

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 1326 (Ahrens)
Version: April 3, 2025
Hearing Date: July 15, 2025
Fiscal: No
Urgency: No
AWM

SUBJECT

Masks: individual or public health

DIGEST

This bill provides that a person has the right to wear a mask, as defined, that covers the nose and mouth, for the protection of their health or the public health, subject to certain exceptions.

EXECUTIVE SUMMARY

Numerous studies have affirmed that wearing a health mask prevents COVID-19 transmission and deaths. Health masks are also useful for persons with respiratory conditions, persons wishing to decrease their inhalation of wildfire smoke and pollution, and persons with allergies. While certain state and federal laws already provide protections for persons who need to wear a health mask due to a disability, there is no state law that clearly sets forth a person's right to wear a health mask without an established disability.

This bill affirms that a person has the right to wear a health mask that covers their mouth and nose—such as an N95 or surgical mask—for health reasons when they are in a public place. A “public place” is defined broadly, and includes a place of business open to the general public; a governmental building open to the public; a street, parks, or outdoor space open to the public; an academic institution or other institutional setting; and an employment setting or other workplace. The bill includes certain exemptions for situations where a person can be required to temporarily remove their mask for identification purposes. The author has agreed to amendments to clarify the bill's scope and the nature of the exemptions.

This bill is sponsored by the author and is supported by the Health Officers Association of California and one individual. The Committee has not received timely opposition to this bill. The Senate Health Committee passed this bill with a vote of 8-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that Congress shall make no law prohibiting the free exercise of religion or abridging the freedom of speech. (U.S. Const., 1st amend. (the First Amendment) & 14th amends.; see *Gitlow v. People of State of New York* (1925) 268 U.S. 652, 666 (First Amendment guarantees apply to the states through the due process clause of the Fourteenth Amendment).)
- 2) Provides that all people are by nature free and independent and have inalienable rights, including pursuing and obtaining safety, happiness, and privacy. (Cal. Const, art. I, § 1 (Section 1).)
- 3) Provides that free exercise and enjoyment of religious liberty without discrimination or preference are guaranteed, except that this liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. (Cal. Const., art. I, § 4 (Section 4).)
- 4) Establishes the Unruh Civil Rights Act, which provides that all persons within the jurisdiction of the state are free and equal, and no matter what their sex, including gender identity and gender expression, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civ. Code, § 51.)
- 5) Defines “personal protective equipment” as protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, including, but not limited to, N95 and other filtering facepiece respirators, elastomeric air-purifying respirators with appropriate particulate filters or cartridges, powered air purifying respirators, disinfecting and sterilizing devices and supplies, medical gowns and apparel, face masks, surgical masks, face shields, gloves, shoe coverings, and other equipment necessary to comply with specified regulations. (Health & Saf. Code, § 131021.)
- 6) Provides that it is unlawful for any person to wear any mask, false whiskers, or any personal disguise (whether complete or partial) for the purpose of evading or escaping discovery, recognition, or identification in the commission of any public offense, or for the purpose of concealment, flight, or escape, when charged with, arrested for, or convicted of, any public offense. A violation of this provision is a misdemeanor. (Pen. Code, § 185.)

This bill:

- 1) Defines the following terms:
 - a) "Mask" means any of the following masks for placement on an individual's face: a filtering facepiece respirator, such as an N95 or KN95 mask; a surgical mask; a cloth mask; or another mask within the scope of "personal protective equipment," as defined.
 - b) "Public place" means any of the following:
 - i. A place of business that is open to the general public for the sale of goods or services.
 - ii. Another place of public accommodation, as defined in federal law or the Unruh Civil Rights Act.
 - iii. A governmental or public building or place open to the public.
 - iv. A street, road, plaza, park, or other outdoor space open to the general public.
 - v. A mode of public transportation.
 - vi. A clinic, a hospital or other health facility, a care facility, or other health care setting.
 - vii. An academic institution or other educational setting.
 - viii. An employment setting or other workplace.
- 2) Provides that an individual has the right to wear a mask on their face in public for the purpose of protecting their individual health or public health, with regard to communicable disease, air quality, or other health factors, subject to the limitations in 3).
- 3) Provides that 2) shall not be construed as limiting or otherwise modifying the application or implementation of any of the following:
 - a) Any requirement to temporarily remove a mask for identification purposes through facial recognition, as part of security regulations, procedures, or protocols under federal or state law, or as part of the policy of a public place if identification is required for entry into the public place and removal of the mask is necessary for that identification.
 - b) Any requirement to avoid obstruction of vision while operating a vehicle. It is the intent of the Legislature that a mask worn as described in 2) is in the form of covering an individual's mouth and nose and not an individual's eyes.
 - c) Any requirement to remove a mask for purposes of a bona fide occupational qualification.
 - d) Any health care protocols to remove a mask as necessary to access an individual's face in order to perform a health care treatment procedure on an emergency basis.
 - e) Section 185 of the Penal Code.

