

ASSEMBLY BILL

No. 402

Introduced by Assembly Member Thurmond

February 9, 2017

An act to add Section 144.9 to the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 402, as introduced, Thurmond. Occupational safety and health standards: plume.

Under existing law, the Occupational Safety and Health Standards Board within the Department of Industrial Relations promulgates and enforces occupational safety and health standards for the state, including standards dealing with toxic materials and harmful physical agents. Under existing law, the Division of Occupational Safety and Health is required to enforce all occupational safety and health standards, as specified. A violation of these standards and regulations under specific circumstances is a crime.

This bill would, by June 1, 2018, require the division to convene an advisory committee to develop a regulation that requires a health facility to evacuate or remove plume through the use of a plume scavenging system in all settings that employ techniques that involve the creation of plume and would authorize certain entities and people to be on the advisory committee, including, among others, practicing physicians and surgeons from affected specialties. The bill would require the division, in developing regulations to do certain things, including evaluating the use of certain standards adopted by specified organizations as a benchmark. The bill would also require the division, when developing the proposed regulations, to take into consideration

recommendations on the evacuation of plume from the federal Occupational Safety and Health Administration or National Institute for Occupational Safety and Health. The bill would, by June 1, 2019, require the division to submit to the board a proposed regulation. The bill would, by July 1, 2020, require the board to adopt a proposed regulation.

The bill would provide that compliance with general room ventilation standards or the use of surgical masks does not satisfy the requirements for protection from surgical plumes under these provisions. The bill would provide that the use of respirators does not satisfy the requirements for protection from surgical plumes under these provisions, except as specified. The bill would require the manufacturer of a plume scavenging system to provide evidence that the system meets specified minimum requirements when installed, operated, and maintained in accordance with the manufacturer's instructions.

The bill would specify that these provisions do not limit the authority of the division to develop, or limit the authority of the board to adopt, a regulation with a broader scope or broader application than required by these provisions.

By expanding the definition of an existing crime, this bill would impose a state-mandated local program.

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 144.9 is added to the Labor Code, to
- 2 read:
- 3 144.9. (a) As used in this section:
- 4 (1) "Division" means the Division of Occupational Safety and
- 5 Health.
- 6 (2) "Electrocautery device" means a device that is electrically
- 7 heated to cut, ablate, or coagulate human tissue for therapeutic
- 8 purposes.

1 (3) “Electrosurgical device” means a device that uses a radio
2 frequency electric current passing through the patient to cut, ablate,
3 or coagulate human tissue for therapeutic purposes.

4 (4) “Energy-based device” means a device that uses energy to
5 ablate, cauterize, or mechanically manipulate target human tissue
6 including lasers, electrosurgical generators, broadband light
7 sources, ultrasonic instruments, plasma generators, bone saws, and
8 drills.

9 (5) “Health facility” means a health facility as defined in
10 subdivision (a) of Section 1250 of the Health and Safety Code.

11 (6) “Plume” means noxious airborne contaminants generated
12 as byproducts of the use of energy-based devices, electrosurgical
13 devices, electrocautery devices, or mechanical tools during surgical,
14 diagnostic, or therapeutic procedures.

15 (7) “Plume scavenging system” means smoke evacuators, laser
16 plume evacuators, plume scavengers, and local exhaust ventilators
17 that capture and neutralize plume at the site of origin and before
18 plume can make ocular contact or contact with the respiratory tract
19 of employees.

20 (b) (1) The division, by June 1, 2018, shall convene an advisory
21 committee to develop a regulation that requires a health facility to
22 evacuate or remove plume through the use of a plume scavenging
23 system in all settings that employ techniques that involve the
24 creation of plume. The advisory committee may include health
25 facilities, practicing physicians and surgeons from affected
26 specialties, registered nurses and other affected health care
27 personnel, labor and specialty organizations representing affected
28 registered nurses, labor and specialty organizations representing
29 other affected health care personnel, and other stakeholders.

30 (2) By June 1, 2019, the division shall submit to the board a
31 proposed regulation requiring a health facility to evacuate or
32 remove plume through the use of a plume scavenging system in
33 all settings that employ techniques that involve the creation of
34 plume.

35 (3) In developing regulations, the division shall do all of the
36 following:

37 (A) Evaluate using as a benchmark the standards titled “Systems
38 for evacuation of plume generated by medical devices” (ISO
39 16571) adopted by the International Organization for
40 Standardization and the standards titled “Plume scavenging in

1 surgical, diagnostic, therapeutic, and aesthetic settings” (CSA
2 Z305.13-13) adopted by the CSA Group.

3 (B) Take into consideration recommendations on the evacuation
4 of plume from the federal Occupational Safety and Health
5 Administration and National Institute for Occupational Safety and
6 Health.

7 (C) Take into consideration the standards titled “Systems for
8 evacuation of plume generated by medical devices” (ISO 16571)
9 adopted by the International Organization for Standardization in
10 developing a standard establishing how much plume shall be
11 captured by a plume scavenging system.

12 (D) Include a requirement in the regulation for employers to
13 provide training to all workers foreseeably participating in
14 procedures that involve the creation of plume. The training shall
15 include, but not be limited to, general education on the contents
16 of plume, the circumstances in which it is generated, the associated
17 health and safety hazards, and appropriate use of the plume
18 scavenging equipment and systems utilized by the health facility.
19 The training shall be designed to provide an opportunity for
20 interactive questions and answers with a person knowledgeable
21 about occupational exposure to plume and the specific equipment
22 utilized to scavenge plume.

23 (c) The board shall, by July 1, 2020, adopt a proposed regulation
24 of the division, except as specified in subdivision (f), requiring a
25 health facility to evacuate or remove plume through the use of a
26 plume scavenging system in all settings that employ techniques
27 that involve the creation of plume.

28 (d) (1) Nothing in this section alters, amends, expands, or
29 reduces existing general room ventilation standards or
30 requirements. These plume scavenging standards are in addition
31 to general room ventilation standards or requirements, and
32 compliance with general room ventilation standards shall not satisfy
33 the requirements of this section.

34 (2) Evidence that the plume scavenging system conforms to the
35 minimum requirements of this section when installed, operated,
36 and maintained in accordance with the manufacturer’s instructions,
37 shall be provided by the manufacturer.

38 (e) The use of surgical masks shall not satisfy the requirements
39 of this section. The use of respirators shall not satisfy the
40 requirements of this section except when, due to medical necessity,

1 the plume scavenging system is not able to be located where it
2 effectively captures plume.

3 (f) This section shall not limit the authority of the division to
4 develop a regulation, or the authority of the board to adopt a
5 regulation, that is broader in scope or broader in application than
6 required by this section.

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

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