



CITY OF SACRAMENTO

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APR 25 1980

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April 24, 1980

Honorable City Council
City Hall
Sacramento, California 95814

RE: SB 2026 (Greene) Smoking in Public Places

SUMMARY:

At the Council meeting of April 15, 1980, a report was requested by the Council as to the status of SB 2026.

On Wednesday, April 16, 1980, a hearing was held on this bill before the Senate Industrial Relations Committee, at which Councilwoman Rudin and others testified. The bill was not voted upon, but is to be redrafted and returned to the Committee for further hearing and vote at an undetermined date.

BACKGROUND INFORMATION:

A copy of SB 2026 in its original form is attached. This bill would preempt local ordinances as to smoking in public places, including Sacramento's Ordinance, Chapter 37 of the City Code.

At the hearing, numerous valid points were raised by Councilwoman Rudin, the League of California Cities and others. The result was that a multitude of amendments were proposed, and a complete rewrite of this bill is necessary. Hopefully the revised bill will focus on employee safety instead of usurping local regulation of smoking in general.

FINANCIAL DATA:

The bill contains a reimbursement clause. Since financial impact may be minimal, the Finance Committee could procedurally move the bill without hearing, if it passes out of Industrial Relations.

APPROVED
BY THE CITY COUNCIL

APR 29 1980

OFFICE OF THE
CITY CLERK

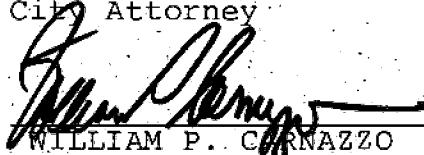
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RECOMMENDATION:


It is recommended that the progress of this bill be followed closely, and that lobbying continue in conjunction with the League of California Cities.

Respectfully Submitted,

JAMES P. JACKSON
City Attorney


WILLIAM P. CARNAZZO
Deputy City Attorney

RECOMMENDATION APPROVED:


WALTER J. SLOPE
City Manager

WPC:KMF

ATTACHMENT

Introduced by Senator Greene

March 19, 1980

An act to add Article 3 (commencing with Section 1401) to Part 4 of Division 2 of the Labor Code, relating to smoking, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2026, as introduced, Greene. Smoking.

(1) Existing law prohibits smoking in specified indoor places of public assembly in public buildings, in specified locations in health facilities and clinics, and other public buildings, and in food preparation portions of restaurants and in retail food marketing establishments.

This bill would require the establishment of smoking and no smoking sections or areas in enclosed public places, enclosed places of employment, enclosed health facilities, and enclosed clinics and would prohibit tobacco smoking in no smoking sections or areas, as specified.

The bill would require posting with signs in no smoking sections and areas, to be enforced by the Department of Industrial Relations. The department would be required to adopt standards to implement the bill, as specified. The bill would expressly preempt the field of smoking legislation, excepting other state law existing on the effective date of this bill which specifically affects tobacco smoking.

Knowing violations of the provisions of the bill would be an infraction with specified penalties.

(2) The bill would require the Department of Industrial Relations to carry out the administration of the provisions of the bill with existing funds and, thereby, would make an appropriation of such existing funds.

(3) Section 2231 of the Revenue and Taxation Code

requires the state to reimburse local agencies and school districts for costs mandated by the state. The section also specifies the manner for paying the reimbursement and requires any statute mandating the costs to contain an appropriation to pay for the costs in the initial fiscal year. This statutory provision will be supplemented by a constitutional requirement of reimbursement effective for statutes enacted on or after July 1, 1980.

This bill appropriates an unspecified sum to the Controller for allocation and disbursement to local agencies and school districts for costs mandated by the state and incurred by them pursuant to this act.

(4) The bill would take effect immediately.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that
 2 smoking in certain enclosed areas may annoy or irritate
 3 nonsmokers, that regulation of smoking in certain areas
 4 is desirable to protect the comfort and environment of
 5 nonsmokers, and that it is not the intent of the
 6 Legislature to deny persons the right to smoke, but rather
 7 to recognize the rights of all individuals regardless of
 8 their use of tobacco products.

9 SEC. 2. The Legislature further declares that:

10 (a) The purpose of this act is to protect the health,
 11 comfort, and environment of nonsmokers in certain
 12 enclosed places.

13 (b) The intent of this act is to strike a reasonable
 14 balance between the needs of persons who smoke
 15 tobacco and the needs of nonsmokers.

16 SEC. 3. Article 3 (commencing with Section 1401) is
 17 added to Part 4 of Division 2 of the Labor Code, to read:

18
 19 Article 3. Smoking and No Smoking Sections

20
 21 1401. This article shall be known and may be cited as
 22 the "Smoking and No Smoking Sections Act of 1980."

