

Introduced by Senator CorbettFebruary 22, 2013

An act to amend Section 1947.5 of the Civil Code, to amend Section 48901 of the Education Code, to amend Sections 7596, 7597, and 19994.35 of the Government Code, to amend Sections 1234, 1286, 1596.795, 104495, 110995, 113978, and 114332.3 of, and to add Section 118882 to, the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Sections 561 and 99580 of the Public Utilities Code, and to amend Section 12523 of the Vehicle Code, relating to electronic cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

SB 648, as introduced, Corbett. Electronic cigarettes: restriction of use and advertising.

Existing law defines an electronic cigarette as a device that can provide an inhalable dose of nicotine by delivering an inhalable solution. Existing law, to the extent not preempted by federal law, makes it unlawful for a person to sell or otherwise furnish an electronic cigarette to a person under 18 years of age.

Existing law restricts or prohibits the smoking of tobacco products in various places, including, but not limited to, residential dwelling units, school campuses, public buildings, as defined, places of employment, day care facilities, retail food facilities, and health facilities. Under existing law, violation of the prohibition against smoking in certain of these places, including, but not limited to, a day care facility, health facility, or clinic constitutes an infraction or a misdemeanor, as specified.

This bill would extend the above-referenced restrictions and prohibitions against the smoking of tobacco products to include

electronic cigarettes. By including electronic cigarettes within the restricted and prohibited activity, this bill would change the definition of a crime with respect to certain facilities, thereby creating a state-mandated local program.

Existing law prohibits the advertising of tobacco products in any state-owned and state-occupied building, except as specified.

This bill would extend the above prohibition against advertising to electronic cigarettes, as defined.

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. It is the intent of the Legislature in enacting this
2 act to regulate the use of electronic cigarettes, as defined in
3 subdivision (b) of Section 110405 of the Health and Safety Code,
4 *to the same extent and* in the same manner as cigarettes and other
5 tobacco products, to the extent not preempted by federal law.

6 SEC. 2. Section 1947.5 of the Civil Code is amended to read:
7 1947.5. (a) A landlord of a residential dwelling unit, as defined
8 in Section 1940, or his or her agent, may prohibit the smoking of
9 a cigarette, as defined in Section 104556 of the Health and Safety
10 Code, *an electronic cigarette, as defined in subdivision (b) of*
11 *Section 119405 of the Health and Safety Code*, or other tobacco
12 product on the property or in any building or portion of the
13 building, including any dwelling unit, other interior or exterior
14 area, or the premises on which it is located, in accordance with
15 this article.

16 (b) (1) Every lease or rental agreement entered into on or after
17 January 1, 2012, for a residential dwelling unit on property on any
18 portion of which the landlord has prohibited the smoking of
19 cigarettes, *electronic cigarettes*, or other tobacco products pursuant
20 to this article shall include a provision that specifies the areas on
21 the property where smoking is prohibited, if the lessee has not
22 previously occupied the dwelling unit.

1 (2) For a lease or rental agreement entered into before January
2 1, 2012, a prohibition against the smoking of cigarettes, *electronic*
3 *cigarettes*, or other tobacco products in any portion of the property
4 in which smoking was previously permitted shall constitute a
5 change of the terms of tenancy, requiring adequate notice in
6 writing, to be provided in the manner prescribed in Section 827.

7 (c) A landlord who exercises the authority provided in
8 subdivision (a) to prohibit smoking shall be subject to federal,
9 state, and local requirements governing changes to the terms of a
10 lease or rental agreement for tenants with leases or rental
11 agreements that are in existence at the time that the policy limiting
12 or prohibiting smoking is adopted.

13 (d) This section shall not be construed to preempt any local
14 ordinance in effect on or before January 1, 2012, or any provision
15 of a local ordinance in effect on or after January 1, 2012, that
16 restricts the smoking of cigarettes, *electronic cigarettes*, or other
17 tobacco products.

18 (e) A limitation or prohibition of the use of any tobacco product
19 or *electronic cigarette* shall not affect any other term or condition
20 of the tenancy, nor shall this section be construed to require
21 statutory authority to establish or enforce any other lawful term
22 or condition of the tenancy.

23 SEC. 3. Section 48901 of the Education Code is amended to
24 read:

25 48901. (a) No school shall permit the smoking or use of
26 tobacco, or any product containing tobacco or nicotine products,
27 including *electronic cigarettes*, by pupils of the school while the
28 pupils are on campus, or while attending school-sponsored
29 activities or while under the supervision and control of school
30 district employees.

31 (b) The governing board of any school district maintaining a
32 high school shall take all steps it deems practical to discourage
33 high school students from smoking.

