

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 22, 2013

SENATE BILL

No. 648

Introduced by Senator Corbett

February 22, 2013

An act to amend Section 48901 of the Education Code, to amend Sections 7596, 7597, and 19994.35 of the Government Code, to amend Sections 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 amended, 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, 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 constitutes 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~~ 119405 of the Health and Safety
4 Code, to the same extent and in the same manner as cigarettes and
5 other tobacco products, to the extent not preempted by federal law.

6 SEC. 2. Section 48901 of the Education Code is amended to
7 read:

8 48901. (a) No school shall permit the smoking or use of
9 tobacco, or any product containing tobacco or nicotine products,
10 including electronic cigarettes, by pupils of the school while the
11 pupils are on campus, or while attending school-sponsored
12 activities or while under the supervision and control of school
13 district employees.

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

17 SEC. 3. Section 7596 of the Government Code is amended to
18 read:

19 7596. As used in this chapter, the following terms have the
20 following meanings:

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

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

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

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

18 (B) The application of this subparagraph shall not supersede or
19 render inapplicable permitted smoking of tobacco products,
20 including electronic cigarettes, under this chapter within any other
21 part of a covered parking lot not specifically listed in subparagraph
22 (1).

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

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

29 SEC. 4. Section 7597 of the Government Code is amended to
30 read:

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

37 (b) This section shall not preempt the authority of any county,
38 city, city and county, California Community College campus,
39 campus of the California State University, or campus of the
40 University of California to adopt and enforce additional smoking

1 and tobacco control ordinances, regulations, or policies that are
2 more restrictive than the applicable standards required by this
3 chapter.

4 SEC. 5. Section 19994.35 of the Government Code is amended
5 to read:

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

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

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

21 SEC. 6. Section 1596.795 of the Health and Safety Code is
22 amended to read:

23 1596.795. (a) The smoking of tobacco, including electronic
24 cigarettes, as defined in subdivision (b) of Section 119405, in a
25 private residence that is licensed as a family day care home shall
26 be prohibited during the hours of operation as a family day care
27 home and in those areas of the family day care home where
28 children are present. Nothing in this section shall prohibit a city
29 or county from enacting or enforcing an ordinance relating to
30 smoking in a family day care home if the ordinance is more
31 stringent than this section.

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

35 SEC. 7. Section 104495 of the Health and Safety Code is
36 amended to read:

37 104495. (a) For the purposes of this section, the following
38 definitions shall govern:

39 (1) “Playground” means any park or recreational area
40 specifically designed to be used by children that has play equipment

1 installed, or any similar facility located on public or private school
2 grounds, or on city, county, or state park grounds.

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

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

10 (4) “Smoke or smoking” means the carrying of a lighted pipe,
11 lighted cigar, or lighted cigarette of any kind or the lighting of a
12 pipe, cigar, or cigarette of any kind, including, but not limited to,
13 tobacco, or any other weed or plant.

14 (5) “Cigarette” means the same as defined in Section 104556,
15 and also includes an electronic cigarette, as defined in subdivision
16 (b) of Section 119405.

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

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

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

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

27 (e) Any person who violates this section is guilty of an infraction
28 and shall be punished by a fine of two hundred fifty dollars (\$250)
29 for each violation of this section. Punishment under this section
30 shall not preclude punishment pursuant to Section 13002, Section
31 374.4 of the Penal Code, or any other provision of law proscribing
32 the act of littering.

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

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

38 (h) This section shall not preempt the authority of any county,
39 city, or city and county to regulate smoking around playgrounds
40 or tot lot sandbox areas. Any county, city, or city and county may

1 enforce any ordinance adopted prior to January 1, 2002, or may
2 adopt and enforce new regulations that are more restrictive than
3 this section, on and after January 1, 2002.

