

ASSEMBLY BILL

No. 1467

Introduced by Assembly Member DeSaulnier

February 23, 2007

An act to amend Section 6404.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1467, as introduced, DeSaulnier. Worker safety.

Existing law prohibits smoking of tobacco products inside all enclosed spaces of places of employment as defined, but exempts certain places of employment, including owner-operated bars and specified warehouses, hotel lobbies, employee break rooms, and meeting and banquet rooms, from this prohibition.

This bill would remove the exemptions that permit smoking in specified bars, warehouses, hotel lobbies, employee breakrooms, and meeting and banquet rooms, while retaining exemptions for other types of businesses. This bill would also prohibit smoking in specified owner-operated businesses regardless of whether or not they have employees.

The violation of the prohibition against smoking in enclosed spaces of places of employment is an infraction punishable by a specified fine and enforcement by local law enforcement and health agencies. 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 6404.5 of the Labor Code is amended to
2 read:

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

24 (b) ~~No employer~~ *business owner or operator* shall knowingly
25 or intentionally permit, and no person shall engage in, the smoking
26 of tobacco products in an enclosed space at a place of employment.
27 “Enclosed space” includes lobbies, lounges, waiting areas,
28 elevators, stairwells, and restrooms that are a structural part of the
29 building and not specifically defined in subdivision (d). *Business*
30 *owner or operator includes any establishment that has been issued*
31 *a liquor license of any kind by the Department of Alcoholic*
32 *Beverage Control, regardless of whether the establishment has*
33 *any employees.*

1 (c) For purposes of this section, ~~an employer~~ *a business owner*
2 *or operator* who permits any nonemployee access to his or her
3 place of employment on a regular basis has not acted knowingly
4 or intentionally in violation of this section if he or she has taken
5 the following reasonable steps to prevent smoking by a
6 nonemployee:

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

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

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

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

17 For purposes of this subdivision, “reasonable steps” does not
18 include ~~(A) the physical ejection of a nonemployee from the place~~
19 ~~of employment or (B) any requirement for making a request to~~
20 ~~requesting~~ a nonemployee to refrain from smoking, under
21 circumstances involving a risk of physical harm to the ~~employer~~
22 *business owner or operator*, or to any employee.

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

25 (1) Sixty-five percent of the guestroom accommodations in a
26 hotel, motel, or similar transient lodging establishment.

27 ~~(2) Areas of the lobby in a hotel, motel, or other similar transient~~
28 ~~lodging establishment designated for smoking by the establishment.~~
29 ~~An establishment may permit smoking in a designated lobby area~~
30 ~~that does not exceed 25 percent of the total floor area of the lobby~~
31 ~~or, if the total area of the lobby is 2,000 square feet or less, that~~
32 ~~does not exceed 50 percent of the total floor area of the lobby. For~~
33 ~~purposes of this paragraph, “lobby” means the common public~~
34 ~~area of an establishment in which registration and other similar or~~
35 ~~related transactions, or both, are conducted and in which the~~
36 ~~establishment’s guests and members of the public typically~~
37 ~~congregate.~~

38 ~~(3) Meeting and banquet rooms in a hotel, motel, other transient~~
39 ~~lodging establishment similar to a hotel or motel, restaurant, or~~
40 ~~public convention center, except while food or beverage functions~~

1 are taking place, including setup, service, and cleanup activities,
2 or when the room is being used for exhibit purposes. At times
3 when smoking is not permitted in a meeting or banquet room
4 pursuant to this paragraph, the establishment may permit smoking
5 in corridors and prefunction areas adjacent to and serving the
6 meeting or banquet room if no employee is stationed in that
7 corridor or area on other than a passing basis.

8 (4)

9 (2) Retail or wholesale tobacco shops and private smokers'
10 lounges. For purposes of this paragraph:

11 (A) "Private smokers' lounge" means any enclosed area in or
12 attached to a retail or wholesale tobacco shop that is dedicated to
13 the use of tobacco products, including, but not limited to, cigars
14 and pipes.

