



## LABOR CODE - LAB

**DIVISION 5. SAFETY IN EMPLOYMENT [6300 - 9104]** ( *Division 5 enacted by Stats. 1937, Ch. 90.* )

**PART 1. OCCUPATIONAL SAFETY AND HEALTH [6300 - 6720]** ( *Heading of Part 1 amended by Stats. 1973, Ch. 993.* )

**CHAPTER 3. Responsibilities and Duties of Employers and Employees [6400 - 6413.5]** ( *Chapter 3 repealed and added by Stats. 1973, Ch. 993.* )

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(Amended by Stats. 2016, 2nd Ex. Sess., Ch. 7, Sec. 23.5. (SB 5 2x) Effective June 9, 2016.)*