

Date of Hearing: April 17, 2013

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT  
Norma Torres, Chair  
AB 746 (Levine) – As Amended: April 2, 2013

SUBJECT: Smoking: prohibition in multifamily dwellings

SUMMARY: Prohibits smoking cigarettes or other tobacco products in all new or existing multifamily dwellings except in designated areas. Specifically, this bill:

- 1) Defines "multifamily dwelling" as residential property containing two or more units with one or more shared walls, floors, ceilings, or ventilation systems.
- 2) Allows a landlord, property manager, building owner, homeowners association, or other equivalent authority to designate an outdoor smoking area if the following conditions are met:
  - a) It is 20 feet from any unit or enclosed area where smoking is prohibited;
  - b) It does not include, and is at least 100 feet, from unenclosed areas primarily used by children and unenclosed areas where physical activity occurs, including playgrounds, pools, and school campuses;
  - c) It includes no more than 10% of the total enclosed area of the multifamily dwelling for which it is designated;
  - d) It has a clearly marked perimeter and is identified by conspicuous signs;
  - e) It is a completely confined area; and
  - f) It does not overlap with any enclosed or unenclosed area in which smoking is otherwise prohibited.
- 3) Makes smoking an infraction, beginning January 1, 2015, and creates the following enforcement provisions:
  - a) For a first offense, a tenant will receive a notice in writing that smoking in the unit or enclosed area is prohibited;
  - b) For a second offense, a tenant will be fined \$100, or may enroll in a smoking cessation program offered through the state Department of Public Health (DPH); and
  - c) For a third offense, a tenant will be fined up to \$200.
- 4) Allows a local city or county to enact or enforce an ordinance relating to smoking in multifamily dwellings if the ordinance is more stringent than this law.

- 5) Requires DPH to develop, implement, and publicize a smoking cessation awareness and educational program that includes a description of the penalties that will be imposed for a violation.

#### EXISTING LAW

- 1) Allows a landlord of a residential dwelling unit to prohibit smoking of a cigarette or other tobacco products on the property or in any building, including any dwelling unit, interior, or exterior area (Civil Code Section 1947.5).
- 2) Requires every lease or rental agreement entered into on or after January 1, 2012, for a residential unit on a property, for which the landlord has prohibited smoking in any portion of the building or property, to specify where smoking is prohibited if the tenant had not previously occupied the building (Civil Code Section 1947.5).
- 3) Requires that for a lease or rental agreement entered into prior to January 1, 2012, a prohibition on smoking of cigarettes or other tobacco products in any portion of a property where it was previously permitted constitutes a change in tenancy and requires notice as prescribed in Civil Code Section 827 (Civil Code Section 1947.5).
- 4) Provides that a landlord who restricts smoking in a residential dwelling unit is subject to any existing federal, state, or local requirements governing smoking cigarettes and tobacco products at the time the policy limiting or prohibiting smoking is adopted (Civil Code Section 1947.5).
- 5) Makes it an infraction punishable by a fine not exceeding \$100 for a person to smoke a pipe, cigar, or cigarette in a motor vehicle in which there is a minor, whether in motion or at rest (Vehicle Code Section 12814.6).

FISCAL EFFECT: Unknown.

#### COMMENTS:

Purpose of this bill: According to the author, "the Surgeon General has found that there is no risk free level of contact with secondhand smoke. The California Air Resources Board has classified secondhand smoke as a toxic air contaminant. The Centers for Disease Control and Prevention (CDC) estimates that secondhand smoke causes 50,000 premature deaths annually. In infants and children, secondhand smoke exposure can cause severe asthma attacks, respiratory infections, ear infections, and sudden infant death syndrome. In December of 2012, the CDC published a study in Nicotine and Tobacco that estimated that 4.6-4.9 million Californians are exposed to secondhand smoke in multi-unit housing against their wishes. According to a 2004 survey by the Center for Tobacco Policy, 82% of California renters would prefer to live in an apartment complex where smoking is not allowed anywhere or only in a separate smoking section. Additionally, a 2008 survey by the California Department of Public Health found that 77% of Californians feel that apartment complexes should require half their rental units to be smoke-free. Lighted tobacco is the leading cause of residential fire deaths. Of residential fire deaths from tobacco, one in four fatalities was not the smoker. AB 746 would ensure that the 4.6-4.9 million men, women and

children that are currently subjected to secondhand smoke exposure against their will are able to breathe clean air in the place they should feel safest being able to do so, their homes."

Previous legislation: In 2011, SB 332 (Padilla), Chapter 264, clarified that landlords have the authority to restrict smoking in dwellings. Although landlords already had authority to prohibit smoking, the lack of a statewide law created confusion for landlords seeking to ban smoking on their properties. SB 332 required all notices to be in writing and delivered to the tenant or posted on the apartment door. Beyond that, the bill treated smoking bans like all other lease modifications and simply permitted the already applicable requirements to apply.

Federal efforts to restrict smoking in public housing: The Department of Housing and Urban Development has taken steps over the last few years to restrict smoking in multifamily dwellings that received federal subsidy. The Journal of Nicotine and Tobacco Research published findings in 2011 that 79 million people live in multifamily housing nationwide. The study did not differentiate between private and public housing. Although 63 million of those individuals reported not smoking in their homes, 28 million people reported exposure to secondhand smoke in their units. Beginning in 2009, HUD began encouraging Public Housing Authorities (PHAs) that received direct assistance from HUD to support affordable housing to adopt smoke free policies. In 2010, HUD extended this recommendation to owners and managers of federally assisted multifamily units.

