

AMENDED IN SENATE JUNE 20, 2012  
AMENDED IN ASSEMBLY JANUARY 26, 2012  
AMENDED IN ASSEMBLY JANUARY 4, 2012  
AMENDED IN ASSEMBLY AUGUST 15, 2011  
AMENDED IN ASSEMBLY MAY 18, 2011  
AMENDED IN ASSEMBLY MARCH 31, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1278**

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**Introduced by Assembly Member Hill**  
**(Coauthor: Assembly Member Pan)**  
*(Coauthor: Senator Alquist)*

February 18, 2011

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An act to *amend Section 1290 of, and to repeal and add Section 1286.5 to 1286 of,* the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1278, as amended, Hill. Health facilities: smoking.

Existing law establishes various programs for the prevention of disease and the promotion of health to be administered by the State Department of Public Health, including, but not limited to, a program for the licensing and regulation of health facilities. A violation of these provisions is a misdemeanor.

Existing law, with certain exceptions, prohibits smoking in patient care areas, waiting rooms, and visiting rooms of specified health facilities, including general acute care hospitals. A violation of these

provisions is an infraction. Existing law generally prohibits smoking in the workplace.

This bill would, ~~for a general acute care hospital, instead, repeal the above described prohibition against smoking in specified areas of specified health facilities, and would instead~~ prohibit smoking in all areas of ~~the~~ a general acute care hospital and throughout the entire hospital campus, as specified. The bill would require general acute care hospitals to post specified signs and train employees on the smoking policy.

The bill would specify that the smoking prohibition does not prevent smoking on a hospital campus by a patient if the treating physician determines that the patient’s treatment will be substantially impaired by the denial to the patient of the use of tobacco and the physician enters a written order permitting the use of tobacco by that patient.

The bill would also specify that violation of these provisions does not constitute either a misdemeanor or an infraction.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1     SECTION 1. Section 1286 of the Health and Safety Code is
- 2     repealed.
- 3     ~~1286. (a) Smoking shall be prohibited in patient care areas,~~
- 4     ~~waiting rooms, and visiting rooms of a health facility, except those~~
- 5     ~~areas specifically designated as smoking areas, and in patient rooms~~
- 6     ~~as specified in subdivision (b).~~
- 7     ~~(b) Smoking shall not be permitted in a patient room unless all~~
- 8     ~~persons assigned to such room have requested a room where~~
- 9     ~~smoking is permitted. In the event that the health facility occupancy~~
- 10    ~~has reached capacity, the health facility shall have reasonable time~~
- 11    ~~to reassign patients to appropriate rooms.~~
- 12    ~~(c) Clearly legible signs shall either:~~
- 13    ~~(1) State that smoking is unlawful and be conspicuously posted~~
- 14    ~~by, or on behalf of, the owner or manager of such health facility,~~
- 15    ~~in all areas of a health facility where smoking is unlawful, or~~
- 16    ~~(2) Identify “smoking permitted” areas, and be posted by, or~~
- 17    ~~on behalf of, the owner or manager of such health facility, only in~~
- 18    ~~areas of the health facility where smoking is lawfully permitted.~~

1 If “smoking permitted” signs are posted, there shall also be  
2 conspicuously posted, near all major entrances, clearly legible  
3 signs stating that smoking is unlawful except in areas designated  
4 “smoking permitted.”

5 (d) ~~No signs pertaining to smoking are required to be posted~~  
6 ~~in patient rooms.~~

7 (e) ~~This section shall not apply to skilled nursing facilities,~~  
8 ~~intermediate care facilities, and intermediate care facilities for the~~  
9 ~~developmentally disabled.~~

10 SECTION 4.

11 SEC. 2. Section ~~1286.5~~ 1286 is added to the Health and Safety  
12 Code, to read:

13 ~~1286.5.~~

14 1286. (a) It is the intent of the Legislature to encourage and  
15 assist smokers to quit tobacco use and to reduce the associated  
16 risks of tobacco and secondhand smoke to hospital patients, staff,  
17 and visitors.

