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AB-7 Smoking in the workplace. (2015-2016)

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Assembly Bill No. 7

CHAPTER 4

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

[Approved by Governor May 04, 2016. Filed with Secretary of State May 04, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 7, 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent

anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that an area not defined as a "place of employment" pursuant to subdivision (e) is subject to local regulation of smoking of tobacco products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The enactment of local regulation of smoking of tobacco products in enclosed places of employment or owner-operated businesses by local governments shall be suspended only for as long as, and to the extent that, the (100-percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100-percent) smoking prohibition is no longer applicable to all enclosed places of employment and owner-operated businesses in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment and owner-operated businesses within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, an area not defined as a "place of employment" or in which smoking is not regulated pursuant to subdivision (e), is subject to local regulation of smoking of tobacco products.

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

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

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

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

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that an area not defined as a "place of employment" pursuant to subdivision (e) is subject to local regulation of smoking of tobacco products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The enactment of local regulation of smoking of tobacco products in enclosed places of employment or owner-operated businesses by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment and owner-operated businesses in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment and owner-operated businesses within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, an area not defined as a "place of employment" or in which smoking is not regulated pursuant to subdivision (e), is subject to local regulation of smoking of tobacco products.

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

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

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

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

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

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 6404.5 of the Labor Code proposed by both this bill and Senate Bill 6 of the Second Extraordinary Session, Senate Bill 5 of the Second Extraordinary Session, and Assembly Bill 6 of the Second Extraordinary Session. It shall only become operative if (1) all bills are enacted, or just this bill and either or both Senate

Bill 5 of the Second Extraordinary Session and Assembly Bill 6 of the Second Extraordinary Session are enacted, and become effective on or before January 1, 2017, (2) each bill amends Section 6404.5 of the Labor Code, and (3) this bill is enacted after Senate Bill 6 of the Second Extraordinary Session, Senate Bill 5 of the Second Extraordinary Session, and Assembly Bill 6 of the Second Extraordinary Session, in which case Section 1 of this bill shall not become operative.

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