34 SEC. 4. Section 7596 of the Government Code is amended to
35 read:

36 7596. As used in this chapter, the following terms have the
37 following meanings:

38 (a) “Public building” means a building owned and occupied, or
39 leased and occupied, by the state, a county, a city, a city and
40 county, or a California community college district.

1 (1) “Inside a public building” includes all indoor areas of the
2 building, except for covered parking lots and residential space.
3 “Inside a public building” also includes any indoor space leased
4 to the state, county, or city, except for covered parking lots and
5 residential space.

6 (2) “Residential space” means a private living area, but it does
7 not include common areas such as lobbies, lounges, waiting areas,
8 elevators, stairwells, and restrooms that are a structural part of a
9 multicomplex building such as a dormitory.

10 (3) (A) “Covered parking lot” means an area designated for the
11 parking of vehicles that is enclosed or contains a roof or ceiling.
12 “Covered parking lot” does not include lobbies, lounges, waiting
13 areas, elevators, stairwells, and restrooms that are a structural part
14 of the parking lot or a building to which it is attached.

15 (B) The application of this subparagraph shall not supersede or
16 render inapplicable permitted smoking of tobacco products,
17 *including electronic cigarettes*, under this chapter within any other
18 part of a covered parking lot not specifically listed in subparagraph
19 (1).

20 (b) “State” or “state agency” means a state agency, as defined
21 pursuant to Section 11000, the Legislature, the Supreme Court and
22 the courts of appeal, and each campus of the California State
23 University and the University of California.

24 (c) “Public employee” means an employee of a state agency or
25 an employee of a county or city.

26 SEC. 5. Section 7597 of the Government Code is amended to
27 read:

28 7597. (a) No public employee or member of the public shall
29 smoke any tobacco product, *including an electronic cigarette*,
30 inside a public building, or in an outdoor area within 20 feet of a
31 main exit, entrance, or operable window of a public building, or
32 in a passenger vehicle, as defined by Section 465 of the Vehicle
33 Code, owned by the state.

34 (b) This section shall not preempt the authority of any county,
35 city, city and county, California Community College campus,
36 campus of the California State University, or campus of the
37 University of California to adopt and enforce additional smoking
38 and tobacco control ordinances, regulations, or policies that are
39 more restrictive than the applicable standards required by this
40 chapter.

1 SEC. 6. Section 19994.35 of the Government Code is amended
2 to read:

3 19994.35. (a) No tobacco product advertising, *which shall*
4 *include electronic cigarette advertising*, shall be allowed in any
5 state-owned and state-occupied building excepting advertising
6 contained in a program, leaflet, newspaper, magazine, or other
7 written material lawfully sold, brought, or distributed within a state
8 building.

9 (b) “Advertise,” for purposes of this section, means the display
10 of any poster, sign, or other written or visual material that is
11 intended to communicate commercial information or images to
12 the public.

13 (c) “Tobacco product,” for purposes of this section, means any
14 product containing tobacco, the prepared leaves of plants of the
15 nicotiana family, including, but not limited to, cigarettes, loose
16 tobacco, cigars, snuff, chewing tobacco, or any other preparation
17 of tobacco.

18 SEC. 7. Section 1234 of the Health and Safety Code is amended
19 to read:

20 1234. (a) Smoking shall not be permitted in patient areas of
21 a clinic except those rooms designated for occupancy exclusively
22 by smokers.

23 (b) Clearly legible signs shall either:

24 (1) State that smoking is unlawful and be conspicuously posted
25 by, or on behalf of, the owner or manager of such clinic, in all
26 areas of a clinic where smoking is unlawful.

27 (2) Identify “smoking permitted” areas, and be posted by, or
28 on behalf of, the owner or manager of such clinic, only in areas of
29 a clinic where smoking is lawfully permitted.

30 If “smoking permitted” signs are posted, there shall also be
31 conspicuously posted, near all major entrances, clearly legible
32 signs stating that smoking is unlawful except in areas designated
33 “smoking permitted.”

34 (c) This section shall not apply to skilled nursing facilities,
35 intermediate care facilities, and intermediate care facilities for the
36 developmentally disabled.

37 (d) *This section applies to the use of electronic cigarettes, as*
38 *defined in subdivision (b) of Section 119405.*

39 SEC. 8. Section 1286 of the Health and Safety Code is amended
40 to read:

1 1286. (a) Smoking shall be prohibited in patient care areas,
2 waiting rooms, and visiting rooms of a health facility, except those
3 areas specifically designated as smoking areas, and in patient rooms
4 as specified in subdivision (b).

