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## AB-402 Occupational safety and health standards: plume. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

### ASSEMBLY BILL

**NO. 402**

Introduced by Assembly Member Thurmond

February 09, 2017

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

### LEGISLATIVE COUNSEL'S DIGEST

AB 402, 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 Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** Section 144.9 is added to the Labor Code, to read:

#### **144.9.** (a) As used in this section:

(1) "Division" means the Division of Occupational Safety and Health.

(2) "Electrocautery device" means a device that is electrically heated to cut, ablate, or coagulate human tissue for therapeutic purposes.

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

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

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

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

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

(b) (1) The division, by June 1, 2018, shall 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. The advisory committee may include health facilities, practicing physicians and surgeons from affected specialties, registered nurses and other affected health care personnel, labor and specialty organizations representing affected registered nurses, labor and specialty organizations representing other affected health care personnel, and other stakeholders.

(2) By June 1, 2019, the division shall submit to the board a proposed regulation requiring 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.

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

(A) Evaluate using as a benchmark the standards titled "Systems for evacuation of plume generated by medical devices" (ISO 16571) adopted by the International Organization for Standardization and the standards titled "Plume scavenging in surgical, diagnostic, therapeutic, and aesthetic settings" (CSA Z305.13-13) adopted by the CSA Group.

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

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

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

(c) The board shall, by July 1, 2020, adopt a proposed regulation of the division, except as specified in subdivision (f), requiring 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.

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

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

(e) The use of surgical masks shall not satisfy the requirements of this section. The use of respirators shall not satisfy the requirements of this section except when, due to medical necessity, the plume scavenging system is not able to be located where it effectively captures plume.

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

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