

Mr. EDWARD DRAKE  
9/2 - 11/10/76  
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11104

Senate Bill No. 1678

Passed the Senate August 26, 1976

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*Secretary of the Senate*

Passed the Assembly August 24, 1976

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*Chief Clerk of the Assembly*

This bill was received by the Governor this \_\_\_\_\_  
day of \_\_\_\_\_, 1976, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to add Chapter 2 (commencing with Section 24200) to Division 20 of the Health and Safety Code, relating to health, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1678, Gregorio. Regulation of carcinogens.

Under current law, no state agency is vested with overall responsibility for regulating the use of substances having recognized carcinogenic properties, although there are statutory provisions directly regulating specific uses of particular carcinogens, such as the spraying of asbestos. Also, there are statutory provisions authorizing protective regulation by administrative agencies in specific areas, such as employee protection, which in such specific area and by necessary implication empower administrative agencies to regulate the manner and amount of human contact with carcinogenic substances.

This bill would define "carcinogen," "employer," and "use," and would require the Occupational Safety and Health Standards Board in the Department of Industrial Relations to adopt occupational safety and health standards, including reporting requirements, governing use by employers of carcinogens. The bill would continue in effect certain standards relating to the use of carcinogens which are in effect on January 1, 1977, until amended or repealed by the standards board. The standards board would be required to continue prescribed medical examination requirements at least as effective as on January 1, 1977, and would be required to prescribe reporting standards for employers using asbestos and vinyl chloride.

This bill would require the State Department of Health to make prescribed inspections of uses of carcinogens and would require the Chief of the Division of Industrial Safety in the Department of Industrial Relations to adopt a fee schedule for such inspections. Employers, other than public agencies, would be required to remit such fees to the division within 7 days after such an inspection, but no fee could be charged for more than one inspection

during any calendar year.

The bill would require the State Department of Health and the Department of Industrial Relations to enter into a prescribed agreement defining the responsibilities of the State Department of Health, other than as expressly set forth in the bill, with respect to enforcement of occupational safety and health standards relating to carcinogens. The bill would, however, rest primary responsibility for enforcement of such standards with the Division of Industrial Safety.

The bill would appropriate \$1,000,000 to the Department of Industrial Relations, subject to reduction commensurate with available federal funding, for expenditure for purposes of the bill from January 1, 1977, through June 30, 1977, according to a prescribed schedule.

This bill would modify civil penalties assessable under the California Occupational Safety and Health Act for specified violations of prescribed standards or orders relating to the use of carcinogens. With specified exceptions, the bill would make all such violations "serious violations" within the meaning of provisions of such act prescribing civil and criminal penalties.

This bill would provide that neither appropriation is made nor obligation created for the reimbursement of local agencies for any costs incurred by them under the bill for a specified reason.

Appropriation: yes.

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

SECTION 1. Chapter 2 (commencing with Section 24200) is added to Division 20 of the Health and Safety Code, to read:

## CHAPTER 2. USE OF CARCINOGENS

### Article 1. General Provisions and Definitions

24200. This chapter shall be known and may be cited as the Occupational Carcinogens Control Act of 1976.

24201. The purpose of this chapter is to clarify and strengthen the provisions of state law applicable to the use of carcinogens in California. It is the intent of the Legislature to provide for effective implementation of the provisions of this chapter. It is further the intent of the Legislature, in enacting this chapter, to eliminate any duplication or overlap of duties performed by the State Department of Health and the Division of Industrial Safety in the Department of Industrial Relations with respect to the safety of employees involved in the use of carcinogens.

24202. The following definitions shall govern the construction of this chapter. Additionally, except where the context otherwise requires, the definitions contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code shall also be applicable to this chapter.

24203. "Affected employee" means an employee who, as part of his employment, is involved in the use of a carcinogen, or an employee with respect to whom there is a substantial probability that he will become so involved as the result of his employer's use of a carcinogen.

