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 AMENDED IN SENATE MAY 24, 1994  
 AMENDED IN SENATE APRIL 6, 1994  
 AMENDED IN SENATE MARCH 7, 1994  
 AMENDED IN SENATE AUGUST 30, 1993  
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 AMENDED IN ASSEMBLY APRIL 12, 1993  
 AMENDED IN ASSEMBLY FEBRUARY 22, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

**ASSEMBLY BILL**

**No. 13**

**Introduced by Assembly Member Terry Friedman**  
**(Principal coauthor: Assembly Member Margolin)**  
**(Coauthors: Assembly Members Archie-Hudson, Bates,**  
**Caldera, Eastin, Gotch, Isenberg, Klehs, and Solis)**  
**(Coauthors: Senators Petris, Torres, and Watson)**

December 7, 1992

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

LEGISLATIVE COUNSEL'S DIGEST

AB 13, as amended, T. Friedman. Occupational safety and health: tobacco products.

The existing California Occupational Safety and Health Act of 1973, administered and enforced by the Division of

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Occupational Safety and Health within the Department of Industrial Relations, prohibits any employer from occupying or maintaining any place of employment that is not safe and healthful. It also provides, under specified circumstances, for misdemeanor penalties with respect to violations of the act, except where another penalty is specifically provided.

This bill would additionally prohibit any employer from knowingly or intentionally permitting, or any person from engaging in, the smoking of tobacco products in an enclosed space at specified places of employment. The bill would specify that, for purposes of these provisions, "place of employment" does not include certain portions of a hotel, motel, or other lodging establishments, meeting or banquet rooms subject to certain exceptions, retail or wholesale tobacco shops, private smoker's lounges, cabs of motor trucks or truck tractors as specified, bars and taverns and gaming clubs subject to certain prescribed conditions, warehouse facilities, theatrical production sites, and medical research or treatment sites, *employee breakrooms under prescribed conditions, patient smoking areas in long-term health care facilities, as defined, and specified smoking areas designated by employers with fewer than 5 employees.* It would also specify that, for purposes of these provisions, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has taken certain reasonable steps to prevent smoking by a nonemployee. ~~It would allow an employer to permit smoking in designated breakrooms under specified conditions.~~

This bill would also specify that the smoking prohibition set forth in these provisions shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment, and shall supersede and render unnecessary specified local ordinances regulating the smoking of tobacco products in enclosed places of employment.

This bill would additionally provide that a violation of the smoking prohibition set forth in these provisions is an infraction punishable by specified fines. It would further provide that the smoking prohibition shall be enforced by

local law enforcement agencies, as specified, but would specify that the division shall not be required to respond to any complaint regarding a violation of the smoking prohibition, unless the employer has been found guilty of a 3rd violation of the smoking prohibition within the previous year. By establishing a new prohibition the violation of which is, under specified circumstances, an infraction, this bill would create a new crime and would thereby establish 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 is added to the Labor  
2 Code, to read:  
3 6404.5. (a) The Legislature finds and declares that  
4 regulation of smoking in the workplace is a matter of  
5 statewide interest and concern. It is the intent of the  
6 Legislature in enacting this section to prohibit the  
7 smoking of tobacco products in all (100 percent of)  
8 enclosed places of employment in this state, as covered  
9 by this section, thereby eliminating the need of local  
10 governments to enact workplace smoking restrictions  
11 within their respective jurisdictions. It is further the  
12 intent of the Legislature to create a uniform statewide  
13 standard to restrict and prohibit the smoking of tobacco  
14 products in enclosed places of employment, as specified  
15 in this section, in order to reduce employee exposure to  
16 environmental tobacco smoke to a level that will prevent  
17 anything other than insignificantly harmful effects to  
18 exposed employees, and also to eliminate the confusion  
19 and hardship that can result from enactment or  
20 enforcement of disparate local workplace smoking

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

8 (b) No employer shall knowingly or intentionally  
 9 permit, and no person shall engage in, the smoking of  
 10 tobacco products in an enclosed space at a place of  
 11 employment.

12 (c) For purposes of this section, an employer who  
 13 permits any nonemployee access to his or her place of  
 14 employment on a regular basis has not acted knowingly  
 15 or intentionally if he or she has taken the following  
 16 reasonable steps to prevent smoking by a nonemployee:

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

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

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

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

28 For purposes of this subdivision, "reasonable steps"  
 29 does not include (A) the physical ejection of a  
 30 nonemployee from the place of employment or (B) any  
 31 requirement for making a request to a nonemployee to  
 32 refrain from smoking, under circumstances involving a  
 33 risk of physical harm to the employer or any employee.

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

36 (1) Sixty-five percent of the guest room  
 37 accommodations in a hotel, motel, or similar transient  
 38 lodging establishment.

