

AMENDED IN ASSEMBLY MARCH 3, 2016

AMENDED IN ASSEMBLY SEPTEMBER 1, 2015

CALIFORNIA LEGISLATURE—2015–16 SECOND EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 7

Introduced by Assembly Member Mark Stone

July 16, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 7, as amended, Mark Stone. Smoking in the workplace.

Existing law prohibits smoking of tobacco products inside an enclosed space, as defined, at a place of employment. The violation of the prohibition against smoking in enclosed spaces of places of employment is an infraction punishable by a specified fine.

This bill would expand the prohibition on smoking in a place of employment to include an owner-operated business, as defined.

This bill would also eliminate most of the specified exemptions that permit smoking in certain work environments, such as hotel lobbies, bars and taverns, banquet rooms, warehouse facilities, and employee break rooms.

By expanding the scope of an infraction, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 6404.5 of the Labor Code proposed by certain bills in the Second Extraordinary Session of the 2015–16 Legislative Session that would become operative if this bill and those bills are enacted, as specified, and this bill is enacted last.

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 enactment~~
17 ~~or enforcement of disparate local workplace smoking restrictions.~~
18 ~~Notwithstanding any other provision of this section, it is the intent~~
19 ~~of the Legislature that any area not defined as a “place of~~
20 ~~employment” pursuant to subdivision (c) shall be subject to local~~
21 ~~regulation of smoking of tobacco products.~~

22 ~~(b) For purposes of this section, an “owner-operated business”~~
23 ~~shall mean a business having no employees, independent~~
24 ~~contractors, or volunteers, in which the owner-operator of the~~
25 ~~business is the only worker. “Enclosed space” includes covered~~
26 ~~parking lots, lobbies, lounges, waiting areas, elevators, stairwells,~~
27 ~~and restrooms that are a structural part of the building and not~~
28 ~~specifically defined in subdivision (c).~~

29 ~~(c) An employer or owner-operator of an owner-operated~~
30 ~~business shall not knowingly or intentionally permit, and a person~~

1 shall not engage in, the smoking of tobacco products at a place of
2 employment or in an enclosed space.

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

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

10 (A) ~~Where smoking is prohibited throughout the building or
11 structure, a sign stating "No smoking" shall be posted at each
12 entrance to the building or structure.~~

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

17 (2) ~~Has requested, when appropriate, that a nonemployee who
18 is smoking refrain from smoking in the enclosed workplace or
19 owner-operated business.~~

20 For purposes of this subdivision, "reasonable steps" does not
21 include (A) the physical ejection of a nonemployee from the place
22 of employment or owner-operated business or (B) any requirement
23 for making a request to a nonemployee to refrain from smoking,
24 under circumstances involving a risk of physical harm to the
25 employer or any employee or owner-operator.

26 (e) ~~For purposes of this section, "place of employment" does
27 not include any of the following:~~

28 (1) ~~Twenty percent of the guestroom accommodations in a hotel,
29 motel, or similar transient lodging establishment.~~

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

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

36 (B) ~~"Retail or wholesale tobacco shop" means any business
37 establishment, the main purpose of which is the sale of tobacco
38 products, including, but not limited to, cigars, pipe tobacco, and
39 smoking accessories.~~

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

4 ~~(4) Theatrical production sites, if smoking is an integral part of
5 the story in the theatrical production.~~

6 ~~(5) Medical research or treatment sites, if smoking is integral
7 to the research and treatment being conducted.~~

8 ~~(6) Private residences, except for private residences licensed as
9 family day care homes, where smoking is prohibited pursuant to
10 Section 1596.795 of the Health and Safety Code.~~

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

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

26 ~~(g) Nothing in this section shall prohibit an employer or
27 owner-operator of an owner-operated business from prohibiting
28 smoking in an enclosed place of employment or owner-operated
29 business for any reason.~~