5 (b) Smoking shall not be permitted in a patient room unless all
6 persons assigned to such room have requested a room where
7 smoking is permitted. In the event that the health facility occupancy
8 has reached capacity, the health facility shall have reasonable time
9 to reassign patients to appropriate rooms.

10 (c) Clearly legible signs shall either:

11 (1) State that smoking is unlawful and be conspicuously posted
12 by, or on behalf of, the owner or manager of such health facility,
13 in all areas of a health facility where smoking is unlawful, ~~or~~.

14 (2) Identify “smoking permitted” areas, and be posted by, or
15 on behalf of, the owner or manager of such health facility, only in
16 areas of the health facility where smoking is lawfully permitted.

17 If “smoking permitted” signs are posted, there shall also be
18 conspicuously posted, near all major entrances, clearly legible
19 signs stating that smoking is unlawful except in areas designated
20 “smoking permitted.”

21 (d) No signs pertaining to smoking are required to be posted
22 in patient rooms.

23 (e) This section shall not apply to skilled nursing facilities,
24 intermediate care facilities, and intermediate care facilities for the
25 developmentally disabled.

26 (f) *This section applies to the use of electronic cigarettes, as*
27 *defined in subdivision (b) of Section 119405.*

28 SEC. 9. Section 1596.795 of the Health and Safety Code is
29 amended to read:

30 1596.795. (a) The smoking of tobacco, *including electronic*
31 *cigarettes, as defined in subdivision (b) of Section 119405*, in a
32 private residence that is licensed as a family day care home shall
33 be prohibited during the hours of operation as a family day care
34 home and in those areas of the family day care home where
35 children are present. Nothing in this section shall prohibit a city
36 or county from enacting or enforcing an ordinance relating to
37 smoking in a family day care home if the ordinance is more
38 stringent than this section.

1 (b) The smoking of tobacco, *including electronic cigarettes*,
2 *as defined in subdivision (b) of Section 119405*, on the premises
3 of a licensed day care center shall be prohibited.

4 SEC. 10. Section 104495 of the Health and Safety Code is
5 amended to read:

6 104495. (a) For the purposes of this section, the following
7 definitions shall govern:

8 (1) “Playground” means any park or recreational area
9 specifically designed to be used by children that has play equipment
10 installed, or any similar facility located on public or private school
11 grounds, or on city, county, or state park grounds.

12 (2) “Tot lot sandbox area” means a designated play area within
13 a public park for the use by children under five years of age. Where
14 the area is not contained by a fence, the boundary of a tot lot
15 sandbox area shall be defined by the edge of the resilient surface
16 of safety material, such as concrete or wood, or any other material
17 surrounding the tot lot sandbox area.

18 (3) “Public park” includes a park operated by a public agency.

19 (4) “Smoke or smoking” means the carrying of a lighted pipe,
20 lighted cigar, or lighted cigarette of any kind, *including an*
21 *electronic cigarette, as defined in subdivision (b) of Section*
22 *119405*, or the lighting of a pipe, cigar, or cigarette of any kind,
23 including, but not limited to, tobacco, or any other weed or plant.

24 (5) “Cigarette” means the same as defined in Section 104556,
25 *and also includes an electronic cigarette.*

26 (6) “Cigar” means the same as defined in Section 104550.

27 (b) No person shall smoke a cigarette, cigar, or other
28 tobacco-related product within 25 feet of any playground or tot
29 lot sandbox area.

30 (c) No person shall dispose of cigarette butts, cigar butts, or any
31 other tobacco-related waste within 25 feet of a playground or a tot
32 lot sandbox area.

33 (d) No person shall intimidate, threaten any reprisal, or effect
34 any reprisal, for the purpose of retaliating against another person
35 who seeks to attain compliance with this section.

36 (e) Any person who violates this section is guilty of an infraction
37 and shall be punished by a fine of two hundred fifty dollars (\$250)
38 for each violation of this section. Punishment under this section
39 shall not preclude punishment pursuant to Section 13002, Section

1 374.4 of the Penal Code, or any other provision of law proscribing
2 the act of littering.

3 (f) The prohibitions contained in subdivisions (b), (c), and (d)
4 shall not apply to private property.

5 (g) The prohibitions contained in subdivisions (b) and (c) shall
6 not apply to a public sidewalk located within 25 feet of a
7 playground or a tot lot sandbox area.

8 (h) This section shall not preempt the authority of any county,
9 city, or city and county to regulate smoking around playgrounds
10 or tot lot sandbox areas. Any county, city, or city and county may
11 enforce any ordinance adopted prior to January 1, 2002, or may
12 adopt and enforce new regulations that are more restrictive than
13 this section, on and after January 1, 2002.

