

ASSEMBLY BILL

No. 2067

Introduced by Assembly Member Oropeza

February 16, 2006

An act to amend Section 7596 of the Government Code, and to amend Section 6404.5 of the Labor Code, relating to smoking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2067, as introduced, Oropeza. Smoking: enclosed spaces of buildings.

Existing law prohibits smoking of tobacco products inside public buildings, as defined, but expressly excludes covered parking lots from this prohibition. Existing law additionally prohibits smoking in all enclosed spaces of employment, as defined.

This bill would define "covered parking lot" for purposes of the exclusion of the prohibition with respect to public buildings but would make common areas such as lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the covered parking lot subject to the smoking prohibition.

This bill would also add a definition of "enclosed space" to the law that prohibits smoking in enclosed spaces of certain places of employment to include the above-described common areas that are a structural part of the building that is the place of employment. The violation of the prohibition against smoking in enclosed spaces of employment is an infraction punishable by a specified fine. By expanding the scope of an infraction, 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 7596 of the Government Code is
2 amended to read:

3 7596. As used in this chapter, *the following terms have the*
4 *following meanings:*

5 (a) “Public building” means a building owned and occupied,
6 or leased and occupied, by the state, a county, a city, a city and
7 county, or a California Community College district.

8 (1) “Inside a public building” includes all indoor areas of the
9 building, except for covered parking lots and residential space.
10 “Inside a public building” also includes any indoor space leased
11 to the state, county, or city, except for covered parking lots and
12 residential space.

13 (2) “Residential space” means a private living area, but it does
14 not include common areas such as lobbies, lounges, waiting
15 areas, elevators, stairwells, and restrooms that are a structural
16 part of a multicomplex building such as a dormitory.

17 (3) “Covered parking lot” means an area designated for the
18 parking of vehicles that is enclosed or contains a roof or ceiling.
19 “Covered parking lot” does not include common areas such as
20 lobbies, lounges, waiting areas, elevators, stairwells, and
21 restrooms that are a structural part of the parking lot or a
22 building to which it is attached.

23 (b) “State” or “state agency” means a state agency, as defined
24 pursuant to Section 11000, the Legislature, the Supreme Court
25 and the courts of appeal, and each campus of the California State
26 University and the University of California.

27 (c) “Public employee” means an employee of a state agency or
28 an employee of a county or city.

29 SEC. 2. Section 6404.5 of the Labor Code is amended to
30 read:

1 6404.5. (a) The Legislature finds and declares that regulation
2 of smoking in the workplace is a matter of statewide interest and
3 concern. It is the intent of the Legislature in enacting this section
4 to prohibit the smoking of tobacco products in all (100 percent
5 of) enclosed places of employment in this state, as covered by
6 this section, thereby eliminating the need of local governments to
7 enact workplace smoking restrictions within their respective
8 jurisdictions. It is further the intent of the Legislature to create a
9 uniform statewide standard to restrict and prohibit the smoking of
10 tobacco products in enclosed places of employment, as specified
11 in this section, in order to reduce employee exposure to
12 environmental tobacco smoke to a level that will prevent
13 anything other than insignificantly harmful effects to exposed
14 employees, and also to eliminate the confusion and hardship that
15 can result from enactment or enforcement of disparate local
16 workplace smoking restrictions. Notwithstanding any other
17 provision of this section, it is the intent of the Legislature that
18 any area not defined as a “place of employment” pursuant to
19 subdivision (d) or in which the smoking of tobacco products is
20 not regulated pursuant to subdivision (e) shall be subject to local
21 regulation of smoking of tobacco products.

22 (b) No employer shall knowingly or intentionally permit, and
23 no person shall engage in, the smoking of tobacco products in an
24 enclosed space at a place of employment. *“Enclosed space”*
25 *includes common areas such as lobbies, lounges, waiting areas,*
26 *elevators, stairwells, and restrooms that are a structural part of*
27 *the building and not specifically defined in subdivision (d).*

28 (c) For purposes of this section, an employer who permits any
29 nonemployee access to his or her place of employment on a
30 regular basis has not acted knowingly or intentionally if he or she
31 has taken the following reasonable steps to prevent smoking by a
32 nonemployee:

33 (1) Posted clear and prominent signs, as follows:

34 (A) Where smoking is prohibited throughout the building or
35 structure, a sign stating “No smoking” shall be posted at each
36 entrance to the building or structure.