30 ~~(h) The enactment of local regulation of smoking of tobacco
31 products in enclosed places of employment or owner-operated
32 businesses by local governments shall be suspended only for as
33 long as, and to the extent that, the (100-percent) smoking
34 prohibition provided for in this section remains in effect. In the
35 event this section is repealed or modified by subsequent legislative
36 or judicial action so that the (100-percent) smoking prohibition is
37 no longer applicable to all enclosed places of employment and
38 owner-operated businesses in California, local governments shall
39 have the full right and authority to enforce previously enacted, and
40 to enact and enforce new, restrictions on the smoking of tobacco~~

1 products in enclosed places of employment and owner-operated
2 businesses within their jurisdictions, including a complete
3 prohibition of smoking. Notwithstanding any other provision of
4 this section, any area not defined as a “place of employment” or
5 in which smoking is not regulated pursuant to subdivision (e), shall
6 be subject to local regulation of smoking of tobacco products.

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

15 (j) Notwithstanding Section 6309, the division is not required
16 to respond to any complaint regarding the smoking of tobacco
17 products in an enclosed space at a place of employment, unless
18 the employer has been found guilty pursuant to subdivision (i) of
19 a third violation of subdivision (e) within the previous year.

20 (k) If any provision of this section or the application thereof to
21 any person or circumstances is held invalid, that invalidity shall
22 not affect other provisions or applications of the section that can
23 be given effect without the invalid provision or application, and
24 to this end the provisions of this section are severable.

25 *SECTION 1. Section 6404.5 of the Labor Code is amended to*
26 *read:*

27 6404.5. (a) The Legislature finds and declares that regulation
28 of smoking in the workplace is a matter of statewide interest and
29 concern. It is the intent of the Legislature in enacting this section
30 to prohibit the smoking of tobacco products in all (100 percent of)
31 enclosed places of employment in this state, as covered by this
32 section, thereby eliminating the need of local governments to enact
33 workplace smoking restrictions within their respective jurisdictions.
34 It is further the intent of the Legislature to create a uniform
35 statewide standard to restrict and prohibit the smoking of tobacco
36 products in enclosed places of employment, as specified in this
37 section, in order to reduce employee exposure to environmental
38 tobacco smoke to a level that will prevent anything other than
39 insignificantly harmful effects to exposed employees, and also to
40 eliminate the confusion and hardship that can result from enactment

1 or enforcement of disparate local workplace smoking restrictions.
 2 Notwithstanding any other provision of this section, it is the intent
 3 of the Legislature that an area not defined as a “place of
 4 employment” pursuant to subdivision (d) or in which the smoking
 5 of tobacco products is not regulated pursuant to subdivision (e) is
 6 subject to local regulation of smoking of tobacco products.

7 ~~(b) An employer shall not knowingly or intentionally permit,~~
 8 ~~and a person shall not engage in, the smoking of tobacco products~~
 9 ~~in an enclosed space at a place of employment. For purposes of~~
 10 ~~this section, an “owner-operated business” shall mean a business~~
 11 ~~having no employees, independent contractors, or volunteers, in~~
 12 ~~which the owner-operator of the business is the only worker.~~
 13 “Enclosed space” includes covered parking lots, lobbies, lounges,
 14 waiting areas, elevators, stairwells, and restrooms that are a
 15 structural part of the building and not specifically defined in
 16 subdivision ~~(d)~~. (e).

17 (c) An employer or owner-operator of an owner-operated
 18 business shall not knowingly or intentionally permit, and a person
 19 shall not engage in, the smoking of tobacco products at a place of
 20 employment or in an enclosed space.

21 ~~(e)~~
 22 (d) For purposes of this section, an employer or owner-operator
 23 of an owner-operated business who permits any nonemployee
 24 access to his or her place of employment or owner-operated
 25 business on a regular basis has not acted knowingly or intentionally
 26 in violation of this section if he or she has taken the following
 27 reasonable steps to prevent smoking by a nonemployee:

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

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

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

36 (2) Has requested, when appropriate, that a nonemployee who
 37 is smoking refrain from smoking in the enclosed ~~workplace.~~
 38 ~~workplace or owner-operated business.~~

39 For purposes of this subdivision, “reasonable steps” does not
 40 include (A) the physical ejection of a nonemployee from the place

1 of employment or *owner-operated business* or (B) any requirement
2 for making a request to a nonemployee to refrain from smoking,
3 under circumstances involving a risk of physical harm to the
4 employer or any ~~employee~~: *employee or owner-operator*.