14 SEC. 11. Section 110995 of the Health and Safety Code is
15 amended to read:

16 110995. Any person or entity who manufactures, transports,
17 stores, or sells ice shall comply with all of the following:

18 (a) A room in which ice is manufactured shall be used for no
19 other purpose than the manufacture of ice and the production of
20 refrigeration, and may contain refrigeration equipment and
21 machinery. This subdivision shall not apply to any food facility
22 as defined in Section 113785.

23 (b) Ice storage or processing areas shall be maintained in a clean
24 and sanitary condition and no noxious or offensive odors, smoking,
25 *including electronic cigarettes, as defined in subdivision (b) of*
26 *Section 119405*, or other air pollution shall be permitted therein.

27 (c) Cover tops for tank cans shall have a smooth, painted, or
28 treated surface, and shall be cleaned daily. Water used for cleaning
29 shall not be permitted to drip into freezing cans. Only potable water
30 shall be used in sprays and in the thaw tanks for the removal of
31 ice from cans. Water coverage tanks shall be covered and provided
32 with filtered vents.

33 (d) Crushed, cubed, or shaved ice, intended for human
34 consumption, shall be stored in a manner that prevents its pollution
35 or contamination.

36 (e) Soil, waste, or drain pipes shall not be installed or maintained
37 above any ice platform, loading space, ice container, ice storage
38 room, dip tank or any place where leakage from the pipes may
39 drop into, or upon any ice or upon any area or equipment used in
40 the manufacture of ice, unless a safety device shall be installed

1 under the pipes drained to an open receptacle or drain so as to
2 prevent pollution of ice, water, or equipment used in the
3 manufacture of the ice.

4 (f) Block ice-loading platforms shall be washed with water as
5 often as necessary to keep them in a clean and sanitary condition,
6 but not less than once each day.

7 (g) Block ice pullers and block ice storage-room employees
8 shall wear rubber overshoes while on duty. The rubber overshoes
9 shall be removed when the employee leaves the storage or tank
10 room, except that if the rubber overshoes are not removed, they
11 shall be cleaned and disinfected before reentering the storage or
12 tank room. The use of street shoes without rubber overshoes in
13 these areas is prohibited.

14 (h) All frozen unpackaged ice blocks intended for sale for human
15 consumption or for the refrigeration of food products shall be
16 washed thoroughly with potable water. Ice manufactured for
17 industrial purposes need not be washed prior to shipping but shall
18 be handled and stored separately from ice intended for human
19 consumption.

20 (i) Ice shall be handled only with clean tongs, ice-carrying bags,
21 scoops, or other sanitary containers, and shall not be directly
22 handled with bare hands.

23 (j) Single service supplies shall be stored, dispensed, and
24 handled in a sanitary manner and shall be used only once.

25 (k) Persons not directly involved in the manufacture, processing,
26 packaging, or storing of ice, in the maintenance of facilities and
27 equipment used therefore, or in the management, supervision, or
28 inspection thereof, shall not be permitted in any area where ice is
29 manufactured, processed, packaged, or stored, unless personal
30 cleanliness and hygienic practices are taken to prevent
31 contamination of the product. These areas shall have signs posted
32 to this effect.

33 ~~(l)~~

34 (l) Bacteriological tests of the finished ice shall be conducted
35 not less than biannually, chemical and physical tests annually, and
36 radiological tests every four years, to insure that ice manufactured
37 for human consumption or for the refrigeration of food products
38 complies with the primary drinking water standards adopted by
39 the department pursuant to Section 116365.

1 (m) No ice produced out of state shall be sold or distributed
2 within this state unless it complies with this article.

3 SEC. 12. Section 113978 of the Health and Safety Code is
4 amended to read:

5 113978. Food facilities shall have a “no smoking” sign posted
6 in the food preparation, food storage, and warewashing areas. *For*
7 *purposes of this section, “smoking” also includes use of electronic*
8 *cigarettes, as defined in subdivision (b) of Section 119405.*

9 SEC. 13. Section 114332.3 of the Health and Safety Code is
10 amended to read:

11 114332.3. (a) No potentially hazardous food or beverage stored
12 or prepared in a private home may be offered for sale, sold, or
13 given away from a nonprofit charitable temporary food facility.
14 Potentially hazardous food shall be prepared in a food
15 establishment or on the premises of a nonprofit charitable
16 temporary food facility.

17 (b) All food and beverage shall be protected at all times from
18 unnecessary handling and shall be stored, displayed, and served
19 so as to be protected from contamination.

20 (c) Potentially hazardous food and beverage shall be maintained
21 at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or
22 above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times.