15 (B) "Retail or wholesale tobacco shop" means any business
16 establishment the main purpose of which is the sale of tobacco
17 products, including, but not limited to, cigars, pipe tobacco, and
18 smoking accessories. *has the same meaning as defined in Section*
19 *22962 of the Business and Professions Code.*

20 (5)

21 (3) Cabs of motortrucks, as defined in Section 410 of the Vehicle
22 Code, or truck tractors, as defined in Section 655 of the Vehicle
23 Code, if no nonsmoking employees are present.

24 (6) ~~Warehouse facilities. For purposes of this paragraph,~~
25 ~~"warehouse facility" means a warehouse facility with more than~~
26 ~~100,000 square feet of total floorspace, and 20 or fewer full-time~~
27 ~~employees working at the facility, but does not include any area~~
28 ~~within a facility that is utilized as office space.~~

29 (7)

30 (4) Gaming clubs, in which smoking is permitted by subdivision
31 (f) (e). For purposes of this paragraph, "gaming club" means any
32 gaming club, as defined in Section 19802 of the Business and
33 Professions Code, or bingo facility, as defined in Section 326.5 of
34 the Penal Code, that restricts access to minors under 18 years of
35 age.

36 (8)

37 (5) Bars and taverns; in which smoking is permitted by
38 subdivision (f) (e). For purposes of this paragraph, "bar" ~~or and~~
39 ~~"tavern" means~~ *mean* a facility primarily devoted to the serving
40 of alcoholic beverages for consumption by guests on the premises,

1 in which the serving of food is incidental. ~~“Bar or tavern” includes~~
 2 *Bars and taverns include* those facilities located within a hotel,
 3 motel, or other similar transient occupancy establishment.
 4 However, when located within a building in conjunction with
 5 another use, including a restaurant, ~~“bar” or “tavern” includes bars~~
 6 *and taverns include* only those areas used primarily for the sale
 7 and service of alcoholic beverages. ~~“Bar” or “tavern” does~~ *Bars*
 8 *and taverns do* not include the dining areas of a restaurant,
 9 regardless of whether alcoholic beverages are served therein.

10 (9)

11 (6) Theatrical production sites, if smoking is an integral part of
12 the story in the theatrical production.

13 (10)

14 (7) Medical research or treatment sites, if smoking is integral
15 to the research and treatment being conducted.

16 (11)

17 (8) Private residences, ~~except for~~ private residences licensed as
18 family day care homes; ~~during the~~ *their* hours of operation as
19 family day care homes and in those areas where children are
20 present.

21 (12)

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

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

26 ~~(A) Air from the smoking room shall be exhausted directly to~~
27 ~~the outside by an exhaust fan. Air from the smoking room shall~~
28 ~~not be recirculated to other parts of the building.~~

29 ~~(B) The employer shall comply with any ventilation standard~~
30 ~~or other standard utilizing appropriate technology, including, but~~
31 ~~not limited to, mechanical, electronic, and biotechnical systems,~~
32 ~~adopted by the Occupational Safety and Health Standards Board~~
33 ~~or the federal Environmental Protection Agency. If both adopt~~
34 ~~inconsistent standards, the ventilation standards of the Occupational~~
35 ~~Safety and Health Standards Board shall be no less stringent than~~
36 ~~the standards adopted by the federal Environmental Protection~~
37 ~~Agency.~~

38 ~~(C) The smoking room shall be located in a nonwork area where~~
39 ~~no one, as part of his or her work responsibilities, is required to~~
40 ~~enter. For purposes of this subparagraph, “work responsibilities”~~

1 does not include any custodial or maintenance work carried out in
2 the breakroom when it is unoccupied.