4 SEC. 8. Section 110995 of the Health and Safety Code is
5 amended to read:

6 110995. Any person or entity who manufactures, transports,
7 stores, or sells ice shall comply with all of the following:

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

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

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

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

26 (e) Soil, waste, or drain pipes shall not be installed or maintained
27 above any ice platform, loading space, ice container, ice storage
28 room, dip tank or any place where leakage from the pipes may
29 drop into, or upon any ice or upon any area or equipment used in
30 the manufacture of ice, unless a safety device shall be installed
31 under the pipes drained to an open receptacle or drain so as to
32 prevent pollution of ice, water, or equipment used in the
33 manufacture of the ice.

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

37 (g) Block ice pullers and block ice storage-room employees
38 shall wear rubber overshoes while on duty. The rubber overshoes
39 shall be removed when the employee leaves the storage or tank
40 room, except that if the rubber overshoes are not removed, they

1 shall be cleaned and disinfected before reentering the storage or
2 tank room. The use of street shoes without rubber overshoes in
3 these areas is prohibited.

4 (h) All frozen unpackaged ice blocks intended for sale for human
5 consumption or for the refrigeration of food products shall be
6 washed thoroughly with potable water. Ice manufactured for
7 industrial purposes need not be washed prior to shipping but shall
8 be handled and stored separately from ice intended for human
9 consumption.

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

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

15 (k) Persons not directly involved in the manufacture, processing,
16 packaging, or storing of ice, in the maintenance of facilities and
17 equipment used therefore, or in the management, supervision, or
18 inspection thereof, shall not be permitted in any area where ice is
19 manufactured, processed, packaged, or stored, unless personal
20 cleanliness and hygienic practices are taken to prevent
21 contamination of the product. These areas shall have signs posted
22 to this effect.

23 (l) Bacteriological tests of the finished ice shall be conducted
24 not less than biannually, chemical and physical tests annually, and
25 radiological tests every four years, to ensure that ice manufactured
26 for human consumption or for the refrigeration of food products
27 complies with the primary drinking water standards adopted by
28 the department pursuant to Section 116365.

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

31 SEC. 9. Section 113978 of the Health and Safety Code is
32 amended to read:

33 113978. Food facilities shall have a “no smoking” sign posted
34 in the food preparation, food storage, and warewashing areas. For
35 purposes of this section, “smoking” also includes use of electronic
36 cigarettes, as defined in subdivision (b) of Section 119405.

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

39 114332.3. (a) No potentially hazardous food or beverage stored
40 or prepared in a private home may be offered for sale, sold, or

1 given away from a nonprofit charitable temporary food facility.
2 Potentially hazardous food shall be prepared in a food
3 establishment or on the premises of a nonprofit charitable
4 temporary food facility.

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

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

11 (d) Ice used in beverages shall be protected from contamination
12 and shall be maintained separate from ice used for refrigeration
13 purposes.

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

16 (f) Smoking, including electronic cigarettes, as defined in
17 subdivision (b) of Section 119405, is prohibited in nonprofit
18 charitable temporary food facilities.

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

22 (2) Paragraph (1) does not prohibit the presence, in any room
23 where food is served to the public, guests, or patrons, of a guide
24 dog, signal dog, or service dog, as defined by Section 54.1 of the
25 Civil Code, accompanied by a totally or partially blind person,
26 deaf person, person whose hearing is impaired, or handicapped
27 person, or dogs accompanied by persons licensed to train guide
28 dogs for the blind pursuant to Chapter 9.5 (commencing with
29 Section 7200) of Division 3 of the Business and Professions Code.

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

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

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

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

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

8 SEC. 11. Section 118882 is added to the Health and Safety
9 Code, to read:

10 118882. The Legislature finds and declares that the use of
11 electronic cigarettes, as defined in subdivision (b) of Section
12 119405, may be a hazard to the health of the general public. Any
13 reference in this chapter to, or any prohibition of, the smoking of
14 tobacco shall also be construed to refer to the use of electronic
15 cigarettes.

