

ASSEMBLY BILL

No. 553

Introduced by Assembly Member Monning

February 16, 2011

An act to add Section 144.8 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 553, as introduced, Monning. Employment safety: hazardous materials.

Existing law authorizes the Division of Occupational Safety and Health within the Department of Industrial Relations to enforce occupational safety and health standards, including evaluating, investigating, and monitoring environmental or health conditions that may be harmful to the health of employees. In so doing, it enforces the standards promulgated by the Occupational Safety and Health Standards Board within the department dealing with toxic materials and harmful physical agents and bloodborne pathogens.

This bill would declare the findings of the Legislature regarding the rights of workers to be protected from exposure to hazardous substances and toxic materials in the workplace.

This bill would require that the board, in promulgating standards dealing with certain toxic materials in the workplace, establish permissible exposure limits that meet specified criteria, with an emphasis on obtaining the highest degree of health and safety protection.

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 and toxic materials in the workplace
4 can cause cancer and reproductive, developmental, and other
5 serious physical harm to workers and their children.

6 (b) Workers have a right to be adequately protected from
7 hazardous substances and toxic materials that cause cancer and
8 reproductive, developmental, and other serious physical harm,
9 especially since these health effects may not develop for years
10 after exposure and can permanently impact workers' ability to
11 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, in the process of regulating hazardous substances and toxic
15 materials, act expeditiously and efficiently, avoiding duplication
16 of efforts, by utilizing actions taken by other California and
17 national regulatory and research agencies, to protect workers
18 against the effects of those substances that may cause cancer and
19 reproductive, developmental, or other serious physical harm.

20 SEC. 2. Section 144.8 is added to the Labor Code, to read:

21 144.8. (a) For the purposes of this section, the following
22 definitions apply:

23 (1) "Health-based occupational exposure limit" and
24 "health-based OEL" mean the level of an airborne contaminant in
25 the workplace that is not anticipated to cause or contribute to
26 reproductive, developmental, or other serious physical harm as
27 defined in Section 6432, or pose a significant risk of cancer to any
28 employee who has regular exposure to the contaminant for the
29 period of his or her working life, and is based on a quantitative
30 risk assessment prepared or published by any of the following
31 agencies:

32 (A) The California Environmental Protection Agency.

33 (B) The National Institute for Occupational Safety and Health.

34 (C) The United States Environmental Protection Agency.

35 (D) The National Toxicology Program Center for the Evaluation
36 of Risks to Human Reproduction.

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

4 (b) (1) In promulgating standards dealing with toxic materials
5 for which a quantitative risk assessment exists as prepared by any
6 of the agencies set forth in paragraph (1) of subdivision (a), and
7 for which a PEL is proposed to be adopted, the board shall set the
8 PEL at a level that corresponds with a health-based OEL to the
9 extent feasible as set forth in paragraph (5). The health-based OEL
10 shall be calculated, as set forth in paragraph (3), from the lowest
11 quantitative risk assessment that addresses cancer or reproductive,
12 developmental, or other serious physical harm. There is a rebuttable
13 presumption that any PEL adopted pursuant to this subdivision
14 shall be the same as the calculated health-based OEL unless it is
15 not feasible, as set forth in paragraph (5).

16 (2) In setting the level of the PEL, the board shall comply with
17 Section 144.6 and place primary emphasis on attainment of the
18 highest degree of health and safety protection. For carcinogens,
19 the PEL shall ensure that there is no significant risk to employee
20 health, in accordance with paragraph (5). For toxicants that cause
21 or contribute to reproductive, developmental, or serious physical
22 harm, the PEL shall be at a level at which no harm occurs.

23 (3) When calculating the health-based OEL for any hazardous
24 substance or toxic material pursuant to paragraph (1), adjustments
25 shall be made to reflect a standard work week over a working life
26 period of 40 years.

27 (4) For a hazardous substance or toxic material that is a
28 carcinogen, a level that does not pose any significant risk to
29 employee health shall not be less protective than the level that
30 would result in cancer in one employee per 100,000 employees
31 exposed to the carcinogen over a working lifetime. For other
32 hazardous substances or toxic materials, adjustments shall be made,
33 utilizing appropriate safety factors, to establish a level that does
34 not cause or contribute to reproductive, developmental, or other
35 serious physical harm.

36 (5) For the purposes of determining feasibility as set forth in
37 Section 144.6 and paragraph (1) of this section, including the ability
38 to measure workplace exposures at the proposed PEL and whether
39 there is a way to achieve compliance with that PEL, the board shall
40 consider the most cost-effective available approach. Feasibility

1 shall include initially evaluating whether an employer may achieve
2 compliance through the substitution of an identified safer
3 alternative, including whether or not that identified safer substitute
4 can be used in the production process. If no safer alternative exists,
5 the board may consider a reasonable phase-in period to achieve
6 the PEL. If no safer alternative exists or is likely to exist within a
7 reasonable period of time, the board shall determine feasibility for
8 the industries affected by the PEL by evaluating whether a change
9 in administrative practices or engineering controls, as defined in
10 Title 8 of the California Code of Regulations, including developing
11 technology, is technologically feasible and, if necessary, whether
12 supplemental respiratory protection may achieve the PEL.

13 (6) Calculations and recommendations made pursuant to this
14 subdivision are not subject to the requirements of Chapter 3.5
15 (commencing with Section 11340) of Part 1 of Division 3 of Title
16 2 of the Government Code.

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

20 (1) Make findings of fact regarding feasibility as set forth in
21 paragraph (5) of subdivision (b), citing the evidence for its findings.
22 The board shall give more weight to evidence based on
23 independently verified quantitative exposure monitoring data,
24 analysis of safer substitutes, and availability of engineering controls
25 that can reduce exposures than to evidence that is not independently
26 verified.

27 (2) Identify the degree of excess cancer risk and risk of
28 reproductive, developmental, or serious physical harm for the PEL
29 compared to the health-based OEL.