3 ~~(D) There are sufficient nonsmoking breakrooms to~~
4 ~~accommodate nonsmokers.~~

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

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

9 ~~(B) All employees who enter the smoking area consent to permit~~
10 ~~smoking. No one, as part of his or her work responsibilities, shall~~
11 ~~be required to work in an area where smoking is permitted. An~~
12 ~~employer who is determined by the division to have used coercion~~
13 ~~to obtain consent or who has required an employee to work in the~~
14 ~~smoking area shall be subject to the penalty provisions of Section~~
15 ~~6427.~~

16 ~~(C) Air from the smoking area shall be exhausted directly to~~
17 ~~the outside by an exhaust fan. Air from the smoking area shall not~~
18 ~~be recirculated to other parts of the building.~~

19 ~~(D) The employer shall comply with any ventilation standard~~
20 ~~or other standard utilizing appropriate technology, including, but~~
21 ~~not limited to, mechanical, electronic, and biotechnical systems,~~
22 ~~adopted by the Occupational Safety and Health Standards Board~~
23 ~~or the federal Environmental Protection Agency. If both adopt~~
24 ~~inconsistent standards, the ventilation standards of the Occupational~~
25 ~~Safety and Health Standards Board shall be no less stringent than~~
26 ~~the standards adopted by the federal Environmental Protection~~
27 ~~Agency.~~

28 ~~This paragraph shall not be construed to (i) supersede or render~~
29 ~~inapplicable any condition or limitation on smoking areas made~~
30 ~~applicable to specific types of business establishments by any other~~
31 ~~paragraph of this subdivision or (ii) apply in lieu of any otherwise~~
32 ~~applicable paragraph of this subdivision that has become~~
33 ~~inoperative.~~

34 ~~(e) Paragraphs (13) and (14) of subdivision (d) shall not be~~
35 ~~construed to require employers to provide reasonable~~
36 ~~accommodation to smokers, or to provide breakrooms for smokers~~
37 ~~or nonsmokers.~~

38 ~~(f)~~

39 ~~(e) (1) Except as otherwise provided in this subdivision,~~
40 ~~smoking may be permitted in gaming clubs, as defined in paragraph~~

1 ~~(7)~~ (4) of subdivision (d), and in bars and taverns, as defined in
2 paragraph ~~(8)~~ (5) of subdivision (d), until the earlier of the
3 following:

4 (A) January 1, 1998.

5 (B) The date of adoption of a regulation (i) by the Occupational
6 Safety and Health Standards Board reducing the permissible
7 employee exposure level to environmental tobacco smoke to a
8 level that will prevent anything other than insignificantly harmful
9 effects to exposed employees or (ii) by the federal Environmental
10 Protection Agency establishing a standard for reduction of
11 permissible exposure to environmental tobacco smoke to an
12 exposure level that will prevent anything other than insignificantly
13 harmful effects to exposed persons.

14 (2) If a regulation specified in subparagraph (B) of paragraph
15 (1) is adopted on or before January 1, 1998, smoking may thereafter
16 be permitted in gaming clubs and in bars and taverns, subject to
17 full compliance with, or conformity to, the standard in the
18 regulation within two years following the date of adoption of the
19 regulation. An employer failing to achieve compliance with, or
20 conformity to, the regulation within this two-year period shall
21 prohibit smoking in the gaming club, bar, or tavern until
22 compliance or conformity is achieved. If the Occupational Safety
23 and Health Standards Board and the federal Environmental
24 Protection Agency both adopt regulations specified in subparagraph
25 (B) of paragraph (1) that are inconsistent, the regulations of the
26 Occupational Safety and Health Standards Board shall be no less
27 stringent than the regulations of the federal Environmental
28 Protection Agency.