23 (d) Ice used in beverages shall be protected from contamination
24 and shall be maintained separate from ice used for refrigeration
25 purposes.

26 (e) All food and food containers shall be stored off the floor on
27 shelving or pallets located within the facility.

28 (f) Smoking, *including electronic cigarettes, as defined in*
29 *subdivision (b) of Section 119405,* is prohibited in nonprofit
30 charitable temporary food facilities.

31 (g) (1) Except as provided in paragraph (2), live animals, birds,
32 or fowl shall not be kept or allowed in nonprofit charitable
33 temporary food facilities.

34 (2) Paragraph (1) does not prohibit the presence, in any room
35 where food is served to the public, guests, or patrons, of a guide
36 dog, signal dog, or service dog, as defined by Section 54.1 of the
37 Civil Code, accompanied by a totally or partially blind person,
38 deaf person, person whose hearing is impaired, or handicapped
39 person, or dogs accompanied by persons licensed to train guide

1 dogs for the blind pursuant to Chapter 9.5 (commencing with
2 Section 7200) of Division 3 of the Business and Professions Code.

3 (3) Paragraph (1) does not apply to dogs under the control of
4 uniformed law enforcement officers or of uniformed employees
5 of private patrol operators and operators of a private patrol service
6 who are licensed pursuant to Chapter 11.5 (commencing with
7 Section 7580) of Division 3 of the Business and Professions Code,
8 while these employees are acting within the course and scope of
9 their employment as private patrol persons.

10 (4) The persons and operators described in paragraphs (2) and
11 (3) are liable for any damage done to the premises or facilities by
12 the dog.

13 (5) The dogs described in paragraphs (2) and (3) shall be
14 excluded from food preparation and utensil wash areas. Aquariums
15 and aviaries shall be allowed if enclosed so as not to create a public
16 health problem.

17 (h) All garbage shall be disposed of in a sanitary manner.

18 (i) Employees preparing or handling food shall wear clean
19 clothing and shall keep their hands clean at all times.

20 SEC. 14. Section 118882 is added to the Health and Safety
21 Code, to read:

22 118882. The Legislature finds and declares that the use of
23 electronic cigarettes, as defined in subdivision (b) of Section
24 119405, is a hazard to the health of the general public. Any
25 reference in this chapter to, or any prohibition of, the smoking of
26 tobacco shall also be construed to refer to the use of electronic
27 cigarettes.

28 SEC. 15. Section 6404.5 of the Labor Code is amended to read:

29 6404.5. (a) The Legislature finds and declares that regulation
30 of smoking in the workplace is a matter of statewide interest and
31 concern. It is the intent of the Legislature in enacting this section
32 to prohibit the smoking of tobacco products, *including electronic*
33 *cigarettes, as defined in subdivision (b) of Section 119405 of the*
34 *Health and Safety Code*, in all ~~(100 percent of)~~ enclosed places of
35 employment in this state, as covered by this section, thereby
36 eliminating the need of local governments to enact workplace
37 smoking restrictions within their respective jurisdictions. It is
38 further the intent of the Legislature to create a uniform statewide
39 standard to restrict and prohibit the smoking of tobacco products,
40 *including electronic cigarettes*, in enclosed places of employment,

1 as specified in this section, in order to reduce employee exposure
2 to environmental tobacco smoke to a level that will prevent
3 anything other than insignificantly harmful effects to exposed
4 employees, and also to eliminate the confusion and hardship that
5 can result from enactment or enforcement of disparate local
6 workplace smoking restrictions. Notwithstanding any other
7 provision of this section, it is the intent of the Legislature that any
8 area not defined as a “place of employment” pursuant to
9 subdivision (d) or in which the smoking of tobacco products,
10 *including electronic cigarettes*, is not regulated pursuant to
11 subdivision (e) shall be subject to local regulation of smoking of
12 tobacco products, *including electronic cigarettes*.

13 (b) No employer shall knowingly or intentionally permit, and
14 no person shall engage in, the smoking of tobacco products in an
15 enclosed space at a place of employment. “Enclosed space”
16 includes lobbies, lounges, waiting areas, elevators, stairwells, and
17 restrooms that are a structural part of the building and not
18 specifically defined in subdivision (d). *For purposes of this section,*
19 *“smoking,” or smoking of tobacco products includes use of*
20 *electronic cigarettes, as specified in subdivision (b) of Section*
21 *119405.*

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

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

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

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

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

37 For purposes of this subdivision, “reasonable steps” does not
38 include (A) the physical ejection of a nonemployee from the place
39 of employment or (B) any requirement for making a request to a

1 nonemployee to refrain from smoking, under circumstances
2 involving a risk of physical harm to the employer or any employee.