COMMENTS

1. Author's comment

According to the author:

This bill aims to establish a clear legal right for individuals to wear masks to protect their health and the health of others. Individuals may face discrimination when making personal health choices without this legal safeguard. This issue relates to bodily autonomy. If statutory protection is not provided, policies or ordinances restricting or banning the use of masks could be implemented.

2. Health masks save lives

Wearing face masks for health reasons was not a major part of American life until the COVID-19 pandemic. As explained by the Senate Health Committee's analysis of this bill:

In April 2020, CDPH issued guidance stating that people may choose to wear a cloth face covering when in public for essential activities, such as shopping at the grocery store, but that wearing a cloth face covering did not eliminate the need to physically distance. In June 2020, CDPH guidance was that people must wear face coverings when they are in the "high-risk situations," including indoor public spaces, health care settings, public transportation, workplaces, and outdoors when physical distance was not possible. On December 15, 2021, CDPH issued a statewide mandate to wear masks in all indoor public settings irrespective of vaccine status

In May 2023, the California Department of Public Health (CDPH) recommended that people wear masks if they have respiratory symptoms or if they have had a significant exposure to someone who has tested positive for COVID-19. The Senate Health Committee's analysis also sets forth a more detailed timeline of California's mask mandates; it is incorporated herein by reference.

Numerous studies have affirmed that wearing a face mask prevents COVID-19 transmission and deaths.¹ Granted, not all masks are created equal—in one study, N95

¹ E.g., Hasen & Mano, *Mask mandates save lives* (Mar. 2023) *Journal of Health Economics*, Vol. 88, 102721 ("statewide mandates saved 87,000 lives through December 19, 2022, while a nationwide mask mandate could have saved 57,000 additional lives"); Nagata, Okada, & Nishiura, *Epidemiological impact of revoking mask-wearing recommendation on COVID-19 transmission in Tokyo, Japan* (Dec. 2024) *Infectious Disease Modelling* Vol. 9, Iss. 4, 1289-1300 (the decrease in mask-wearing coverage in Japan in 2023, from 97 percent to 69 percent, led to approximately 427 additional deaths in Tokyo, corresponding to approximately 3,700 additional deaths across Japan); Leech, et al., *Mask wearing in community settings reduces SARS-CoV-2 transmission* (May 31, 2022) *Applied Biological Sciences*, 119 (23); Damette & Huynh, *Face mask is an efficient tool to fight the Covid-19 pandemic and some factors increase the probability of its adoption*

respirators were significantly more efficacious than other mask types at controlling COVID-19 particles---but even the least-effective masks will stop more infections than no mask at all.²

Beyond COVID-19, there are a number of health concerns for which a person may choose to wear a mask, including:

- Preventing the inhalation of wildfire smoke.
- Preventing the inhalation of poor-quality air, whether due to pollution from vehicles, industrial facilities, or agriculture.
- Protecting a wearer with chronic respiratory diseases.
- Reducing the wearer's risk of infection from others, particularly when the wearer is immunocompromised or cares for a person who is immunocompromised.
- Reducing the wearer's risk of transmitting diseases to others, such as the flu.

There are also a number of health conditions that require a person to wear a mask; many of these conditions, and the right to wear a mask for health reasons as a result of these conditions, are already protected by existing disability antidiscrimination statutes, including the Americans with Disabilities Act (ADA)³ and the Unruh Civil Rights Act.⁴

3. This bill confirms a person's right to wear a mask that covers their mouth and nose for health reasons, subject to limited exceptions

This bill affirms that a person has the right to wear a mask that covers their mouth and nose — such as an N95 or surgical mask — for health reasons when they are in a public place. A “public place” is defined broadly, and includes a place of business open to the general public; a governmental building open to the public; a street, park, or outdoor space open to the public; an academic institution or other institutional setting; and an employment setting or other workplace.