39 (2) Areas of the lobby in a hotel, motel, or other similar  
 40 transient lodging establishment designated for smoking

1 by the establishment. Such an establishment may permit  
 2 smoking in a designated lobby area that does not exceed  
 3 25 percent of the total floor area of the lobby or, if the  
 4 total area of the lobby is 2,000 square feet or less, that does  
 5 not exceed 50 percent of the total floor area of the lobby.  
 6 For purposes of this paragraph, "lobby" means the  
 7 common public area of such an establishment in which  
 8 registration and other similar or related transactions, or  
 9 both, are conducted and in which the establishment's  
 10 guests and members of the public typically congregate.

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

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

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

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

33 (5) Cabs of motor trucks, as defined in Section 410 of  
 34 the Vehicle Code, or truck tractors, as defined in Section  
 35 655 of the Vehicle Code, if no nonsmoking employees are  
 36 present.

37 (6) Warehouse facilities. For purposes of this  
 38 paragraph, "warehouse facility" means a warehouse  
 39 facility with more than 100,000 square feet of total floor  
 40 space, and 20 or fewer full-time employees working at the

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1 smoking room shall not be recirculated to other parts of  
 2 the building.  
 3 (B) The employer shall comply with any ventilation  
 4 standard or other standard utilizing appropriate  
 5 technology, including, but not limited to, mechanical,  
 6 electronic, and protechnical systems, adopted by the  
 7 Occupational Safety and Health Standards Board or the  
 8 federal Environmental Protection Agency. If both adopt  
 9 inconsistent standards, the ventilation standards of the  
 10 Occupational Safety and Health Standards Board shall be  
 11 no less stringent than the standards adopted by the  
 12 federal Environmental Protection Agency.  
 13 (C) The smoking room shall be located in a nonwork  
 14 area where no one, as part of his or her work  
 15 responsibilities, is required to enter. For purposes of this  
 16 paragraph, "work responsibilities" does not include any  
 17 custodial or maintenance work carried out in the  
 18 breakroom when it is unoccupied.  
 19 (D) There are sufficient nonsmoking breakrooms to  
 20 accommodate nonsmokers.  
 21 (8) The subdivision  
 22 (14) Employers with a total of five or fewer  
 23 employees, either full-time or part-time, may permit  
 24 smoking where all of the following conditions are met:  
 25 (A) The smoking area is not accessible to minors.  
 26 (B) All employees who enter the smoking area  
 27 consent to permit smoking. No one, as part of his or her  
 28 work responsibilities, shall be required to work in an area  
 29 where smoking is permitted. An employer who is  
 30 determined by the division to have used coercion to  
 31 obtain consent or who has required an employee to work  
 32 in the smoking area shall be subject to the penalty  
 33 provisions of Section 6427.  
 34 (C) Air from the smoking area shall be exhausted  
 35 directly to the outside by an exhaust fan. Air from the  
 36 smoking area shall not be recirculated to other parts of  
 37 the building.  
 38 (D) The employer shall comply with any ventilation  
 39 standard or other standard utilizing appropriate  
 40 technology, including, but not limited to, mechanical,

1 facility, but does not include any area within such a  
 2 facility that is utilized as office space.  
 3 (7) Gaming clubs, in which smoking is permitted by  
 4 subdivision (f). For purposes of this paragraph, "gaming  
 5 club" means any gaming club as defined in Section 19802  
 6 of the Business and Professions Code or bingo facility as  
 7 defined in Section 326.5 of the Penal Code that restricts  
 8 access to minors under 18 years of age.  
 9 (8) Bars and taverns, in which smoking is permitted by  
 10 subdivision (f). For purposes of this paragraph, "bar" or  
 11 "tavern" means a facility primarily devoted to the  
 12 serving of alcoholic beverages for consumption by guests  
 13 on the premises, in which the serving of food is incidental.  
 14 "Bar or tavern" includes those facilities located within a  
 15 hotel, motel, or other similar transient occupancy  
 16 establishment. However, when located within a building  
 17 in conjunction with another use, including a restaurant,  
 18 "bar" or "tavern" includes only those areas used  
 19 primarily for the sale and service of alcoholic beverages.  
 20 "Bar" or "tavern" does not include the dining areas of a  
 21 restaurant, regardless of whether alcoholic beverages are  
 22 served therein.  
 23 (9) Theatrical production sites, if smoking is an  
 24 integral part of the story in the theatrical production.  
 25 (10) Medical research or treatment sites, if smoking is  
 26 integral to the research and treatment being conducted.  
 27 (11) Private residences, except for private residences  
 28 licensed as family day care homes, during the hours of  
 29 operation as family day care homes and in those areas  
 30 where children are present.  
 31 (f) Employers may permit smoking in designated  
 32 breakrooms where  
 33 (12) Patient smoking areas in long-term health care  
 34 facilities, as defined in Section 1418 of the Health and  
 35 Safety Code.  
 36 (13) Breakrooms designated by employers for  
 37 smoking, provided that all of the following conditions are  
 38 met  
 39 (A) Air from the smoking room shall be exhausted  
 40 directly to the outside by an exhaust fan. Air from the