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

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

7 (2) Areas of the lobby in a hotel, motel, or other similar transient
8 lodging establishment designated for smoking by the establishment.

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

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

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

30 (A) “Private smokers’ lounge” means any enclosed area in or
31 attached to a retail or wholesale tobacco shop that is dedicated to
32 the use of tobacco products, including, but not limited to, *electronic*
33 *cigarettes*, cigars, and pipes.

34 (B) “Retail or wholesale tobacco shop” means any business
35 establishment the main purpose of which is the sale of tobacco
36 products, including, but not limited to, *electronic cigarettes*, cigars,
37 pipe tobacco, and smoking accessories.

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

1 (6) Warehouse facilities. For purposes of this paragraph,
2 “warehouse facility” means a warehouse facility with more than
3 100,000 square feet of total floorspace, and 20 or fewer full-time
4 employees working at the facility, but does not include any area
5 within a facility that is utilized as office space.

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

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

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

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

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

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

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

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

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

12 (D) There are sufficient nonsmoking breakrooms to
13 accommodate nonsmokers.

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

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

18 (B) All employees who enter the smoking area consent to permit
19 smoking. No one, as part of his or her work responsibilities, shall
20 be required to work in an area where smoking is permitted. An
21 employer who is determined by the division to have used coercion
22 to obtain consent or who has required an employee to work in the
23 smoking area shall be subject to the penalty provisions of Section
24 6427.

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

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

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

1 applicable paragraph of this subdivision that has become
2 inoperative.

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

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

11 (A) January 1, 1998.

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

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

36 (3) If a regulation specified in subparagraph (B) of paragraph
37 (1) is not adopted on or before January 1, 1998, the exemptions
38 specified in paragraphs (7) and (8) of subdivision (d) shall become
39 inoperative on and after January 1, 1998, until a regulation is
40 adopted. Upon adoption of such a regulation on or after January

1 1, 1998, smoking may thereafter be permitted in gaming clubs and
2 in bars and taverns, subject to full compliance with, or conformity
3 to, the standard in the regulation within two years following the
4 date of adoption of the regulation. An employer failing to achieve
5 compliance with, or conformity to, the regulation within this
6 two-year period shall prohibit smoking in the gaming club, bar,
7 or tavern until compliance or conformity is achieved. If the
8 Occupational Safety and Health Standards Board and the federal
9 Environmental Protection Agency both adopt regulations specified
10 in subparagraph (B) of paragraph (1) that are inconsistent, the
11 regulations of the Occupational Safety and Health Standards Board
12 shall be no less stringent than the regulations of the federal
13 Environmental Protection Agency.

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

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

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

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

35 (h) Nothing in this section shall prohibit an employer from
36 prohibiting smoking in an enclosed place of employment for any
37 reason.

38 (i) The enactment of local regulation of smoking of tobacco
39 products in enclosed places of employment by local governments
40 shall be suspended only for as long as, and to the extent that, the

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

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

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

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

32 SEC. 16. Section 561 of the Public Utilities Code is amended
33 to read:

34 561. (a) Every railroad corporation, passenger stage
35 corporation, passenger air carrier, and street railroad corporation
36 providing departures originating in this state shall prohibit the
37 smoking of any tobacco product, *including an electronic cigarette*,
38 in the passenger seating area of every passenger car, passenger
39 stage, aircraft, or other vehicle.

1 (b) Every such corporation and carrier shall display in the
2 passenger seating area of every passenger car, passenger stage,
3 aircraft, or other vehicle, notices sufficient in number, posted in
4 such locations as to be readily seen by boarding passengers,
5 advising passengers of the no smoking requirements pursuant to
6 subdivision (a). Words on such notices which state “No Smoking”
7 or an equivalent phrase shall be at least three-quarters of one inch
8 high, and any other explanatory words on the notices shall be at
9 least one-quarter of an inch high.

10 (c) No person shall smoke any tobacco product, *including an*
11 *electronic cigarette*, in a space known by him or her to be
12 designated for nonsmoking passengers. A violation of this
13 subdivision is not a crime.

14 (d) As used in this section, “passenger air carrier” shall have
15 the same meaning as provided in Sections 2741 and 2743.

16 SEC. 17. Section 99580 of the Public Utilities Code, as
17 amended by Section 2.5 of Chapter 750 of the Statutes of 2012, is
18 amended to read:

19 99580. (a) Pursuant to subdivision (e) of Section 640 of the
20 Penal Code, a public transportation agency may enact and enforce
21 an ordinance to impose and enforce an administrative penalty for
22 any of the acts described in subdivision (b). The ordinance shall
23 include the provisions of this chapter and shall not apply to minors.