1 1402. (a) Subject to the criteria set forth in Section
2 1403, smoking and no smoking sections or areas shall be
3 established and designated in every enclosed public
4 place, enclosed place of employment, enclosed health
5 facility, and enclosed clinic. No person shall smoke
6 tobacco in a no smoking section or area.

7 (b) The provisions of this article shall not limit
8 smoking in outdoor areas, in private residences, or in any
9 place not established pursuant to the provisions of this
10 article as a no smoking section or area, nor prohibit the
11 sale of tobacco products.

12 1403. Smoking and no smoking sections or areas
13 established and designated pursuant to this article shall
14 be consistent with the purpose and intent of this article
15 and shall conform with the following criteria:

16 (a) Smoking and no smoking sections need not be
17 separated by walls, partitions, or other barriers. No
18 construction or erection of ventilation devices, walls,
19 partitions, or other barriers shall be required to comply
20 with this article.

21 (b) Facilities and areas in which it would be
22 inappropriate or impractical to limit smoking may be
23 designated in their entirety as smoking areas. Impractical
24 facilities and areas may include, but not be limited to, the
25 following:

26 (1) An enclosed room normally occupied exclusively
27 by persons who smoke tobacco.

28 (2) Hotel or motel rooms designed and used for rental
29 to transient guests.

30 (3) Areas used for private social or business functions.

31 (4) Vehicles and other mobile workplaces.

32 (5) Areas wherein employee workstations are
33 transient or mobile.

34 (6) Any other area in which it is determined it would
35 be inappropriate to restrict smoking of tobacco.

36 However, the listing of impractical facilities and areas
37 of this subdivision shall be deemed to be illustrative only
38 and shall not be considered as restrictive, by analogy or
39 otherwise. The Legislature intends that impracticality be
40 a function of enforcement likelihood, compliance

1 difficulty, economics, cost-benefit, and similar factors.

2 (c) Smoking shall not be permitted in a patient room
3 of a health facility if any person assigned to such room
4 requests that he or she be assigned to a nonsmoking room
5 unless there is no other appropriate patient room
6 available. Smoking shall be prohibited in public patient
7 care areas of a health facility except those areas
8 specifically designated as smoking areas.

9 (d) Notwithstanding any other provision of this
10 article, any facility or area may be designated in its
11 entirety as a no smoking area by the owner or manager
12 thereof.

13 1404. (a) In any facilities subject to this article,
14 clearly legible signs shall be conspicuously posted in
15 every no smoking section or no smoking area established
16 pursuant to this article, which signs shall state that
17 smoking in such section or area is unlawful. The signs
18 shall be sufficiently numerous to give reasonable notice
19 to all persons in a no smoking section or no smoking area
20 that tobacco smoking is unlawful. Such posting shall be
21 the obligation of the lessee of leased premises and the
22 obligation of the owner of premises which are not leased.
23 In order that the lessee of leased premises or the owner
24 of premises which are not leased may adopt signs adapted
25 to their business needs, decor, and the nature of clientele
26 or other members of the public frequenting such
27 premises, the number, quality, type, and size of the signs
28 required pursuant to this article shall not be specified by
29 the Department of Industrial Relations by order or
30 regulation, except when an alleged violation of the
31 provisions of this section has occurred at the facility
32 which is subject to such an order or regulation, any such
33 order or regulation shall be issued after notice and
34 hearing.

35 (b) Notwithstanding any other provision of this
36 section, the standards adopted pursuant to Section 1408
37 shall designate areas and facilities where the posting of no
38 smoking signs is unnecessary to fulfill the purpose of this
39 article. No signs shall be required to be posted in such a
40 designated area or facility.

1 (c) Notwithstanding any other provision of this
2 section, in any no smoking section or area in which signs
3 indicating that smoking is not permitted are already
4 conspicuously posted, signs otherwise required by this
5 section are not required to be posted until such
6 preexisting signs are worn out or removed.

7 1405. (a) Knowing violation of any provision of this
8 article is an infraction. Any person who violates any
9 provision of this article shall be subject to a fine of not
10 more than fifteen dollars (\$15) for each violation.

11 (b) Enforcement of this article shall be by citation. No
12 person may be taken into custody or be subject to search
13 by peace officers solely because of the violation or
14 suspected violation of a provision of this article.

15 (c) Each day on which a knowing violation of the
16 sign-posting requirements provided in this article occurs
17 shall be a distinct and separate violation.

18 (d) The Department of Industrial Relations and local
19 law enforcement departments shall enforce the
20 sign-posting requirements provided in this article. Local
21 law enforcement departments shall enforce the other
22 provisions of this article.