18 (b) ~~Notwithstanding Section 1286, and except~~ *Except* as  
19 provided in subdivision (c), on and after March 1, 2013, smoking  
20 shall be prohibited in all areas of a general acute care hospital and  
21 throughout the entire hospital campus, including, but not limited  
22 to, buildings, parking areas, plazas, vehicles, underground passages,  
23 and sidewalks, unless there is a government-mandated exception.  
24 Public thoroughfares and sidewalks adjacent to the general acute  
25 care hospital but not owned by the hospital are not subject to this  
26 section.

27 (c) (1) This section shall not prevent smoking on a hospital  
28 campus by a patient if the treating physician determines that the  
29 patient’s treatment will be substantially impaired by the denial to  
30 the patient of the use of tobacco and the physician enters a written  
31 order permitting the use of tobacco by that patient.

32 (2) This section shall not apply to property owned or leased by  
33 the hospital that is distinct from, and not part of, the principal  
34 medical campus if the property is used for purposes unrelated to  
35 health care.

36 (d) A general acute care hospital shall post signs stating that  
37 smoking is prohibited on the entire hospital campus at building  
38 entrances and in other conspicuous locations. New employees shall  
39 be advised of the nonsmoking policy during orientation and current

1 employees shall be informed of the policy at least 60 days prior  
2 to implementation.

3 (e) A general acute care hospital may provide interested patients,  
4 visitors, and staff with information on, or refer them to, smoking  
5 cessation services.

6 (f) A city, county, or city and county may adopt and enforce  
7 additional smoking and tobacco control ordinances, regulations,  
8 or policies that are no less stringent than the applicable standards  
9 under this section.

10 (g) A violation of this section shall not be subject to Section  
11 1290.

12 *SEC. 3. Section 1290 of the Health and Safety Code is amended*  
13 *to read:*

14 1290. (a) Except as provided in subdivision (b) ~~or (e)~~, any  
15 person who violates this chapter or Section 127050 or 128600, or  
16 who willfully or repeatedly violates any rule or regulation adopted  
17 under this chapter or Section 127050 or 128600 is guilty of a  
18 misdemeanor and upon conviction thereof shall be punished by a  
19 fine not to exceed one thousand dollars (\$1,000) or by  
20 imprisonment in the county jail for a period not to exceed 180  
21 days, or by both the fine and imprisonment.

22 ~~(b) Any person who violates Section 1286 is guilty of an~~  
23 ~~infraction and shall be punished by a fine of not more than one~~  
24 ~~hundred dollars (\$100).~~

25 ~~(e)~~

26 (b) Any person who willfully or repeatedly violates this chapter  
27 or Chapter 2.4 (commencing with Section 1417), excluding  
28 Sections 1425 and 1432, or any rule or regulation adopted under  
29 this chapter, relating to the operation or maintenance of a long-term  
30 health care facility as defined in Section 1418, is guilty of a  
31 misdemeanor and upon conviction thereof shall be punished by a  
32 fine not to exceed two thousand five hundred dollars (\$2,500) or  
33 by imprisonment in the county jail for a period not to exceed 180  
34 days, or by both.

35 In determining the punishment to be imposed upon a conviction  
36 under this subdivision, the court shall consider all relevant facts,  
37 including, but not limited to, the following:

38 (1) Whether the violation exposed the patient to the risk of  
39 death or serious physical harm.

1 (2) Whether the violation had a direct or immediate relationship  
2 to the health, safety, or security of the patient.

3 (3) Evidence, if any, of willfulness.

4 (4) The number of repeated violations.

5 (5) The presence or absence of good faith efforts by the  
6 defendant to prevent the violation.

7 ~~(d)~~

8 (c) For the purposes of this section, “willfully” or “willful”  
9 means the person doing an act or omitting to do an act intends the  
10 act or omission, and knows the relevant circumstances connected  
11 therewith.

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