16 SEC. 12. Section 6404.5 of the Labor Code is amended to read:

17 6404.5. (a) The Legislature finds and declares that regulation
18 of smoking in the workplace is a matter of statewide interest and
19 concern. It is the intent of the Legislature in enacting this section
20 to prohibit the smoking of tobacco products, including electronic
21 cigarettes, as defined in subdivision (b) of Section 119405 of the
22 Health and Safety Code, in all enclosed places of employment in
23 this state, as covered by this section, thereby eliminating the need
24 of local governments to enact workplace smoking restrictions
25 within their respective jurisdictions. It is further the intent of the
26 Legislature to create a uniform statewide standard to restrict and
27 prohibit the smoking of tobacco products, including electronic
28 cigarettes, in enclosed places of employment, as specified in this
29 section, in order to reduce employee exposure to environmental
30 tobacco smoke to a level that will prevent anything other than
31 insignificantly harmful effects to exposed employees, and also to
32 eliminate the confusion and hardship that can result from enactment
33 or enforcement of disparate local workplace smoking restrictions.
34 Notwithstanding any other provision of this section, it is the intent
35 of the Legislature that any area not defined as a “place of
36 employment” pursuant to subdivision (d) or in which the smoking
37 of tobacco products, including electronic cigarettes, is not regulated
38 pursuant to subdivision (e) shall be subject to local regulation of
39 smoking of tobacco products, including electronic cigarettes.

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

(c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment 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) If 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) If 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.

For purposes of this subdivision, “reasonable steps” does not include (A) the physical ejection of a nonemployee from the place of employment 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.

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

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

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking by the establishment. An establishment may permit smoking in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, “lobby” means the common public

1 area of an establishment in which registration and other similar or
2 related transactions, or both, are conducted and in which the
3 establishment's guests and members of the public typically
4 congregate.

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

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

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

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

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

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

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

39 (8) Bars and taverns, in which smoking is permitted by
40 subdivision (f). For purposes of this paragraph, "bar" or "tavern"

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

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

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

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

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

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

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

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

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

39 (D) There are sufficient nonsmoking breakrooms to
40 accommodate nonsmokers.

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

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

5 (B) All employees who enter the smoking area consent to permit
6 smoking. No one, as part of his or her work responsibilities, shall
7 be required to work in an area where smoking is permitted. An
8 employer who is determined by the division to have used coercion
9 to obtain consent or who has required an employee to work in the
10 smoking area shall be subject to the penalty provisions of Section
11 6427.

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

15 (D) The employer shall comply with any ventilation standard
16 or other standard utilizing appropriate technology, including, but
17 not limited to, mechanical, electronic, and biotechnical systems,
18 adopted by the Occupational Safety and Health Standards Board
19 or the federal Environmental Protection Agency. If both adopt
20 inconsistent standards, the ventilation standards of the Occupational
21 Safety and Health Standards Board shall be no less stringent than
22 the standards adopted by the federal Environmental Protection
23 Agency.

24 This paragraph shall not be construed to (i) supersede or render
25 inapplicable any condition or limitation on smoking areas made
26 applicable to specific types of business establishments by any other
27 paragraph of this subdivision or (ii) apply in lieu of any otherwise
28 applicable paragraph of this subdivision that has become
29 inoperative.

30 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
31 construed to require employers to provide reasonable
32 accommodation to smokers, or to provide breakrooms for smokers
33 or nonsmokers.

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

38 (A) January 1, 1998.

39 (B) The date of adoption of a regulation (i) by the Occupational
40 Safety and Health Standards Board reducing the permissible

1 employee exposure level to environmental tobacco smoke to a
2 level that will prevent anything other than insignificantly harmful
3 effects to exposed employees or (ii) by the federal Environmental
4 Protection Agency establishing a standard for reduction of
5 permissible exposure to environmental tobacco smoke to an
6 exposure level that will prevent anything other than insignificantly
7 harmful effects to exposed persons.