5 (d)

6 (e) For purposes of this section, “place of employment” does
7 not include any of the following:

8 (1) ~~Sixty-five~~ *Twenty* percent of the guestroom accommodations
9 in a hotel, motel, or similar transient lodging establishment.

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

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

31 (4)

32 (2) Retail or wholesale tobacco shops and private smokers’
33 lounges. For purposes of this paragraph:

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

38 (B) “Retail or wholesale tobacco shop” means any business
39 ~~establishment~~ *establishment*, the main purpose of which is the sale

1 of tobacco products, including, but not limited to, cigars, pipe
2 tobacco, and smoking accessories.

3 ~~(5)~~

4 (3) Cabs of motortrucks, as defined in Section 410 of the Vehicle
5 Code, or truck tractors, as defined in Section 655 of the Vehicle
6 Code, if nonsmoking employees are not present.

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

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

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

30 ~~(9)~~

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

33 ~~(10)~~

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

36 ~~(11)~~

37 (6) Private residences, except for private residences licensed as
38 family day care homes where smoking is prohibited pursuant to
39 Section 1596.795 of the Health and Safety Code.

40 ~~(12)~~

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

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

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

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

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

22 ~~(D) There are sufficient nonsmoking breakrooms to~~
23 ~~accommodate nonsmokers.~~

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

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

28 ~~(B) All employees who enter the smoking area consent to permit~~
29 ~~smoking. No one, as part of his or her work responsibilities, shall~~
30 ~~be required to work in an area where smoking is permitted. An~~
31 ~~employer who is determined by the division to have used coercion~~
32 ~~to obtain consent or who has required an employee to work in the~~
33 ~~smoking area shall be subject to the penalty provisions of Section~~
34 ~~6427.~~

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

38 ~~(D) The employer shall comply with any ventilation standard~~
39 ~~or other standard utilizing appropriate technology, including, but~~
40 ~~not limited to, mechanical, electronic, and biotechnical systems,~~

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

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

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

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

21 (A) January 1, 1998.

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

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

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

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

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

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

31 ~~(B) If feasible, an employee shall not be required, in the
32 performance of ordinary work responsibilities, to enter any area
33 in which smoking is permitted.~~

34 ~~(g)~~

35 ~~(f) The smoking prohibition set forth in this section constitutes
36 a uniform statewide standard for regulating the smoking of tobacco
37 products in enclosed places of employment and *owner-operated*
38 *businesses and* supersedes and ~~render renders~~ unnecessary the
39 local enactment or enforcement of local ordinances regulating the
40 smoking of tobacco products in enclosed places of employment.~~

1 *employment and owner-operated businesses*. Insofar as the smoking
2 prohibition set forth in this section is applicable to all (100-percent)
3 places of employment *and owner-operated businesses* within this
4 state and, therefore, provides the maximum degree of coverage,
5 the practical effect of this section is to eliminate the need of local
6 governments to enact enclosed workplace smoking restrictions
7 within their respective jurisdictions.

8 ~~(h)~~

9 (g) This section does not prohibit an employer *or*
10 *owner-operator of an owner-operated business* from prohibiting
11 smoking in an enclosed place of employment *or owner-operated*
12 *business* for any reason.

13 ~~(i)~~

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

31 ~~(j)~~

32 (i) A violation of the prohibition set forth in subdivision ~~(b)~~ (c)
33 is an infraction, punishable by a fine not to exceed one hundred
34 dollars (\$100) for a first violation, two hundred dollars (\$200) for
35 a second violation within one year, and five hundred dollars (\$500)
36 for a third and for each subsequent violation within one year. This
37 subdivision shall be enforced by local law enforcement agencies,
38 including, but not limited to, local health departments, as
39 determined by the local governing body.