24204. "Carcinogen" means and includes the following recognized cancer-causing substances for which standards have been adopted pursuant to Article 3 (commencing with Section 24220):

(a) Any of the following substances and any compound, mixture, or product containing such substances:

- (1) 2-acetylaminofluorene.
- (2) 4-aminodiphenyl.
- (3) Benzidine and its salts.
- (4) Bis(chloromethyl) ether.
- (5) 3,3'-dichlorobenzidine and its salts.
- (6) 4-dimethylaminoazobenzene.
- (7) Beta-naphthylamine.
- (8) 4-nitrodiphenyl.
- (9) N-nitrosodimethylamine.
- (10) Beta-propiolactone.
- (11) Methyl chloromethyl ether.
- (12) Alpha-naphthylamine.

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(13) 4,4'-methylene-(bis)2-chloroaniline.

(14) Ethyleneimine.

(b) Asbestos, including chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(c) Vinyl chloride.

(d) Any other substance for which standards are adopted and in effect due to cancer-causing properties and any compound, mixture, or product containing such a substance, except as specifically exempted from such standards.

24205. "Division" means the Division of Industrial Safety in the Department of Industrial Relations.

24206. "Employer" means any of the following:

(a) The state and every state agency.

(b) Each county, city, district, and all public and quasi-public corporations and public agencies therein.

(c) Every person including any public service corporation, which has any natural person in service.

(d) The legal representative of any deceased employer.

24207. "Standards" means standards and orders adopted by the standards board pursuant to Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code.

24208. "Standards board" means the Occupational Safety and Health Standards Board in the Department of Industrial Relations.

24209. "State department" means the State Department of Health.

24209.5. "Use" means any use of a carcinogen by an employer, including but not limited to, the following:

(a) Manufacture of a carcinogen, industrial uses thereof, or formation of a carcinogen as a result of a chemical reaction.

(b) Sale or other transfer of a carcinogen.

(c) Storage or disposal of a carcinogen.

(d) Utilization of a carcinogen for research.

(e) Transport of a carcinogen. The state department and division shall have concurrent jurisdiction with any federal agency to protect affected employees of interstate carriers, including rail carriers, while in this

state, as provided in this chapter or as authorized by other provisions of state law.

## Article 2. Exemptions

24210. Except where in conflict with Section 142.3 of the Labor Code or other applicable provisions of law, the standards board may exempt from the provisions of this chapter and its standards uses of carcinogen\* which it determines have been shown by a preponderance of the evidence to present no substantial threat to employee health and which may include, but need not be limited to:

(a) Use of carcinogens specified in subdivision (a) of Section 24204 in operations involving the destructive distillation of carbonaceous materials, such as occurs in coke ovens.

(b) Use of asbestos, except where there is a material risk of substantial and repeated exposure of employees to such carcinogen.

The standards board shall report to the Legislature on or before January 5, 1978, respecting recommendations for standards governing the uses specified in this section.

The standards board shall adopt regulations for the implementation of the provisions of this section.

## Article 3. Standards and Administration

24220. (a) Pursuant to Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code, the standards board shall adopt standards for carcinogens at least as restrictive as the federal requirements for use of carcinogens promulgated under Section 6 of the Occupational Safety and Health Act of 1970 (P.L. 91-596), as such federal requirements may be revised from time to time. Within six months after the effective date of any change in such federal requirements, the standards board shall amend its standards as necessary to comply with this subdivision.

(b) It is the intent of the Legislature that the state shall exercise strong leadership in preventing employees.

employers, and other persons from being exposed to carcinogens. In this connection, it is the further intent of the Legislature that the standards board adopt standards for substances as to which there exists a preponderance of evidence of carcinogenicity, but for which the federal government has not yet promulgated requirements specified in subdivision (a). The state department shall determine the necessity for such standards and shall develop and present such proposed standards to the standards board pursuant to Section 147.1 of the Labor Code. The standards board shall on or before January 5, 1978, report to the Legislature on whether it has adopted standards for carcinogens which are (1) not subject to federal requirements specified in subdivision (a) or (2) not specified in subdivision (a), (b), or (c) of Section 24204.