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

23 (3) If a regulation specified in subparagraph (B) of paragraph
24 (1) is not adopted on or before January 1, 1998, the exemptions
25 specified in paragraphs (7) and (8) of subdivision (d) shall become
26 inoperative on and after January 1, 1998, until a regulation is
27 adopted. Upon adoption of such a regulation on or after January
28 1, 1998, smoking may thereafter be permitted in gaming clubs and
29 in bars and taverns, subject to full compliance with, or conformity
30 to, the standard in the regulation within two years following the
31 date of adoption of the regulation. An employer failing to achieve
32 compliance with, or conformity to, the regulation within this
33 two-year period shall prohibit smoking in the gaming club, bar,
34 or tavern until compliance or conformity is achieved. If the
35 Occupational Safety and Health Standards Board and the federal
36 Environmental Protection Agency both adopt regulations specified
37 in subparagraph (B) of paragraph (1) that are inconsistent, the
38 regulations of the Occupational Safety and Health Standards Board
39 shall be no less stringent than the regulations of the federal
40 Environmental Protection Agency.

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

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

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

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

22 (h) Nothing in this section shall prohibit an employer from
23 prohibiting smoking in an enclosed place of employment for any
24 reason.

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

(j) Any violation of the prohibition set forth in subdivision (b) 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.

(k) Notwithstanding Section 6309, the division shall not be 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 (j) of a third violation of subdivision (b) within the previous year.

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

SEC. 13. Section 561 of the Public Utilities Code is amended to read:

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

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

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

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

SEC. 14. Section 99580 of the Public Utilities Code, as amended by Section 2.5 of Chapter 750 of the Statutes of 2012, is amended to read:

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

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

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

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

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

(5) Expectorating upon a system facility or vehicle.

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

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

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

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

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

(10) Skateboarding, roller skating, bicycle riding, or roller blading in a system facility, including a parking structure, or in a system vehicle. This paragraph does not apply to an activity that is necessary for utilization of a system facility by a bicyclist, including, but not limited to, an activity that is necessary for parking a bicycle or transporting a bicycle aboard a system vehicle,

1 if that activity is conducted with the permission of the agency of
2 the system in a manner that does not interfere with the safety of
3 the bicyclist or other patrons of the system facility.

4 (11) (A) Unauthorized use of a discount ticket or failure to
5 present, upon request from a system representative, acceptable
6 proof of eligibility to use a discount ticket, in accordance with
7 Section 99155, and posted system identification policies when
8 entering or exiting a system station or vehicle. Acceptable proof
9 of eligibility must be clearly defined in the posting.

10 (B) In the event that an eligible discount ticket user is not in
11 possession of acceptable proof at the time of request, an issued
12 notice of fare evasion or passenger conduct violation shall be held
13 for a period of 72 hours to allow the user to produce acceptable
14 proof. If the proof is provided, that notice shall be voided. If the
15 proof is not produced within that time period, that notice shall be
16 processed.

17 (12) Sale or peddling of any goods, merchandise, property, or
18 services of any kind whatsoever on the facilities, vehicles, or
19 property of the public transportation system without the express
20 written consent of the public transportation system or its duly
21 authorized representatives.

22 (c) (1) The public transportation agency may contract with a
23 private vendor or governmental agency for the processing of notices
24 of fare evasion or passenger conduct violation, and notices of
25 delinquent fare evasion or passenger conduct violation pursuant
26 to Section 99581.

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

29 (A) The agency issuing the notice of fare evasion or passenger
30 conduct violation and the notice of delinquent fare evasion or
31 passenger conduct violation.

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

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

39 (4) For the purpose of this chapter, “public transportation
40 agency” shall mean a public agency that provides public

1 transportation as defined in paragraph (1) of subdivision (f) of
2 Section 1 of Article XIX A of the California Constitution.

