

ASSEMBLY BILL

No. 332

Introduced by Assembly Member Hall

February 13, 2013

An act to add Section 6720 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 332, as introduced, Hall. Occupational safety and health: adult films.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime.

This bill would require an employer engaged in the production of an adult film to adopt prescribed practices and procedures to protect employees from exposure to, and infection by, sexually transmitted diseases, including engineering and work practice controls, an exposure control plan, hepatitis B vaccinations, medical monitoring, and information and training on health and safety. The bill would define terms for those purposes. The bill would require the Occupational Safety and Health Standards Board to adopt emergency regulations to implement these provisions by July 1, 2014. Because a violation of the act would be a crime under certain circumstances, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 6720 is added to the Labor Code, to read:
2 6720. (a) The Legislature finds and declares that the protection
3 of workers in the adult film industry is the responsibility of multiple
4 layers of government, with the department being responsible for
5 worker safety and the county being responsible for protecting the
6 public health. Therefore, this section shall not be construed to
7 prohibit a city, county, or city and county from implementing a
8 local ordinance regulating the adult film industry if the local
9 ordinance is consistent with this section.

10 (b) For purposes of this section, the following definitions shall
11 apply:

12 (1) "Adult film" means the production of any film, video,
13 multimedia, or other recorded representation of sexual intercourse
14 for the sexual stimulation of the viewer that may involve exposure
15 to bloodborne pathogens or other potentially infectious materials.

16 (2) "Employee" means a person who is an employee,
17 independent contractor, or unpaid individual, regardless of whether
18 the person is shown in the adult film, who performs a penetrative
19 sexual act or an act for the sexual stimulation of the viewer that
20 involves exposure to bloodborne pathogens or other potentially
21 infectious materials.

22 (3) "Employer" means a company, partnership, corporation, or
23 individual engaged in the production of an adult film. There shall
24 be a rebuttable presumption that the name on the material for
25 commercial distribution is the employer unless there is evidence
26 to the contrary as demonstrated through contractual or employment
27 records.

28 (4) "Sexually transmitted disease" or "STD" means any infection
29 commonly spread by sexual conduct, including, but not limited
30 to, HIV/AIDS, gonorrhea, syphilis, chlamydia, hepatitis, genital
31 human papillomavirus infection, and genital herpes.

32 (c) An employer shall maintain engineering and work practice
33 controls sufficient to protect employees from exposure to blood
34 and any potentially infectious materials. Engineering and work
35 practice controls shall include, but are not limited to, the following:

1 (1) Simulation of sex acts using acting, production, and
2 postproduction techniques.

3 (2) Provision of and required use of condoms and other
4 protective barriers whenever acts of vaginal or anal intercourse
5 are filmed.

6 (3) The provision of condom-safe water-based or silicone-based
7 lubricants to facilitate the use of condoms.

8 (4) Plastic and other disposable materials to clean up sets.

9 (5) Sharps containers for disposal of any blades, wires, or broken
10 glass.

11 (d) An employer shall maintain an exposure control plan in
12 accordance with Section 5193 of Title 8 of the California Code of
13 Regulations. An employer shall not be required to comply with
14 any provision related to establishing and maintaining a sharps
15 injury log.

16 (e) An employer shall make available the hepatitis B vaccination
17 for any employee engaged in the production of adult films, at the
18 employer's expense.

19 (f) An employer shall designate a custodian of records for
20 purposes of this section. A copy of the original production shall
21 be retained by the custodian of records.

22 (g) An employer shall pay the costs of required medical
23 monitoring such as STD testing and keep confidential employee
24 records.

25 (h) (1) An employer shall adopt, implement, maintain, and
26 update, as required, a written health and safety program approved
27 by the department and that meets the requirements of the Injury
28 and Illness Prevention Program and the bloodborne pathogens
29 standard, described, respectively, in Sections 3203 and 5193 of
30 Title 8 of the California Code of Regulations.

31 (2) An employer shall provide department-approved information
32 and training on health and safety to employees at the employer's
33 expense. The training program shall be provided in accordance
34 with Section 5193 of Title 8 of the California Code of Regulations.
35 The training requirements of this subdivision may be satisfied by
36 proof that the employee has received appropriate training at another
37 workplace or from an appropriate third party approved by the
38 department in the prior 12 months.

39 (i) By July 1, 2014, the Occupational Safety and Health
40 Standards Board shall adopt emergency regulations to implement

1 this section in accordance with the rulemaking provisions of the
2 Administrative Procedure Act (Chapter 3.5 (commencing with
3 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
4 Code).

5 (j) This section shall not be construed to require condoms,
6 barriers, or other personal protective equipment to be visible in
7 the final product of an adult film.

8 SEC. 2. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.