24 (b) (1) Evasion of the payment of a fare of the system.

25 (2) Misuse of a transfer, pass, ticket, or token with the intent to
26 evade the payment of a fare.

27 (3) Playing sound equipment on or in a system facility or
28 vehicle.

29 (4) Smoking, *including electronic cigarettes*, eating, or drinking
30 in or on a system facility or vehicle in those areas where those
31 activities are prohibited by that system.

32 (5) Expectorating upon a system facility or vehicle.

33 (6) Willfully disturbing others on or in a system facility or
34 vehicle by engaging in boisterous or unruly behavior.

35 (7) Carrying an explosive or acid, flammable liquid, or toxic or
36 hazardous material in a system facility or vehicle.

37 (8) Urinating or defecating in a system facility or vehicle, except
38 in a lavatory. However, this paragraph shall not apply to a person
39 who cannot comply with this paragraph as a result of a disability,
40 age, or a medical condition.

1 (9) (A) Willfully blocking the free movement of another person
2 in a system facility or vehicle.

3 (B) This paragraph shall not be interpreted to affect any lawful
4 activities permitted or first amendment rights protected under the
5 laws of this state or applicable federal law, including, but not
6 limited to, laws related to collective bargaining, labor relations,
7 or labor disputes.

8 (10) Skateboarding, roller skating, bicycle riding, or roller
9 blading in a system facility, including a parking structure, or in a
10 system vehicle. This paragraph does not apply to an activity that
11 is necessary for utilization of a system facility by a bicyclist,
12 including, but not limited to, an activity that is necessary for
13 parking a bicycle or transporting a bicycle aboard a system vehicle,
14 if that activity is conducted with the permission of the agency of
15 the system in a manner that does not interfere with the safety of
16 the bicyclist or other patrons of the system facility.

17 (11) (A) Unauthorized use of a discount ticket or failure to
18 present, upon request from a system representative, acceptable
19 proof of eligibility to use a discount ticket, in accordance with
20 Section 99155, and posted system identification policies when
21 entering or exiting a system station or vehicle. Acceptable proof
22 of eligibility must be clearly defined in the posting.

23 (B) In the event that an eligible discount ticket user is not in
24 possession of acceptable proof at the time of request, an issued
25 notice of fare evasion or passenger conduct violation shall be held
26 for a period of 72 hours to allow the user to produce acceptable
27 proof. If the proof is provided, that notice shall be voided. If the
28 proof is not produced within that time period, that notice shall be
29 processed.

30 (12) Sale or peddling of any goods, merchandise, property, or
31 services of any kind whatsoever on the facilities, vehicles, or
32 property of the public transportation system without the express
33 written consent of the public transportation system or its duly
34 authorized representatives.

35 (c) (1) The public transportation agency may contract with a
36 private vendor or governmental agency for the processing of notices
37 of fare evasion or passenger conduct violation, and notices of
38 delinquent fare evasion or passenger conduct violation pursuant
39 to Section 99581.

1 (2) For the purpose of this chapter, “processing agency” means
2 either of the following:

3 (A) The agency issuing the notice of fare evasion or passenger
4 conduct violation and the notice of delinquent fare evasion or
5 passenger conduct violation.

6 (B) The party responsible for processing the notice of fare
7 evasion or passenger conduct violation and the notice of delinquent
8 violation, if a contract is entered into pursuant to paragraph (1).

9 (3) For the purpose of this chapter, “fare evasion or passenger
10 conduct violation penalty” includes, but is not limited to, a late
11 payment penalty, administrative fee, fine, assessment, and costs
12 of collection as provided for in the ordinance.

13 (4) For the purpose of this chapter, “public transportation
14 agency” shall mean a public agency that provides public
15 transportation as defined in paragraph (1) of subdivision (f) of
16 Section 1 of Article XIX A of the California Constitution.

17 (5) All fare evasion and passenger conduct violation penalties
18 collected pursuant to this chapter shall be deposited in the general
19 fund of the county in which the citation is administered.

20 (d) (1) If a fare evasion or passenger conduct violation is
21 observed by a person authorized to enforce the ordinance, a notice
22 of fare evasion or passenger conduct violation shall be issued. The
23 notice shall set forth the violation, including reference to the
24 ordinance setting forth the administrative penalty, the date of the
25 violation, the approximate time, and the location where the
26 violation occurred. The notice shall include a printed statement
27 indicating the date payment is required to be made, and the
28 procedure for contesting the notice. The notice shall be served by
29 personal service upon the violator. The notice, or copy of the
30 notice, shall be considered a record kept in the ordinary course of
31 business of the issuing agency and the processing agency, and
32 shall be prima facie evidence of the facts contained in the notice
33 establishing a rebuttable presumption affecting the burden of
34 producing evidence.

