

AMENDED IN ASSEMBLY MARCH 25, 2011

AMENDED IN ASSEMBLY MARCH 8, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 217

Introduced by Assembly Member Carter

January 31, 2011

An act to amend Section 6404.5 of the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 217, as amended, Carter. Workplace smoking prohibition: long-term health care facilities.

Existing law prohibits an employer from knowingly or intentionally permitting, and a person from engaging in, the smoking of tobacco products in an enclosed space at a place of employment. Existing law provides that “place of employment” for purposes of that prohibition does not include, among other places, patient smoking areas in long-term health care facilities, as defined. Existing law provides that any violation of that prohibition is an infraction, punishable by a fine not to exceed \$100 for a first violation, \$200 for a 2nd violation within one year, and \$500 for a 3rd and for each subsequent violation within one year.

This bill would ~~delete that exception for patient smoking areas in long-term health care facilities, thereby making those areas subject to the smoking prohibition described above~~ *provide that a patient smoking area, as defined, is not a place of employment for purposes of the smoking prohibition described above only if the patient smoking area is not located in a patient’s room, is located outdoors in a courtyard, patio, or other outdoor space that can be monitored by facility staff,*

and is located in an area that reasonably prevents smoke from entering the facility or patient rooms.

By limiting the application of the exception for patient smoking areas, the bill would make some of those areas subject to the smoking prohibition, thereby creating an additional crime punishable as an infraction and imposing a state-mandated local program.

~~By creating an additional crime punishable as 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 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 (d) or in which the smoking
 21 of tobacco products is not regulated pursuant to subdivision (e)
 22 shall be subject to local regulation of smoking of tobacco products.

1 (b) No employer shall knowingly or intentionally permit, and
2 no person shall engage in, the smoking of tobacco products in an
3 enclosed space at a place of employment. “Enclosed space”
4 includes lobbies, lounges, waiting areas, elevators, stairwells, and
5 restrooms that are a structural part of the building and not
6 specifically defined in subdivision (d).

7 (c) For purposes of this section, an employer who permits any
8 nonemployee access to his or her place of employment on a regular
9 basis has not acted knowingly or intentionally in violation of this
10 section if he or she has taken the following reasonable steps to
11 prevent smoking by a nonemployee:

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

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

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

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

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

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

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

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

1 establishment’s guests and members of the public typically
2 congregate.

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

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

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

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

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

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

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

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

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

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

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

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

16 (12) *Patient smoking areas in long-term health care facilities,*
17 *as defined in Section 1418 of the Health and Safety Code, provided*
18 *that all of the following conditions are met:*

19 (A) *The patient smoking area is not located in a patient’s room.*

20 (B) *The patient smoking area is located outdoors in a courtyard,*
21 *patio, or other outdoor space that can be monitored by facility*
22 *staff.*

23 (C) *The patient smoking area is located in an area that*
24 *reasonably prevents smoke from entering the facility or patient*
25 *rooms.*

26 ~~(12)~~

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

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

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

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

6 (D) There are sufficient nonsmoking breakrooms to
7 accommodate nonsmokers.

8 ~~(13)~~

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

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

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

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

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

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

38 (e) Paragraphs ~~(12) and (13)~~ (13) and (14) of subdivision (d)
39 shall not be construed to require employers to provide reasonable

1 accommodation to smokers, or to provide breakrooms for smokers
2 or nonsmokers.

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

7 (A) January 1, 1998.

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

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

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

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

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

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

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

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

31 (h) Nothing in this section shall prohibit an employer from
32 prohibiting smoking in an enclosed place of employment for any
33 reason.

34 (i) The enactment of local regulation of smoking of tobacco
35 products in enclosed places of employment by local governments
36 shall be suspended only for as long as, and to the extent that, the
37 (100-percent) smoking prohibition provided for in this section
38 remains in effect. In the event this section is repealed or modified
39 by subsequent legislative or judicial action so that the (100-percent)
40 smoking prohibition is no longer applicable to all enclosed places

1 of employment in California, local governments shall have the full
2 right and authority to enforce previously enacted, and to enact and
3 enforce new, restrictions on the smoking of tobacco products in
4 enclosed places of employment within their jurisdictions, including
5 a complete prohibition of smoking. Notwithstanding any other
6 provision of this section, any area not defined as a “place of
7 employment” or in which smoking is not regulated pursuant to
8 subdivision (d) or (e), shall be subject to local regulation of
9 smoking of tobacco products.

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

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

23 (l) If any provision of this act or the application thereof to any
24 person or circumstances is held invalid, that invalidity shall not
25 affect other provisions or applications of the act that can be given
26 effect without the invalid provision or application, and to this end
27 the provisions of this act are severable.

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

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