The bill also provides that there are exceptions to the right to wear a mask; these are narrowly tailored to circumstances in which a mask would interfere with state or federal law or the safety of the wearer or the public. Specifically, the exceptions include:

(Jun. 6, 2023) Scientific Reports, Vol. 13:9218; Ford, et al., *Mask use in community settings in the context of COVID-19: a systematic review of ecological data* (Jul. 19, 2021) eClinical Medicine, 38:101024; Greenhalgh, et al., *Masks and respirators for prevention of respiratory infections: a state of the science review* (May 22, 2024) Clinical Microbiology Reviews, Vol. 37, No. 2; Boulos, et al., *Effectiveness of face masks for reducing transmission of SARS-CoV-2: a rapid systematic review* (Aug. 24, 2023) Philosophical Transactions of the Royal Society A, Vol. 381, Iss. 2257.

² Lai, et al., *Relative efficacy of masks and respirators as source control for viral aerosol shedding from people infected with SARS-CoV-2: a controlled human exhaled breath aerosol experimental study* (Jun. 2024) eBioMedicine, Vol. 104, 105157.

³ 42 U.S.C. ch. 126, §§ 12101 et seq.

⁴ Civ. Code, § 51.

- A requirement to temporarily remove a mask for identification purposes when required by federal or state law, such as at the airport when presenting one's driver's license or ID card to the Transportation Security Administration, when getting one's driver's license or ID photo taken, or when law enforcement is checking one's driver's license for identification purposes at a traffic stop.⁵ The removal requirement is required to be momentary, i.e., only as long as the agent or officer performing the identification needs to confirm that the person's face matches their other documentation.
- A requirement to temporarily remove a mask for identification purposes if identification is necessary for entry into the public place and the removal of the mask is necessary for the identification. This is also a narrow exception that permits only a momentary removal of the mask to confirm the wearer's identity, and should be confined to situations where there is a real need to check a person's identification before entering a public place, such as to confirm a person's age before allowing them into a bar.⁶
- A requirement to avoid obstruction while operating a vehicle.
- A requirement to remove a mask for purposes of a bona fide occupational qualification, as the term is used in California's Fair Housing and Employment Act.⁷
- Any health care protocols to remove a mask as necessary to access an individual's face in order to perform a health care treatment or procedure on an emergency basis.
- Wearing a mask or other disguise to evade detection during, or after, the commission of a crime.⁸

The author has agreed to amendments, set forth below in Comment 5, to clarify these provisions.

To be clear, this bill speaks to the right to wear a health mask only to the extent not already covered by the ADA or state laws; the exceptions set forth above do not override existing antidiscrimination laws to prevent a person from wearing a mask if doing so would functionally discriminate against them on the basis of a disability. This bill also does not address, one way or the other, a person's right to wear a mask for other reasons protected by other laws. For example, the First Amendment and Section 2 of the California Constitution protect a person's right to free expression, which may include wearing a mask for expressive purposes; the First Amendment and Section 4 of the California Constitution protect the free exercise of religion, which may include wearing a face covering for religious reasons; and Section 1 of the California

⁵ See Veh. Code, §§ 12500, 12800.5, 13005.5, 23136.

⁶ See, e.g., Bus. & Prof. Code, §§ 25658-25660; Civ. Code, § 1798.99.1.

⁷ AB 596 (McKinnor, 2025), which was passed by the Senate Labor, Public Employment and Retirement Committee with a vote of 5-0 and is pending before the Senate Appropriations Committee, establishes more specific rights for employees who wish to wear a mask at work.

⁸ See Pen. Code, § 185.

Constitution protects the right to privacy, which may include wearing a mask to protect one's privacy from, e.g., corporate surveillance technology. Nevertheless, this bill's affirmation that every person enjoys the right to wear a health mask without undue interference should provide useful guidance to persons and businesses regarding the scope of that right.

4. Amendments

As noted above, the author has agreed to amendments to clarify the bill's scope, including its interaction with existing laws and the contemplated exception for temporary identifications. The amendments are set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel may make.