40 ~~(k)~~

1 (j) Notwithstanding Section 6309, the division ~~shall~~ *is not be*
2 required to respond to any complaint regarding the smoking of
3 tobacco products in an enclosed space at a place of employment,
4 unless the employer has been found guilty pursuant to subdivision
5 ~~(j)~~ (i) of a third violation of subdivision ~~(b)~~ (c) within the previous
6 year.

7 ~~(t)~~

8 (k) If a provision of this ~~aet~~ *section* or the application thereof
9 to any person or circumstances is held invalid, that invalidity shall
10 not affect other provisions or applications of the ~~aet~~ *section* that
11 can be given effect without the invalid provision or application,
12 and to this end the provisions of this ~~aet~~ *section* are severable.

13 *SEC. 1.5. Section 6404.5 of the Labor Code is amended to*
14 *read:*

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

35 ~~(b) An employer shall not knowingly or intentionally permit,~~
36 ~~and a person shall not engage in, the smoking of tobacco products~~
37 ~~in an enclosed space at a place of employment. For purposes of~~
38 ~~this section, an “owner-operated business” shall mean a business~~
39 ~~having no employees, independent contractors, or volunteers, in~~
40 ~~which the owner-operator of the business is the only worker.~~

1 “Enclosed space” includes *covered parking lots*, lobbies, lounges,
 2 waiting areas, elevators, stairwells, and restrooms that are a
 3 structural part of the building and not specifically defined in
 4 subdivision ~~(d)~~: (e).

5 (c) *An employer or owner-operator of an owner-operated*
 6 *business shall not knowingly or intentionally permit, and a person*
 7 *shall not engage in, the smoking of tobacco products at a place of*
 8 *employment or in an enclosed space.*

9 ~~(e)~~

10 (d) For purposes of this section, an employer or owner-operator
 11 of an owner-operated business who permits any nonemployee
 12 access to his or her place of employment or owner-operated
 13 business on a regular basis has not acted knowingly or intentionally
 14 in violation of this section if he or she has taken the following
 15 reasonable steps to prevent smoking by a nonemployee:

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

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

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

24 (2) Has requested, when appropriate, that a nonemployee who
 25 is smoking refrain from smoking in the enclosed ~~workplace~~:
 26 *workplace or owner-operated business.*

27 For purposes of this subdivision, “reasonable steps” does not
 28 include (A) the physical ejection of a nonemployee from the place
 29 of employment or *owner-operated business* or (B) any requirement
 30 for making a request to a nonemployee to refrain from smoking,
 31 under circumstances involving a risk of physical harm to the
 32 employer or any ~~employee~~: *employee or owner-operator.*

33 ~~(d)~~

34 (e) For purposes of this section, “place of employment” does
 35 not include any of the following:

36 (1) ~~Sixty-five~~ *Twenty* percent of the guestroom accommodations
 37 in a hotel, motel, or similar transient lodging establishment.

38 (2) ~~Areas of the lobby in a hotel, motel, or other similar transient~~
 39 ~~lodging establishment designated for smoking by the establishment.~~
 40 ~~An establishment may permit smoking in a designated lobby area~~

1 that does not exceed 25 percent of the total floor area of the lobby
2 or, if the total area of the lobby is 2,000 square feet or less, that
3 does not exceed 50 percent of the total floor area of the lobby. For
4 purposes of this paragraph, “lobby” means the common public
5 area of an establishment in which registration and other similar or
6 related transactions, or both, are conducted and in which the
7 establishment’s guests and members of the public typically
8 congregate.

9 (3) Meeting and banquet rooms in a hotel, motel, other transient
10 lodging establishment similar to a hotel or motel, restaurant, or
11 public convention center, except while food or beverage functions
12 are taking place, including setup, service, and cleanup activities,
13 or when the room is being used for exhibit purposes. At times
14 when smoking is not permitted in a meeting or banquet room
15 pursuant to this paragraph, the establishment may permit smoking
16 in corridors and prefunction areas adjacent to and serving the
17 meeting or banquet room if no employee is stationed in that
18 corridor or area on other than a passing basis.