24221. All standards relating to the use of carcinogens which are in effect on January 1, 1977, including standards set forth in Sections 5208, 5209, and 5210 of Title 8 of the California Administrative Code, shall remain in effect until amended or repealed by the standards board.

24222. The division shall have primary responsibility for enforcement of standards relating to carcinogens. However, the State Department of Health shall assist the division in the enforcement of such standards, in the manner prescribed by this chapter and as shall be further defined by a written agreement between the state department and the Department of Industrial Relations, pursuant to Section 144 of the Labor Code.

#### Article 4. Reporting

24230. The standards board shall adopt one or more standards requiring each employer which uses any carcinogen, including asbestos and vinyl chloride, to submit a written report regarding such use or any incident which results in the release of a potentially hazardous amount of a carcinogen into any area where employees may be exposed. The reporting requirements set forth in Sections 5209 and 5210 of Title 8 of the California Administrative Code on January 1, 1977, shall

remain in effect until amended or repealed by the standards board, and any subsequent reporting requirements shall provide for reports which are at least as detailed as those required on such date. For asbestos and vinyl chloride, the standards board shall adopt a standard which requires each employer who uses vinyl chloride or asbestos to report in a manner similar to the reporting required pursuant to Section 5209 of Title 8 of the California Administrative Code.

24231. The division shall transmit a copy of each report specified in Section 24230 to any bargaining representatives, and other representatives known to the division, of affected employees of the reporting employer. A copy of each such report shall be posted by the employer in the location or locations where the carcinogen is used, which shall be conspicuous to affected employees, as shall be provided in the standards.

24232. The state department shall make every effort to ascertain the identities of existing users of carcinogens and to notify, inform, and educate them about the requirements of this chapter on or before July 1, 1977. The division shall cooperate fully with the state department in this effort. The state department and division shall utilize all appropriate means of communication and education, including direct mailings to employers, the use of courses, workshops, and seminars, advertising in mass media, trade and employee publications, and professional and scientific journals, contact with trade associations, employee representatives, and professional and scientific societies, and cooperation with other governmental agencies to inform affected employees, employers, and the public of the requirements of this chapter.

### Article 5. Medical Examinations

24240. Every employer using carcinogens shall provide for medical examinations of affected employees where required by standards adopted pursuant to subdivision (b) of Section 142.3 of the Labor Code. The standards board shall continue to require medical

examinations in at least as effective a manner as provided in Sections 5208, 5209, and 5210 of Title 8 of the California Administrative Code on January 1, 1977.

#### Article 6. Inspections

24250. The state department shall establish priorities for the performance of inspections of premises for which uses have been reported pursuant to Section 24230 and shall perform as many of such inspections as possible within the limits of the resources available to it for such purpose.

24251. The agreement between the state department and the Department of Industrial Relations specified in Section 24222 shall provide for a right of access to places of employment for any authorized representative of the state department in order to perform such inspections.

24252. If an authorized representative of the state department determines on the basis of an inspection conducted pursuant to this article that an employer is using a carcinogen in violation of the standards pertaining to such use, he shall immediately notify the employer, affected employees, and the division.

24253. Whenever an employer, other than a public agency, is inspected pursuant to this chapter, the employer shall within seven days thereafter remit to the division the inspection fee prescribed pursuant to this section. Such fees shall be set forth in a schedule to be adopted by the chief of the division, and shall be not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500). The chief of the division, in establishing such fee schedule, shall take into account the number of affected employees and the amount of time necessary to perform the inspection, and may, in addition, consider any other reasonable criteria. If an employer is subject to inspection more than once during any calendar year, he shall not be charged any fee for the second or subsequent inspections of the same use which was the subject of the initial inspection, regardless of the basis for the inspection. The fees collected by the division shall be deposited in the General Fund.

