meet*
12 *the criteria of subdivision (b).*

13 (e) (1) *For any toxic material identified pursuant to subdivision*
14 *(d), OEHHA shall calculate and recommend to the board a*
15 *health-based OEL. In calculating the health-based OEL, OEHHA*
16 *shall use the quantitative risk assessment it has prepared or*
17 *published on the material, adjusted to account for differences*
18 *related to workplace exposure and other factors relevant to*
19 *establishing a level that does not pose any significant risk to*
20 *employee health or any significant risk of developmental harm.*

21 (2) *In addition to recommending a health-based OEL for a toxic*
22 *material pursuant to paragraph (1), OEHHA also shall calculate*
23 *the risk level associated with the current PEL, if one exists, for the*
24 *toxic material.*

25 (3) *For the purposes of a toxic material that is a carcinogen, a*
26 *level that does not pose any significant risk to employee health*
27 *shall not be less stringent than the level that would result in one*
28 *excess cancer per 100,000 employees exposed to the carcinogen*
29 *over a working lifetime.*

30 (4) *Calculations and recommendations made pursuant to this*
31 *subdivision are not subject to the requirements of Chapter 3.5*
32 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
33 *2 of the Government Code.*

34 (f) (1) *The Division of Occupational Safety and Health may*
35 *submit to the board recommendations for occupational safety and*
36 *health standards adopted pursuant to subdivision (b) and may*
37 *convene one or more advisory committees to assist the division in*
38 *preparing its recommendations.*

39 (2) *If the division convenes an advisory committee, it shall be*
40 *composed of individuals with expertise in relevant technical areas*

1 including toxicology, epidemiology, occupational medicine,
2 industrial hygiene, ventilation engineering, industrial hygiene
3 chemistry, and engineering economics. A committee member shall
4 not participate in any discussion or decision in which he or she
5 has a financial interest. All committee members shall be required
6 to sign conflict-of-interest declarations.

7 (3) If an advisory committee recommends an exposure limit that
8 is less protective than the corresponding health-based OEL, it
9 shall state in writing the reasons for its recommendation.

10 (4) In addition to submitting recommendations to the board
11 pursuant to this subdivision, the division shall submit the following
12 to the board:

13 (A) The findings of an advisory committee, if any, and the
14 material reviewed by the committee.

15 (B) The division's findings and the material reviewed by the
16 division in developing its recommendations to the board, regardless
17 of whether a consensus-based decision-making model was used
18 by the advisory committee.

19 (g) If the board, based on feasibility, adopts a PEL pursuant to
20 subdivision (c) that is less protective than the health-based OEL,
21 the board shall do both of the following:

22 (1) Make findings of fact regarding feasibility, including whether
23 a more protective PEL may be reasonably achieved with the use
24 of best available technology and engineering controls or changes
25 in operational practices, and shall cite the evidence for the
26 findings. The board shall give more weight to evidence regarding
27 the most protective exposure level able to be measured by existing
28 instruments or able to be achieved using best available technology
29 or engineering controls which is based on independently verified
30 exposure monitoring data than to evidence that does not include
31 such data.

32 (2) Identify the risk level for the PEL and the risk level of the
33 health-based OEL.

34 (h) Not later than April 1, 2008, the Occupational Safety and
35 Health Standards Board shall submit to the Governor and the
36 Legislature a plan, including a timeline and schedule, for the
37 adoption of standards and PELs as required by this section.

O