35 (2) When a notice of fare evasion or passenger conduct violation
36 has been served, the person issuing the notice shall file the notice
37 with the processing agency.

38 (3) If, after a notice of fare evasion or passenger conduct
39 violation is issued pursuant to this section, the issuing officer
40 determines that there is incorrect data on the notice, including, but

1 not limited to, the date or time, the issuing officer may indicate in
2 writing on a form attached to the original notice the necessary
3 correction to allow for the timely entry of the corrected notice on
4 the processing agency's data system. A copy of the correction shall
5 be mailed to the address provided by the person cited at the time
6 the original notice of fare evasion or passenger conduct violation
7 was served.

8 (4) If a person contests a notice of fare evasion or passenger
9 conduct violation, the issuing agency shall proceed in accordance
10 with Section 99581.

11 (e) In setting the amounts of administrative penalties for the
12 violations listed in subdivision (b), the public transportation agency
13 shall not establish penalty amounts that exceed the maximum fine
14 amount set forth in Section 640 of the Penal Code.

15 (f) A person who receives a notice of fare evasion or passenger
16 conduct violation pursuant to this section shall not be subject to
17 citation for a violation of Section 640 of the Penal Code.

18 (g) If an entity enacts an ordinance pursuant to this section it
19 shall, both two years and five years after enactment of the
20 ordinance, report all of the following information to the Senate
21 Committee on Transportation and Housing and the Assembly
22 Committee on Transportation:

23 (1) A description of the ordinance, including the circumstances
24 under which an alleged violator is afforded the opportunity to
25 complete the administrative process.

26 (2) The amount of the administrative penalties.

27 (3) The number and types of citations administered pursuant to
28 the ordinance.

29 (4) To the extent available, a comparison of the number and
30 types of citations administered pursuant to the ordinance with the
31 number and types of citations issued for similar offenses and
32 administered through the courts both in the two years prior to the
33 ordinance and, if any, since enactment of the ordinance.

34 (5) A discussion of the effect of the ordinance on passenger
35 behavior.

36 (6) A discussion of the effect of the ordinance on revenues to
37 the entity described in subdivision (a) and, in consultation with
38 the superior courts, the cost savings to the county courts. The
39 superior courts are encouraged to collaborate on and provide data
40 for this report.

1 SEC. 18. Section 12523 of the Vehicle Code is amended to
2 read:

3 12523. (a) No person shall operate a youth bus without having
4 in possession a valid driver's license of the appropriate class,
5 endorsed for passenger transportation and a certificate issued by
6 the department to permit the operation of a youth bus.

7 (b) Applicants for a certificate to drive a youth bus shall present
8 evidence that they have successfully completed a driver training
9 course administered by or at the direction of their employer
10 consisting of a minimum of 10 hours of classroom instruction
11 covering applicable laws and regulations and defensive driving
12 practices and a minimum of 10 hours of behind-the-wheel training
13 in a vehicle to be used as a youth bus. Applicants seeking to renew
14 a certificate to drive a youth bus shall present evidence that they
15 have received two hours of refresher training during each 12
16 months of driver certificate validity.

17 (c) The driver certificate shall be issued only to applicants
18 qualified by examinations prescribed by the Department of Motor
19 Vehicles and the Department of the California Highway Patrol,
20 and upon payment of a fee of twenty-five dollars (\$25) for an
21 original certificate and twelve dollars (\$12) for the renewal of that
22 certificate to the Department of the California Highway Patrol.
23 The examinations shall be conducted by the Department of the
24 California Highway Patrol. The Department of Motor Vehicles
25 may deny, suspend, or revoke a certificate valid for driving a youth
26 bus for the causes specified in this code or in regulations adopted
27 pursuant to this code.

28 (d) An operator of a youth bus shall, at all times when operating
29 a youth bus, do all of the following:

- 30 (1) Use seat belts.
- 31 (2) Refrain from smoking, *including electronic cigarettes*.
- 32 (3) Report any accidents reportable under Section 16000 to the
33 Department of the California Highway Patrol.

34 (e) A person holding a valid certificate to permit the operation
35 of a youth bus, issued prior to January 1, 1991, shall not be required
36 to reapply for a certificate to satisfy any additional requirements
37 imposed by the act adding this subdivision until the certificate he
38 or she holds expires or is canceled or revoked.

39 SEC. 19. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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