Local ordinances: Cities and counties throughout the state have adopted smoking ordinances for multifamily dwellings. Ordinances vary from community to community, in some cases banning 100% of smoking in existing multifamily dwelling units or newly constructed multifamily dwelling units, or restricting smoking in common areas but not prohibiting smoking in an individual's unit. This bill would preempt enforcement of those ordinances that are not as stringent as the proposed law. It's unclear what effect this provision would have on an ordinance that prohibits smoking in the common area but not in an individual unit. It seems likely that this bill would supersede all ordinances that do not ban smoking completely in individual units in multifamily developments.

Enforcement: Methods for enforcing local ordinances banning smoking vary across jurisdictions. Some methods include making the landlord liable if a tenant is smoking, a violation is a material breach of the lease and results in eviction, and enforcement by a public health officer. This bill includes an enforcement provision that progresses from a written warning to increasingly more severe fines. Because the bill makes smoking an infraction of the law, it would be enforced by a peace officer. This bill could result in a tenant being evicted, because a tenant who commits a crime on the premises of his/her dwelling can be subject to a good-cause eviction.

Cessation programs: According to the American Lung Association, California received a grade of "A" for restricting smoking to provide a smoke-free environment and a grade of "F" for smoking cessation efforts. California invests \$2.40 per smoker in a state smokers' helpline to direct smokers to local cessation programs. The CDC recommends an investment of \$10.53 per smoker in cessation programs. This bill would direct the Department of Public Health to develop a smoking cessation awareness and educational program that includes a description of the penalties that will be imposed on tenants that violate this bill. It's unclear in the bill if this program would be funded by the fines imposed on smokers or if funding would come from another source.

Disproportionate effect on lower-income tenants: Lower-income and minority tenants smoke at a higher rate than other tenants. Although this bill does not explicitly allow landlords to evict tenants who smoke, it does provide for fines of up to \$200 for each incident in which a tenant is found to be smoking in his unit after two previous incidents. This fine could be significant cost to tenants who are finding it difficult to quit smoking or cannot afford smoking cessation programs.

Arguments in support: According to the sponsor, "although Californians have extensive protections from exposure to secondhand tobacco smoke where they work, eat, and play, many people are still exposed to secondhand smoke where they should feel the most safe – their homes. Nonsmoking residents of multi-unit housing complexes who choose to make their units smoke-free may still be exposed to secondhand smoke that infiltrates their units from other units or common areas, potentially endangering their health. Secondhand smoke can drift from neighboring units, neighboring patios and balconies and from outdoor common areas into nonsmokers' units through open windows, open doors, and shared ventilation systems.

Smoke-free housing policies do not prohibit people who smoke from living in a nonsmoking unit. The policies simply require that there be no smoking in that unit. Some believe such policies discriminate against low-income tenants who smoke, but the real discrimination is against low-income families who cannot escape exposure to deadly secondhand smoke and cannot find another place to live because of income, health, or other reasons. Low-income individuals have less access to health care and are more likely to suffer from conditions, such as asthma, that are worsened by secondhand smoke exposure. In fact, housing authorities throughout California are beginning to recognize this reality and have begun prohibiting smoking in low-income and senior housing. As of November 2012, 19 cities and counties have adopted a policy to require nonsmoking units in housing authority properties or affordable housing."

Arguments in opposition: According to the Santa Monicans for Renters' Rights, "AB 746 would jeopardize the tenancies of low-income and minority tenants who smoke in greater percentages than other tenants and don't have access to expensive smoking cessation programs." Several apartment associations are also opposed to the bill. They are concerned that the bill does not identify who is responsible for enforcing the ban on smoking which they believe would mean that enforcement would fall on the property owner. Also, they argue that the bill fails to protect owners and property managers from liability. The California Association of Realtors (CAR) shares this concern and believes landlords could be exposed to liability if they fail to enforce the law against a smoker or do not provide a designated smoking area. CAR believes that it may be impossible for all rental developments to meet all of the requirements for providing a smoking area outlined in the bill due to lack of space.

Double referred: If AB 746 passes this committee, the bill will be referred to the Committee on Governmental Organization.

REGISTERED SUPPORT / OPPOSITION:

Support

American Lung Association (sponsor)  
Alameda County Tobacco Control Coalition  
American Cancer Society Cancer Action Network

American Heart Association  
Breathe California  
California Black Health Network  
California State Firefighters' Association, Inc.  
ChangeLab Solutions  
Community Health Education Institute  
Fresno County Tobacco-Free Coalition  
Health Officers Association of California  
La Clinica de La Raza, Inc.  
LeadingAge California  
March of Dimes, California Chapter  
Rose E. Perez, Vice Mayor, City of Huntington Park  
San Luis Obispo County Tobacco Control Coalition  
Santa Clara County Board of Supervisors  
Smoke-Free Marin Coalition  
Tobacco Education and Research Oversight Committee  
Tobacco Free Glenn County Coalition  
Six individual letters

Opposition

Apartment Association, California Southern Cities  
Apartment Association of Greater Los Angeles  
California Apartment Association  
California Association of Realtors  
East Bay Rental Housing Association  
Nor Cal Rental Property Association  
San Diego County Apartment Association  
Santa Barbara Rental Property Association  
Santa Monica's for Renters' Rights  
Two individual letters

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085