37 (B) Where smoking is permitted in designated areas of the
38 building or structure, a sign stating “Smoking is prohibited
39 except in designated areas” shall be posted at each entrance to the
40 building or structure.

1 (2) Has requested, when appropriate, that a nonemployee who
2 is smoking refrain from smoking in the enclosed workplace.

3 For purposes of this subdivision, “reasonable steps” does not
4 include (A) the physical ejection of a nonemployee from the
5 place of employment or (B) any requirement for making a
6 request to a nonemployee to refrain from smoking, under
7 circumstances involving a risk of physical harm to the employer
8 or any employee.

9 (d) For purposes of this section, “place of employment” does
10 not include any of the following:

11 (1) Sixty-five percent of the guest room accommodations in a
12 hotel, motel, or similar transient lodging establishment.

13 (2) Areas of the lobby in a hotel, motel, or other similar
14 transient lodging establishment designated for smoking by the
15 establishment. An establishment may permit smoking in a
16 designated lobby area that does not exceed 25 percent of the total
17 floor area of the lobby or, if the total area of the lobby is 2,000
18 square feet or less, that does not exceed 50 percent of the total
19 floor area of the lobby. For purposes of this paragraph, “lobby”
20 means the common public area of an establishment in which
21 registration and other similar or related transactions, or both, are
22 conducted and in which the establishment’s guests and members
23 of the public typically congregate.

24 (3) Meeting and banquet rooms in a hotel, motel, other
25 transient lodging establishment similar to a hotel or motel,
26 restaurant, or public convention center, except while food or
27 beverage functions are taking place, including setup, service, and
28 cleanup activities, or when the room is being used for exhibit
29 purposes. At times when smoking is not permitted in a meeting
30 or banquet room pursuant to this paragraph, the establishment
31 may permit smoking in corridors and prefunction areas adjacent
32 to and serving the meeting or banquet room if no employee is
33 stationed in that corridor or area on other than a passing basis.

34 (4) Retail or wholesale tobacco shops and private smokers’
35 lounges. For purposes of this paragraph:

36 (A) “Private smokers’ lounge” means any enclosed area in or
37 attached to a retail or wholesale tobacco shop that is dedicated to
38 the use of tobacco products, including, but not limited to, cigars
39 and pipes.

1 (B) “Retail or wholesale tobacco shop” means any business
2 establishment the main purpose of which is the sale of tobacco
3 products, including, but not limited to, cigars, pipe tobacco, and
4 smoking accessories.

5 (5) Cabs of motortrucks, as defined in Section 410 of the
6 Vehicle Code, or truck tractors, as defined in Section 655 of the
7 Vehicle Code, if no nonsmoking employees are present.

8 (6) Warehouse facilities. For purposes of this paragraph,
9 “warehouse facility” means a warehouse facility with more than
10 100,000 square feet of total floor space, and 20 or fewer full-time
11 employees working at the facility, but does not include any area
12 within a facility that is utilized as office space.

13 (7) Gaming clubs, in which smoking is permitted by
14 subdivision (f). For purposes of this paragraph, “gaming club”
15 means any gaming club, as defined in Section 19802 of the
16 Business and Professions Code, or bingo facility, as defined in
17 Section 326.5 of the Penal Code, that restricts access to minors
18 under 18 years of age.

19 (8) Bars and taverns, in which smoking is permitted by
20 subdivision (f). For purposes of this paragraph, “bar” or “tavern”
21 means a facility primarily devoted to the serving of alcoholic
22 beverages for consumption by guests on the premises, in which
23 the serving of food is incidental. “Bar or tavern” includes those
24 facilities located within a hotel, motel, or other similar transient
25 occupancy establishment. However, when located within a
26 building in conjunction with another use, including a restaurant,
27 “bar” or “tavern” includes only those areas used primarily for the
28 sale and service of alcoholic beverages. “Bar” or “tavern” does
29 not include the dining areas of a restaurant, regardless of whether
30 alcoholic beverages are served therein.

31 (9) Theatrical production sites, if smoking is an integral part of
32 the story in the theatrical production.

33 (10) Medical research or treatment sites, if smoking is integral
34 to the research and treatment being conducted.

35 (11) Private residences, except for private residences licensed
36 as family day care homes, during the hours of operation as family
37 day care homes and in those areas where children are present.

38 (12) Patient smoking areas in long-term health care facilities,
39 as defined in Section 1418 of the Health and Safety Code.