29 (3) If a regulation specified in subparagraph (B) of paragraph
30 (1) is not adopted on or before January 1, 1998, the exemptions
31 specified in paragraphs ~~(7)~~ (4) and ~~(8)~~ (5) of subdivision (d) shall
32 become inoperative on and after January 1, 1998, until a regulation
33 is adopted. Upon adoption of such a regulation on or after January
34 1, 1998, smoking may thereafter be permitted in gaming clubs and
35 in bars and taverns, subject to full compliance with, or conformity
36 to, the standard in the regulation within two years following the
37 date of adoption of the regulation. An employer failing to achieve
38 compliance with, or conformity to, the regulation within this
39 two-year period shall prohibit smoking in the gaming club, bar,
40 or tavern until compliance or conformity is achieved. If the

1 Occupational Safety and Health Standards Board and the federal
2 Environmental Protection Agency both adopt regulations specified
3 in subparagraph (B) of paragraph (1) that are inconsistent, the
4 regulations of the Occupational Safety and Health Standards Board
5 shall be no less stringent than the regulations of the federal
6 Environmental Protection Agency.

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

12 ~~(A) If practicable, the gaming club or bar or tavern shall~~
13 ~~establish a designated nonsmoking area.~~

14 ~~(B) If feasible, no employee shall be required, in the~~
15 ~~performance of ordinary work responsibilities, to enter any area~~
16 ~~in which smoking is permitted.~~

17 ~~(g)~~

18 ~~(f) The smoking prohibition set forth in this section shall~~
19 ~~constitute~~ *constitutes* a uniform statewide standard for regulating
20 the smoking of tobacco products in enclosed places of employment
21 ~~and shall supersede~~ *supersedes* and ~~render~~ *renders* unnecessary
22 the local enactment or enforcement of local ordinances regulating
23 the smoking of tobacco products in enclosed places of employment.
24 Insofar as the smoking prohibition set forth in this section is
25 applicable to all (100-percent) places of employment within this
26 state and, therefore, provides the maximum degree of coverage,
27 the practical effect of this section is to eliminate the need of local
28 governments to enact enclosed workplace smoking restrictions
29 within their respective jurisdictions.

30 ~~(h)~~

31 ~~(g) Nothing in this section shall prohibit an employer~~ *prohibits*
32 *a business owner or operator* from prohibiting smoking in an
33 enclosed place of employment for any reason.

34 ~~(i)~~

35 ~~(h) The enactment of local regulation of smoking of tobacco~~
36 ~~products in enclosed places of employment by local governments~~
37 ~~shall be suspended only for as long as, and to the extent that, the~~
38 ~~(100-percent) smoking prohibition provided for in this section~~
39 ~~remains in effect. In the event this section is repealed or modified~~
40 ~~by subsequent legislative or judicial action so that the (100-percent)~~

1 smoking prohibition is no longer applicable to all enclosed places
2 of employment in California, local governments ~~shall~~ have the full
3 right and authority to enforce previously enacted, and to enact and
4 enforce new, restrictions on the smoking of tobacco products in
5 enclosed places of employment within their jurisdictions, including
6 a complete prohibition of smoking. Notwithstanding any other
7 provision of this section, any area not defined as a “place of
8 employment” or in which smoking is not regulated pursuant to
9 subdivision (d) ~~or (e)~~, ~~shall be~~ *is* subject to local regulation of
10 smoking of tobacco products.

11 ~~(j)~~
12 (i) Any violation of the prohibition set forth in subdivision (b)
13 is an infraction, punishable by a fine not to exceed one hundred
14 dollars (\$100) for a first violation, two hundred dollars (\$200) for
15 a second violation within one year, and five hundred dollars (\$500)
16 for a third and for each subsequent violation within one year. This
17 subdivision shall be enforced by local law enforcement agencies,
18 including, but not limited to, local health departments, as
19 determined by the local governing body.

20 ~~(k)~~
21 (j) Notwithstanding Section 6309, the division ~~shall~~ *is not be*
22 required to respond to any complaint regarding the smoking of
23 tobacco products in an enclosed space at a place of employment,
24 unless the employer has been found guilty pursuant to subdivision
25 ~~(j)~~ (i) of a third violation of subdivision (b) within the previous
26 year.

27 ~~(l)~~
28 (k) If any provision of this act or the application thereof to any
29 person or circumstances is held invalid, that invalidity shall not
30 affect other provisions or applications of the act that can be given
31 effect without the invalid provision or application, and to this end
32 the provisions of this act are severable.

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

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O