23 1406. No person shall discharge or refuse to hire any
24 employee or applicant for employment because such
25 employee or applicant exercises any rights afforded in
26 this article.

27 1407. (a) Except as provided in subdivision (b), and
28 notwithstanding the provisions of Section 1408, it is
29 intended that this article shall preempt and wholly
30 occupy the field of legislation, or other regulation, of
31 smoking.

32 (b) The provisions of this section shall not invalidate
33 any other state law specifically affecting tobacco smoking
34 in effect on the effective date of this section.

35 1408. (a) On or before July 1, 1981, the Department
36 of Industrial Relations shall adopt, and may thereafter
37 amend, revise, or repeal standards in accordance with
38 Chapter 3.5 (commencing with Section 11340) of Part 1
39 of Division 3 of Title 2 of the Government Code to
40 implement the provisions of this article. The standards

1 shall, among other things, specify those facilities and
2 areas which may be designated in their entirety as
3 smoking areas pursuant to subdivision (b) of Section
4 1403, provided no such standard shall be founded upon
5 workplace safety.

6 (b) The Department of Industrial Relations shall have
7 exclusive administrative jurisdiction under the provisions
8 of this article with respect to the issuance of standards for
9 the establishment and designation of smoking and no
10 smoking sections and areas.

11 (c) The Department of Industrial Relations shall use
12 existing resources and shall not request or obtain
13 increased budgetary allocations to carry out its duties
14 imposed pursuant to the provisions of this article. No
15 special bureaucracy shall be created within the
16 Department of Industrial Relations or within any other
17 governmental agency for the administration of the
18 provisions of this article or the standards adopted
19 pursuant thereto.

20 1409. Unless the context otherwise requires, the
21 following definitions shall govern the provisions of this
22 article:

23 (a) "Place of employment" means any fully enclosed
24 area under the control of a public or private employer
25 which employees normally frequent during the course of
26 employment, including, but not limited to, work areas,
27 employee lounges, meeting rooms, and employee
28 cafeterias. A private residence is not a "place of
29 employment."

30 (b) "Public place" means any area to which the public
31 is invited or in which the public is permitted, including,
32 but not limited to, restaurants, theaters, waiting rooms,
33 reception areas, and instrumentalities of public
34 transportation. A private residence is not a "public
35 place."

36 (c) "Second-hand smoke" means both tobacco smoke
37 from the burning ends of cigarettes, cigars, and pipes and
38 tobacco smoke exhaled by persons who smoke.

39 (d) "Smoking" or to "smoke" means and includes the
40 carrying or holding of a lighted cigarette, cigar, pipe or

1 any other lighted smoking equipment used for the
2 practice commonly known as smoking, or the intentional
3 inhalation or exhalation of tobacco smoke from any such
4 lighted smoking equipment.

5 (e) "The Department of Industrial Relations" means
6 the Department of Industrial Relations or any successor
7 thereof.

8 (f) The standards adopted pursuant to Section 1407
9 shall contain such other definitions as the Department of
10 Industrial Relations shall deem appropriate to carry out
11 the purposes of this article.

12 1409.5. If any provision of this article or the
13 application thereof to any person or circumstance is held
14 invalid, any such invalidity shall not affect other
15 provisions or applications of this article which can be
16 given effect without the invalid provision or application,
17 and to this end, the provisions of this article are severable.

18 SEC. 4. The Department of Industrial Relations shall
19 adopt regulations required by the provisions of Article 3
20 (commencing with Section 1401) of Part 4 of Division 2
21 of the Labor Code on or before July 1, 1981.

22 SEC. 5. The sum of _____ dollars (\$_____) is
23 hereby appropriated from the General Fund to the
24 Controller for allocation and disbursement to local
25 agencies and school districts to reimburse them for costs
26 mandated by the state and incurred by them pursuant to
27 this act.

28 SEC. 6. This act is an urgency statute necessary for
29 the immediate preservation of the public peace, health,
30 or safety within the meaning of Article IV of the
31 Constitution and shall go into immediate effect. The facts
32 constituting such necessity are:

33 Breathing of second-hand tobacco smoke for extended
34 periods may cause disease in healthy nonsmokers or
35 aggravate the condition of the millions of Californians
36 with heart or lung disease. Second-hand tobacco smoke
37 can cause irritation of eyes, nasal passages, lungs, and skin
38 of allergic persons and causes unnecessary discomfort to
39 nonsmokers. In order to protect the public health and
40 safety and in order to reduce the disease of healthy

- 1 persons and eliminate aggravation of the condition of sick
- 2 persons at the earliest possible time, it is necessary that
- 3 this act take immediate effect.



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