

**ASSEMBLY BILL**

**No. 746**

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**Introduced by Assembly Member Levine**

February 21, 2013

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An act to add Article 4 (commencing with Section 118960) to Chapter 4 of Part 15 of Division 104 of the Health and Safety Code, relating to smoking.

LEGISLATIVE COUNSEL'S DIGEST

AB 746, as introduced, Levine. Smoking: prohibition in multifamily dwellings.

Existing law regulates the smoking of tobacco in various public places, prohibits the smoking of tobacco in a private residence that is licensed as a family day care home during its hours of operation and in those areas of the facility where children are present, and authorizes a landlord to prohibit the smoking of tobacco in the building or on the property.

This bill would prohibit the smoking of a cigarette or other tobacco products in all areas of multifamily dwellings, except those areas designated as areas where smoking is permitted, as specified. This bill would define, for the purposes of these provisions, multifamily dwellings to mean residential property containing 2 or more units with one or more shared walls, floors, ceilings, or ventilation systems. This bill would provide that any person who violates the requirements of the bill is guilty of an infraction. By creating a new 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.

State-mandated local program: yes.

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

1 SECTION 1. Article 4 (commencing with Section 118960) is  
2 added to Chapter 4 of Part 15 of Division 104 of the Health and  
3 Safety Code, to read:

4  
5 Article 4. Smoking in Multifamily Dwellings  
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7 118960. (a) The smoking of a cigarette, as defined in Section  
8 104556, or other tobacco product is prohibited in the units and all  
9 other areas of new and existing multifamily dwellings, except those  
10 areas that have been designated pursuant to subdivision as areas  
11 where smoking is permitted (c).

12 (b) For the purposes of this section, “multifamily dwelling”  
13 means residential property containing two or more units with one  
14 or more shared walls, floors, ceilings, or ventilation systems.

15 (c) The landlord, property manager, building owner,  
16 homeowners’ association, or other equivalent authority may  
17 designate an outdoor area where smoking is permitted if the area  
18 meets all of the following criteria:

19 (1) The area is located at least 20 feet from any unit or enclosed  
20 area where smoking is prohibited.

21 (2) The area does not include, and is at least 100 feet from,  
22 unenclosed areas primarily used by children and unenclosed areas  
23 with improvements that facilitate physical activity including  
24 playgrounds, swimming pools, and school campuses.

25 (3) The area includes no more than 10 percent of the total  
26 enclosed area of the multifamily dwelling for which it is  
27 designated.

28 (4) The area has a clearly marked perimeter and is identified by  
29 conspicuous signs.

30 (5) The area is completely within a confined area.

31 (6) The area does not overlap with any enclosed or unenclosed  
32 area in which smoking is otherwise prohibited.

1 (d) Any person who violates this section is guilty of an infraction  
2 and shall be punished by a fine not to exceed one hundred dollars  
3 (\$100) for each violation.

4 (e) This section shall not be construed to preempt a city or  
5 county from enacting or enforcing an ordinance relating to smoking  
6 in multifamily dwellings if the ordinance is more stringent than  
7 this section.

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

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