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

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

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

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

24 *(A) January 1, 1997.*

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

35 *(2) If a regulation specified in subparagraph (B) of*  
 36 *paragraph (1) is adopted on or before January 1, 1997,*  
 37 *smoking may thereafter be permitted in gaming clubs*  
 38 *and in bars and taverns, subject to full compliance with,*  
 39 *or conformity to, the standard in the regulation within*  
 40 *two years following the date of adoption of the regulation.*

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

12 (3) If a regulation specified in subparagraph (B) of  
 13 paragraph (1) is not adopted on or before January 1, 1997,  
 14 the exemptions specified in paragraphs (7) and (8) of  
 15 subdivision (d) shall be inoperative on and after January  
 16 1, 1997, until such a regulation is adopted. Upon adoption  
 17 of such a regulation on or after January 1, 1997, smoking  
 18 may thereafter be permitted in gaming clubs and in bars  
 19 and taverns, subject to full compliance with, or  
 20 conformity to, the standard in the regulation within two  
 21 years following the date of adoption of the regulation. An  
 22 employer failing to achieve compliance with, or  
 23 conformity to, such a regulation within this two-year  
 24 period shall prohibit smoking in the gaming club, bar, or  
 25 tavern until compliance or conformity is achieved. If the  
 26 Occupational Safety and Health Standards Board and the  
 27 federal Environmental Protection Agency both adopt  
 28 regulations specified in subparagraph (B) of paragraph  
 29 (1) that are inconsistent, the regulations of the  
 30 Occupational Safety Standards Board shall be no less  
 31 stringent than the regulations of the federal  
 32 Environmental Protection Agency.

33 (g) The smoking prohibition set forth in this section  
 34 shall constitute a uniform statewide standard for  
 35 regulating the smoking of tobacco products in enclosed  
 36 places of employment and shall supersede and render  
 37 unnecessary the local enactment or enforcement of local  
 38 ordinances regulating the smoking of tobacco products in  
 39 enclosed places of employment. Insofar as the smoking  
 40 prohibition set forth in this section is applicable to all (100

1 percent of) places of employment within this state and,  
 2 therefore, provides the maximum degree of coverage,  
 3 the practical effect of this section is to eliminate the need  
 4 of local governments to enact enclosed workplace  
 5 smoking restrictions within their respective jurisdictions.  
 6 (h) Nothing in this section shall prohibit an employer  
 7 from prohibiting smoking in an enclosed place of  
 8 employment for any reason.

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

28 (j) Any violation of the prohibition set forth in  
 29 subdivision (b) is an infraction subject to subdivision (d)  
 30 of Section 17 of the Penal Code and, notwithstanding  
 31 Section 19.8 of the Penal Code, is punishable by a fine not  
 32 to exceed one hundred dollars (\$100) for a first violation,  
 33 two hundred dollars (\$200) for a second violation within  
 34 one year, and five hundred dollars (\$500) for a third and  
 35 for each subsequent violation within one year. This  
 36 subdivision shall be enforced by local law enforcement  
 37 agencies including, but not limited to, local health  
 38 departments, as determined by the local governing body.

39 (k) Notwithstanding Section 6309, the division shall  
 40 not be required to respond to any complaint regarding

1 the smoking of tobacco products in an enclosed space at  
 2 a place of employment, unless the employer has been  
 3 found guilty pursuant to subdivision (j) of a third  
 4 violation of subdivision (b) within the previous year.  
 5 (l) If any provision of this act or the application  
 6 thereof to any person or circumstances is held invalid,  
 7 that invalidity shall not affect other provisions or  
 8 applications of the act that can be given effect without  
 9 the invalid provision of application, and to this end the  
 10 provisions of this act are severable.

11 SEC. 2. No reimbursement is required by this act  
 12 pursuant to Section 6 of Article XIII B of the California  
 13 Constitution because the only costs which may be  
 14 incurred by a local agency or school district will be  
 15 incurred because this act creates a new crime or  
 16 infraction, changes the definition of a crime or infraction,  
 17 changes the penalty for a crime or infraction, or  
 18 eliminates a crime or infraction. Notwithstanding Section  
 19 17580 of the Government Code, unless otherwise  
 20 specified in this act, the provisions of this act shall become  
 21 operative on the same date that the act takes effect  
 22 pursuant to the California Constitution.

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