24254. The director of the state department shall transmit to the division copies of each report of an inspection relating to the use of a carcinogen which is performed pursuant to this chapter.

24255. In addition to the provisions of Section 144.5 of the Labor Code, upon request from the division or any employer or any employee, or upon its own initiative, the state department shall provide consultation services regarding the use of a carcinogen and may offer educational programs to inform employers and employees of the provisions of this chapter; provided, that the department shall devote a substantial amount of staff time to department-initiated inspections provided for in this article.

#### Article 7. Penalties

24260. The civil penalties prescribed by Chapter 6 (commencing with Section 6423) of Part 1 of Division 5 of the Labor Code shall be applicable to violations of standards and special orders regulating the use of carcinogens, except as modified by the following:

(a) A civil penalty assessed against an employer because of failure to report, as required by standards specified in Section 24230, shall be not less than five hundred dollars (\$500).

(b) A civil penalty assessed against an employer for a serious violation involving use of a carcinogen in violation of standards or special orders, except as provided by subdivision (c) and by Section 6429 of the Labor Code, shall be in the amount of one thousand dollars (\$1,000).

(c) A civil penalty assessed pursuant to Section 6429 of the Labor Code for repeated violations of standards or special orders specified in subdivision (a) or (b) shall be not less than five thousand dollars (\$5,000).

The maximum limitations on civil penalties specified in Chapter 4 (commencing with Section 6423) of Part 1 of Division 5 of the Labor Code shall be applicable to civil penalties for which the minimum amount is prescribed by subdivision (a) or (c). Nothing in this section shall supersede any provision of law prescribing criminal

offenses or penalties.

This section shall become operative July 1, 1977.

24261. (a) For purposes of this article and for purposes of Chapter 4 (commencing with Section 6423) of Part 1 of Division 5 of the Labor Code, "serious violation" shall have the meaning specified in Section 6432 of the Labor Code and, except as provided in subdivision (b), shall additionally include any violation of a standard or special order respecting the use of a carcinogen.

(b) A violation of a standard or special order respecting the use of a carcinogen shall not be a "serious violation" if the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation or if the violation is minor and resulted in no substantial health hazard, as determined by the division.

SEC. 2. The sum of one million dollars (\$1,000,000) is hereby appropriated from the General Fund to the Department of Industrial Relations for use during the period commencing January 1, 1977, and continuing through June 30, 1977, in accordance with the following schedule:

- (a) For additional funding of its contract with the State Department of Health pursuant to Section 24222 of the Health and Safety Code for the purposes set forth in Article 6 (commencing with Section 24250) of Chapter 2 of Division 20 of the Health and Safety Code, as added by this act ..... \$675,000
- (b) For additional funding of such contract with State Department of Health for the purposes set forth in Section 24232 of the Health and Safety Code, as added by this act; provided, that any of such funds not expended by the state department for the purposes of Section 24232 may be expended for the purposes specified in subdivision (a) of this section ..... \$250,000
- (c) For costs to the Department of Industrial Relations incurred in administering the

provisions of Chapter 2 (commencing with Section 24200) of Division 20 of the Health and Safety Code, as added by this act..... \$75,000

However, the Director of Finance may reduce the amount expended hereunder commensurate with any federal moneys which may be made available to the division for the purposes of Chapter 2 (commencing with Section 24200) of Division 20 of the Health and Safety Code, as added by this act, and which may be used as provided in this section.

It is the intent of the Legislature that the State Department of Health shall continue to respond to serious complaints from employees regarding the potential unlawful use of carcinogens under this act, and shall give such investigations priority over department-initiated inspections provided for by this act; provided, that the department shall devote a substantial amount of staff time to such department-initiated inspections on a priority basis.

SEC. 3. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local governmental entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

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Approved \_\_\_\_\_, 1976

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*Governor*

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