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BILL TEXT

CHAPTER 264
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INTRODUCED BY Senator Padilla
(Coauthors: Assembly Members Gordon and Williams)

FEBRUARY 15, 2011

An act to add Section 1947.5 to the Civil Code, relating to tenancies.

LEGISLATIVE COUNSEL'S DIGEST

SB 332, Padilla. Rental dwellings: smoking.

Existing law regulates the terms and conditions of residential tenancies. Existing law authorizes the creation of antitobacco use programs for school-age populations and prohibits any person from smoking a cigarette, cigar, or other tobacco-related product, or from disposing of cigarette butts, cigar butts, or any other tobacco-related waste, within a playground.

This bill would authorize a landlord of a residential dwelling unit to prohibit the smoking of tobacco products on the property, in a dwelling unit, in another interior or exterior area, or on the premises on which the dwelling unit is located. The bill would make certain requirements on notices and leases executed on and after, and on and before, January 1, 2012, in this regard. The bill would require that a landlord who prohibits smoking pursuant to this authority be subject to federal, state, and local requirements governing changes to the terms of a lease or rental agreement for tenants, as specified. The bill would provide that its provisions do not preempt local ordinances in effect on or before January 1, 2012, or a provision of a local ordinance on or after January 1, 2012, that prohibits the smoking of cigarettes or other tobacco products.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) More than 443,000 people die in the United States from tobacco-related diseases every year, making tobacco-related diseases the nation's leading cause of preventable death.

(b) The State Department of Public Health has estimated that 86 percent of adult Californians are nonsmokers. Secondhand smoke is responsible for an estimated 49,400 deaths among nonsmokers each year

in the United States, which includes 3,400 lung cancer deaths and 46,000 deaths due to heart disease. Secondhand smoke also has been proven to cause cancer in humans.

(c) Secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of sudden infant death syndrome (SIDS) in infants of mothers who smoke.

(d) Secondhand smoke exposure causes as many as 300,000 children in the United States under 18 months of age to suffer lower respiratory tract infections, such as pneumonia and bronchitis; exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children.

(e) The United States Environmental Protection Agency has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen.

(f) The United States Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke.

(g) The State Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure.

(h) The California Environmental Protection Agency has included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm.

(i) Thirty-one percent of California's housing is multiunit residences, such as apartments and condominiums.

SEC. 2. Section 1947.5 is added to the Civil Code, to read:

1947.5. (a) A landlord of a residential dwelling unit, as defined in Section 1940, or his or her agent, may prohibit the smoking of a cigarette, as defined in Section 104556 of the Health and Safety Code, or other tobacco product on the property or in any building or portion of the building, including any dwelling unit, other interior or exterior area, or the premises on which it is located, in accordance with this article.

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

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

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

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

(e) A limitation or prohibition of the use of any tobacco product shall not affect any other term or condition of the tenancy, nor shall this section be construed to require statutory authority to establish or enforce any other lawful term or condition of the

tenancy.