1 (13) Breakrooms designated by employers for smoking,
2 provided that all of the following conditions are met:

3 (A) Air from the smoking room shall be exhausted directly to
4 the outside by an exhaust fan. Air from the smoking room shall
5 not be recirculated to other parts of the building.

6 (B) The employer shall comply with any ventilation standard
7 or other standard utilizing appropriate technology, including, but
8 not limited to, mechanical, electronic, and biotechnical systems,
9 adopted by the Occupational Safety and Health Standards Board
10 or the federal Environmental Protection Agency. If both adopt
11 inconsistent standards, the ventilation standards of the
12 Occupational Safety and Health Standards Board shall be no less
13 stringent than the standards adopted by the federal
14 Environmental Protection Agency.

15 (C) The smoking room shall be located in a nonwork area
16 where no one, as part of his or her work responsibilities, is
17 required to enter. For purposes of this paragraph, “work
18 responsibilities” does not include any custodial or maintenance
19 work carried out in the breakroom when it is unoccupied.

20 (D) There are sufficient nonsmoking breakrooms to
21 accommodate nonsmokers.

22 (14) Employers with a total of five or fewer employees, either
23 full-time or part-time, may permit smoking where all of the
24 following conditions are met:

25 (A) The smoking area is not accessible to minors.

26 (B) All employees who enter the smoking area consent to
27 permit smoking. No one, as part of his or her work
28 responsibilities, shall be required to work in an area where
29 smoking is permitted. An employer who is determined by the
30 division to have used coercion to obtain consent or who has
31 required an employee to work in the smoking area shall be
32 subject to the penalty provisions of Section 6427.

33 (C) Air from the smoking area shall be exhausted directly to
34 the outside by an exhaust fan. Air from the smoking area shall
35 not be recirculated to other parts of the building.

36 (D) The employer shall comply with any ventilation standard
37 or other standard utilizing appropriate technology, including, but
38 not limited to, mechanical, electronic, and biotechnical systems,
39 adopted by the Occupational Safety and Health Standards Board
40 or the federal Environmental Protection Agency. If both adopt

1 inconsistent standards, the ventilation standards of the
2 Occupational Safety and Health Standards Board shall be no less
3 stringent than the standards adopted by the federal
4 Environmental Protection Agency.

5 This paragraph shall not be construed to (i) supersede or render
6 inapplicable any condition or limitation on smoking areas made
7 applicable to specific types of business establishments by any
8 other paragraph of this subdivision or (ii) apply in lieu of any
9 otherwise applicable paragraph of this subdivision that has
10 become inoperative.

11 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
12 construed to require employers to provide reasonable
13 accommodation to smokers, or to provide breakrooms for
14 smokers or nonsmokers.

15 (f) (1) Except as otherwise provided in this subdivision,
16 smoking may be permitted in gaming clubs, as defined in
17 paragraph (7) of subdivision (d), and in bars and taverns, as
18 defined in paragraph (8) of subdivision (d), until the earlier of the
19 following:

20 (A) January 1, 1998.

21 (B) The date of adoption of a regulation (i) by the
22 Occupational Safety and Health Standards Board reducing the
23 permissible employee exposure level to environmental tobacco
24 smoke to a level that will prevent anything other than
25 insignificantly harmful effects to exposed employees or (ii) by
26 the federal Environmental Protection Agency establishing a
27 standard for reduction of permissible exposure to environmental
28 tobacco smoke to an exposure level that will prevent anything
29 other than insignificantly harmful effects to exposed persons.

30 (2) If a regulation specified in subparagraph (B) of paragraph
31 (1) is adopted on or before January 1, 1998, smoking may
32 thereafter be permitted in gaming clubs and in bars and taverns,
33 subject to full compliance with, or conformity to, the standard in
34 the regulation within two years following the date of adoption of
35 the regulation. An employer failing to achieve compliance with,
36 or conformity to, the regulation within this two-year period shall
37 prohibit smoking in the gaming club, bar, or tavern until
38 compliance or conformity is achieved. If the Occupational Safety
39 and Health Standards Board and the federal Environmental
40 Protection Agency both adopt regulations specified in

1 subparagraph (B) of paragraph (1) that are inconsistent, the
2 regulations of the Occupational Safety Standards Board shall be
3 no less stringent than the regulations of the federal
4 Environmental Protection Agency.