19 (4)

20 (2) Retail or wholesale tobacco shops and private smokers’
21 lounges. For purposes of this paragraph:

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

26 (B) “Retail or wholesale tobacco shop” means any business
27 establishment *establishment*, the main purpose of which is the sale
28 of tobacco products, including, but not limited to, cigars, pipe
29 tobacco, and smoking accessories.

30 (5)

31 (3) Cabs of motortrucks, as defined in Section 410 of the Vehicle
32 Code, or truck tractors, as defined in Section 655 of the Vehicle
33 Code, if nonsmoking employees are not present.

34 (6) Warehouse facilities. For purposes of this paragraph,
35 “warehouse facility” means a warehouse facility with more than
36 100,000 square feet of total floorspace, and 20 or fewer full-time
37 employees working at the facility, but does not include any area
38 within a facility that is utilized as office space.

39 (7) Gaming clubs, in which smoking is permitted by subdivision
40 (f). For purposes of this paragraph, “gaming club” means any

1 ~~gaming club, as defined in Section 19802 of the Business and~~
2 ~~Professions Code, or bingo facility, as defined in Section 326.5 of~~
3 ~~the Penal Code, that restricts access to minors under 18 years of~~
4 ~~age.~~

5 ~~(8) Bars and taverns, in which smoking is permitted by~~
6 ~~subdivision (f). For purposes of this paragraph, “bar” or “tavern”~~
7 ~~means a facility primarily devoted to the serving of alcoholic~~
8 ~~beverages for consumption by guests on the premises, in which~~
9 ~~the serving of food is incidental. “Bar or tavern” includes those~~
10 ~~facilities located within a hotel, motel, or other similar transient~~
11 ~~occupancy establishment. However, when located within a building~~
12 ~~in conjunction with another use, including a restaurant, “bar” or~~
13 ~~“tavern” includes only those areas used primarily for the sale and~~
14 ~~service of alcoholic beverages. “Bar” or “tavern” does not include~~
15 ~~the dining areas of a restaurant, regardless of whether alcoholic~~
16 ~~beverages are served therein.~~

17 ~~(9)~~

18 ~~(4) Theatrical production sites, if smoking is an integral part of~~
19 ~~the story in the theatrical production.~~

20 ~~(10)~~

21 ~~(5) Medical research or treatment sites, if smoking is integral~~
22 ~~to the research and treatment being conducted.~~

23 ~~(11)~~

24 ~~(6) Private residences, except for private residences licensed as~~
25 ~~family day care homes where smoking is prohibited pursuant to~~
26 ~~Section 1596.795 of the Health and Safety Code.~~

27 ~~(12)~~

28 ~~(7) Patient smoking areas in long-term health care facilities, as~~
29 ~~defined in Section 1418 of the Health and Safety Code.~~

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

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

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

1 Safety and Health Standards Board shall be no less stringent than
2 the standards adopted by the federal Environmental Protection
3 Agency.

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

9 (D) There are sufficient nonsmoking breakrooms to
10 accommodate nonsmokers.

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

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

15 (B) All employees who enter the smoking area consent to permit
16 smoking. No one, as part of his or her work responsibilities, shall
17 be required to work in an area where smoking is permitted. An
18 employer who is determined by the division to have used coercion
19 to obtain consent or who has required an employee to work in the
20 smoking area shall be subject to the penalty provisions of Section
21 6427.

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

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

34 This paragraph shall not be construed to (i) supersede or render
35 inapplicable any condition or limitation on smoking areas made
36 applicable to specific types of business establishments by any other
37 paragraph of this subdivision or (ii) apply in lieu of any otherwise
38 applicable paragraph of this subdivision that has become
39 inoperative.

