

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 6, 2011

SENATE BILL

No. 575

Introduced by Senator DeSaulnier
(Principal coauthor: Assembly Member Hill)
(*Coauthor: Senator Padilla*)

February 17, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 575, as amended, DeSaulnier. 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, ~~tobacco shops~~, banquet rooms, warehouse facilities, private residences used as family day care homes, and employee break rooms.

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 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 (e) 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 and lobbies, lounges, waiting areas, elevators,
27 stairwells, and restrooms that are a structural part of the building
28 and not specifically defined in subdivision (e).
29 (c) No employer or owner-operated business shall knowingly
30 or intentionally permit, and no person shall engage in, the smoking
31 of tobacco products in an enclosed space at a place of employment
32 or owner-operated business.

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

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

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

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

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

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

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

35 (5) Private residences, except for private residences licensed as
36 family day care homes *during the hours of operation as family*
37 *day care homes*.

38 (6) *Retail or wholesale tobacco shops and private smokers’*
39 *lounges. For purposes of this paragraph:*

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

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

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

22 (g) Nothing in this section shall prohibit an employer or
23 owner-operated business from prohibiting smoking in an enclosed
24 place of employment or owner-operated business for any reason.

25 (h) The enactment of local regulation of smoking of tobacco
26 products in enclosed places of employment or owner-operated
27 businesses by local governments shall be suspended only for as
28 long as, and to the extent that, the (100-percent) smoking
29 prohibition provided for in this section remains in effect. In the
30 event this section is repealed or modified by subsequent legislative
31 or judicial action so that the (100-percent) smoking prohibition is
32 no longer applicable to all enclosed places of employment and
33 owner-operated businesses in California, local governments shall
34 have the full right and authority to enforce previously enacted, and
35 to enact and enforce new, restrictions on the smoking of tobacco
36 products in enclosed places of employment and owner-operated
37 businesses within their jurisdictions, including a complete
38 prohibition of smoking. Notwithstanding any other provision of
39 this section, any area not defined as a “place of employment” or

1 in which smoking is not regulated pursuant to subdivision (e), shall
2 be subject to local regulation of smoking of tobacco products.

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

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

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

21 SEC. 2. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.