5 (3) If a regulation specified in subparagraph (B) of paragraph
6 (1) is not adopted on or before January 1, 1998, the exemptions
7 specified in paragraphs (7) and (8) of subdivision (d) shall be
8 inoperative on and after January 1, 1998, until a regulation is
9 adopted. Upon adoption of such a regulation on or after January
10 1, 1998, smoking may thereafter be permitted in gaming clubs
11 and in bars and taverns, subject to full compliance with, or
12 conformity to, the standard in the regulation within two years
13 following the date of adoption of the regulation. An employer
14 failing to achieve compliance with, or conformity to, the
15 regulation within this two-year period shall prohibit smoking in
16 the gaming club, bar, or tavern until compliance or conformity is
17 achieved. If the Occupational Safety and Health Standards Board
18 and the federal Environmental Protection Agency both adopt
19 regulations specified in subparagraph (B) of paragraph (1) that
20 are inconsistent, the regulations of the Occupational Safety and
21 Health Standards Board shall be no less stringent than the
22 regulations of the federal Environmental Protection Agency.

23 (4) From January 1, 1997, to December 31, 1997, inclusive,
24 smoking may be permitted in gaming clubs, as defined in
25 paragraph (7) of subdivision (d), and in bars and taverns, as
26 defined in paragraph (8) of subdivision (d), subject to both of the
27 following conditions:

28 (A) If practicable, the gaming club or bar or tavern shall
29 establish a designated nonsmoking area.

30 (B) If feasible, no employee shall be required, in the
31 performance of ordinary work responsibilities, to enter any area
32 in which smoking is permitted.

33 (g) The smoking prohibition set forth in this section shall
34 constitute a uniform statewide standard for regulating the
35 smoking of tobacco products in enclosed places of employment
36 and shall supersede and render unnecessary the local enactment
37 or enforcement of local ordinances regulating the smoking of
38 tobacco products in enclosed places of employment. Insofar as
39 the smoking prohibition set forth in this section is applicable to
40 all ~~(100 percent of)~~ (100-percent) places of employment within

1 this state and, therefore, provides the maximum degree of
2 coverage, the practical effect of this section is to eliminate the
3 need of local governments to enact enclosed workplace smoking
4 restrictions within their respective jurisdictions.

5 (h) Nothing in this section shall prohibit an employer from
6 prohibiting smoking in an enclosed place of employment for any
7 reason.

8 (i) The enactment of local regulation of smoking of tobacco
9 products in enclosed places of employment by local governments
10 shall be suspended only for as long as, and to the extent that, the
11 ~~(100 percent)~~ (100-percent) smoking prohibition provided for in
12 this section remains in effect. In the event this section is repealed
13 or modified by subsequent legislative or judicial action so that
14 the ~~(100 percent)~~ (100-percent) smoking prohibition is no longer
15 applicable to all enclosed places of employment in California,
16 local governments shall have the full right and authority to
17 enforce previously enacted, and to enact and enforce new,
18 restrictions on the smoking of tobacco products in enclosed
19 places of employment within their jurisdictions, including a
20 complete prohibition of smoking. Notwithstanding any other
21 provision of this section, any area not defined as a “place of
22 employment” or in which the smoking is not regulated pursuant
23 to subdivision (d) or (e), shall be subject to local regulation of
24 smoking of tobacco products.

25 (j) Any violation of the prohibition set forth in subdivision (b)
26 is an infraction, punishable by a fine not to exceed one hundred
27 dollars (\$100) for a first violation, two hundred dollars (\$200) for
28 a second violation within one year, and five hundred dollars
29 (\$500) for a third and for each subsequent violation within one
30 year. This subdivision shall be enforced by local law
31 enforcement agencies, including, but not limited to, local health
32 departments, as determined by the local governing body.

33 (k) Notwithstanding Section 6309, the division shall not be
34 required to respond to any complaint regarding the smoking of
35 tobacco products in an enclosed space at a place of employment,
36 unless the employer has been found guilty pursuant to
37 subdivision (j) of a third violation of subdivision (b) within the
38 previous year.

39 (l) If any provision of this act or the application thereof to any
40 person or circumstances is held invalid, that invalidity shall not

1 affect other provisions or applications of the act that can be given
2 effect without the invalid provision of application, and to this end
3 the provisions of this act are severable.

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the
9 penalty for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition of a
11 crime within the meaning of Section 6 of Article XIII B of the
12 California Constitution.