1 ~~(e) Paragraphs (13) and (14) of subdivision (d) shall not be~~
2 ~~construed to require employers to provide reasonable~~
3 ~~accommodation to smokers, or to provide breakrooms for smokers~~
4 ~~or nonsmokers.~~

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

9 ~~(A) January 1, 1998.~~

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

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

34 ~~(3) If a regulation specified in subparagraph (B) of paragraph~~
35 ~~(1) is not adopted on or before January 1, 1998, the exemptions~~
36 ~~specified in paragraphs (7) and (8) of subdivision (d) shall become~~
37 ~~inoperative on and after January 1, 1998, until a regulation is~~
38 ~~adopted. Upon adoption of such a regulation on or after January~~
39 ~~1, 1998, smoking may thereafter be permitted in gaming clubs and~~
40 ~~in bars and taverns, subject to full compliance with, or conformity~~

1 to, the standard in the regulation within two years following the
2 date of adoption of the regulation. An employer failing to achieve
3 compliance with, or conformity to, the regulation within this
4 two-year period shall prohibit smoking in the gaming club, bar,
5 or tavern until compliance or conformity is achieved. If the
6 Occupational Safety and Health Standards Board and the federal
7 Environmental Protection Agency both adopt regulations specified
8 in subparagraph (B) of paragraph (1) that are inconsistent, the
9 regulations of the Occupational Safety and Health Standards Board
10 shall be no less stringent than the regulations of the federal
11 Environmental Protection Agency.

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

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

19 ~~(B) If feasible, an employee shall not be required, in the~~
20 ~~performance of ordinary work responsibilities, to enter any area~~
21 ~~in which smoking is permitted.~~

22 ~~(g)~~

23 ~~(f) The smoking prohibition set forth in this section constitutes~~
24 ~~a uniform statewide standard for regulating the smoking of tobacco~~
25 ~~products in enclosed places of employment and *owner-operated*~~
26 ~~*businesses* and supersedes and ~~render renders~~ unnecessary the~~
27 ~~local enactment or enforcement of local ordinances regulating the~~
28 ~~smoking of tobacco products in enclosed places of ~~employment.~~~~
29 ~~*employment and owner-operated businesses*. Insofar as the smoking~~
30 ~~prohibition set forth in this section is applicable to all ~~(100-percent)~~~~
31 ~~*(100 percent)* places of employment and *owner-operated*~~
32 ~~*businesses* within this state and, therefore, provides the maximum~~
33 ~~degree of coverage, the practical effect of this section is to~~
34 ~~eliminate the need of local governments to enact enclosed~~
35 ~~workplace smoking restrictions within their respective jurisdictions.~~

36 ~~(h)~~

37 ~~(g) This section does not prohibit an employer or~~
38 ~~*owner-operator of an owner-operated business* from prohibiting~~
39 ~~smoking of *tobacco products* in an enclosed place of employment~~
40 ~~or *owner-operated business* for any reason.~~

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

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

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

36 ~~(l)~~
 37 (k) If a provision of this ~~act~~ *section* or the application thereof
 38 to any person or circumstances is held invalid, that invalidity shall
 39 not affect other provisions or applications of the ~~act~~ *section* that

1 can be given effect without the invalid provision or application,
2 and to this end the provisions of this ~~act~~ section are severable.

3 (l) For purposes of this section, “smoking” has the same
4 meaning as in subdivision (c) of Section 22950.5 of the Business
5 and Professions Code.

6 (m) For purposes of this section, “tobacco product” means a
7 product or device as defined in subdivision (d) of Section 22950.5
8 of the Business and Professions Code.

9 SEC. 2. Section 1.5 of this bill incorporates amendments to
10 Section 6404.5 of the Labor Code proposed by both this bill and
11 Senate Bill 6 of the Second Extraordinary Session, Senate Bill 5
12 of the Second Extraordinary Session, and Assembly Bill 6 of the
13 Second Extraordinary Session. It shall only become operative if
14 (1) all bills are enacted, or just this bill and either or both Senate
15 Bill 5 of the Second Extraordinary Session and Assembly Bill 6 of
16 the Second Extraordinary Session are enacted, and become
17 effective on or before January 1, 2017, (2) each bill amends Section
18 6404.5 of the Labor Code, and (3) this bill is enacted after Senate
19 Bill 6 of the Second Extraordinary Session, Senate Bill 5 of the
20 Second Extraordinary Session, and Assembly Bill 6 of the Second
21 Extraordinary Session, in which case Section 1 of this bill shall
22 not become operative.

23 ~~SEC. 2.~~

24 SEC. 3. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.

O