Amendment 1

On page 3, delete lines 8-15 and insert

(a) "Health mask" means medical grade masks that are surgical or N95 or KN95 respirators to prevent the transmission of infections.

Amendment 2

On page 3, after line 30, insert "(9) Any other location that is open to the general public."

Amendment 3

On page 3, in line 31, after "wear a" insert "health"

Amendment 4

On page 4, delete lines 6-11 and insert

(a) (1) Any requirement to temporarily remove a health mask for identification purposes through facial recognition, as part of any of the following:

(A) Security regulations, procedures, or protocols under federal law, such as passenger screening at airports.

(B) Security regulations, procedures, or protocols under state law, such as photograph processing for a driver's license or identification card.

(C) The policy of a public place if identification of an individual is required for entry into the public place and removal of the health mask is necessary for that

identification, such as age verification at certain nightclubs or other establishments serving alcohol.

(2) To the extent not in conflict with federal law, paragraph (1) shall be construed in the narrowest and most restrictive manner possible, with the removal of the health mask being limited to a temporary and momentary basis for identification purposes only upon entry and not as a justification for requiring prolonged removal of the health mask within the public place if no longer necessary for the identification described in paragraph (1).

Amendment 5

On page 4, in line 13, after “that a” insert “mask”

Amendment 6

On page 4, after “(c)”, insert “(1)” and after “remove a” insert “health”

Amendment 7

On page 4, in line 17, after “qualification” insert “reasonably necessary to the normal operation of the corresponding employment setting or other workplace. For purposes of this paragraph, “bona fide occupational qualification” shall be interpreted in a manner consistent with the interpretation of that term under Section 12940 of the Government Code.

(2) Section 6403.7 of the Labor Code, if Assembly Bill No. 596 of the 2025–26 Regular Session is chaptered and adds that section

Amendment 8

On page 4, in line 18, after “remove a” insert “health”

Amendment 9

On page 4, after line 21, insert:

28053. Section 28052 shall not be construed as limiting or otherwise modifying the application or implementation of any nondiscrimination protections on the basis of disability or medical condition, including, but not limited to, applicable protections set forth in the following provisions:

(a) The federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(b) Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794).

(c) The Unruh Civil Rights Act (Section 51 of the Civil Code).

(d) Section 11135 of the Government Code.

4. Arguments in support

According to the Health Officers Association of California:

The COVID-19 pandemic, severe wildfire seasons, and recurring outbreaks of communicable diseases have underscored the critical role that face masks play in protecting community health. Beyond pandemic response, masks remain a vital tool for safeguarding immunocompromised individuals, reducing respiratory illness transmission, and mitigating exposure to poor air quality. Ensuring that individuals may continue to wear masks in public places for legitimate health purposes is essential to protecting vulnerable populations and maintaining public health resilience.

Protecting the right to mask for health reasons is a common-sense measure that promotes public health, individual dignity, and community safety.

SUPPORT

Health Officers Association of California

One individual

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation:

SB 627 (Wiener, 2025) makes it a misdemeanor for a law enforcement officer to wear a mask or personal disguise while interacting with the public, except for specified medical-grade masks and masks to protect against exposure to smoke during wildfires. SB 627 is pending before the Assembly Public Safety Committee.

AB 596 (McKinnor, 2025) prohibits an employer from wearing a face covering, as defined and including a respirator, unless it would create a safety hazard, and permits the employer to require a person on the worksite to momentarily remove their face covering for identification purposes, unless the removal would create a safety hazard. AB 569 is pending before the Senate Appropriations Committee.

Prior legislation:

AB 1775 (Haney, Ch. 1004, Stats. 2024) among other things, required a jurisdiction that permits a licensed cannabis retailer to also serve food or host live performances on the premises to require the retailer to permit employees to wear a mask for respiration in any area where cannabis is smoked, including a N95 and NIOSH N95-rated masks.

AB 73 (Rivas, Ch. 322, Stats. 2021) expanded the definition of “essential workers” to include agricultural workers, for the purpose of accessing the personal protective equipment stockpile for emergencies established by the Department of Public Health and the Office of Emergency Services.

PRIOR VOTES:

Senate Health Committee (Ayes 8, Noes 0)

Assembly Floor (Ayes 58, Noes 2)

Assembly Health Committee (Ayes 14, Noes 2)