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

6 (d) (1) If a fare evasion or passenger conduct violation is
7 observed by a person authorized to enforce the ordinance, a notice
8 of fare evasion or passenger conduct violation shall be issued. The
9 notice shall set forth the violation, including reference to the
10 ordinance setting forth the administrative penalty, the date of the
11 violation, the approximate time, and the location where the
12 violation occurred. The notice shall include a printed statement
13 indicating the date payment is required to be made, and the
14 procedure for contesting the notice. The notice shall be served by
15 personal service upon the violator. The notice, or copy of the
16 notice, shall be considered a record kept in the ordinary course of
17 business of the issuing agency and the processing agency, and
18 shall be prima facie evidence of the facts contained in the notice
19 establishing a rebuttable presumption affecting the burden of
20 producing evidence.

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

24 (3) If, after a notice of fare evasion or passenger conduct
25 violation is issued pursuant to this section, the issuing officer
26 determines that there is incorrect data on the notice, including, but
27 not limited to, the date or time, the issuing officer may indicate in
28 writing on a form attached to the original notice the necessary
29 correction to allow for the timely entry of the corrected notice on
30 the processing agency's data system. A copy of the correction shall
31 be mailed to the address provided by the person cited at the time
32 the original notice of fare evasion or passenger conduct violation
33 was served.

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

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

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

4 (g) If an entity enacts an ordinance pursuant to this section it
5 shall, both two years and five years after enactment of the
6 ordinance, report all of the following information to the Senate
7 Committee on Transportation and Housing and the Assembly
8 Committee on Transportation:

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

12 (2) The amount of the administrative penalties.

13 (3) The number and types of citations administered pursuant to
14 the ordinance.

15 (4) To the extent available, a comparison of the number and
16 types of citations administered pursuant to the ordinance with the
17 number and types of citations issued for similar offenses and
18 administered through the courts both in the two years prior to the
19 ordinance and, if any, since enactment of the ordinance.

20 (5) A discussion of the effect of the ordinance on passenger
21 behavior.

22 (6) A discussion of the effect of the ordinance on revenues to
23 the entity described in subdivision (a) and, in consultation with
24 the superior courts, the cost savings to the county courts. The
25 superior courts are encouraged to collaborate on and provide data
26 for this report.

27 SEC. 15. Section 12523 of the Vehicle Code is amended to
28 read:

29 12523. (a) No person shall operate a youth bus without having
30 in possession a valid driver's license of the appropriate class,
31 endorsed for passenger transportation and a certificate issued by
32 the department to permit the operation of a youth bus.

33 (b) Applicants for a certificate to drive a youth bus shall present
34 evidence that they have successfully completed a driver training
35 course administered by or at the direction of their employer
36 consisting of a minimum of 10 hours of classroom instruction
37 covering applicable laws and regulations and defensive driving
38 practices and a minimum of 10 hours of behind-the-wheel training
39 in a vehicle to be used as a youth bus. Applicants seeking to renew
40 a certificate to drive a youth bus shall present evidence that they

1 have received two hours of refresher training during each 12
2 months of driver certificate validity.

3 (c) The driver certificate shall be issued only to applicants
4 qualified by examinations prescribed by the Department of Motor
5 Vehicles and the Department of the California Highway Patrol,
6 and upon payment of a fee of twenty-five dollars (\$25) for an
7 original certificate and twelve dollars (\$12) for the renewal of that
8 certificate to the Department of the California Highway Patrol.
9 The examinations shall be conducted by the Department of the
10 California Highway Patrol. The Department of Motor Vehicles
11 may deny, suspend, or revoke a certificate valid for driving a youth
12 bus for the causes specified in this code or in regulations adopted
13 pursuant to this code.

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

- 16 (1) Use seat belts.
17 (2) Refrain from smoking, including electronic cigarettes.
18 (3) Report any accidents reportable under Section 16000 to the
19 Department of the California Highway Patrol.

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

25 SEC. 16. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.