

Health and Human Services Policy Committee
Thursday, April 30 • 3:00 – 4:00 p.m.
Via Conference Call
Dial In: (800) 867-2581 • Passcode: 7500559#

Supervisor Ken Yeager, Santa Clara County, Chair
Supervisor Hub Walsh, Merced County, Vice Chair

- 3:00 p.m. **I. Welcome and Introductions**
Supervisor Ken Yeager, Santa Clara County
- 3:05 – 3:20 **II. Budget and Legislative Update**
Farrah McDaid Ting, Legislative Representative
Michelle Gibbons, Legislative Analyst
- 3:20 –3:40 **III. Tobacco-Related Legislation**
Action Item *Farrah McDaid Ting, Legislative Representative*
Michelle Gibbons, Legislative Analyst
- 3:40 – 4:00 **IV. Poverty Platform**
Action Item *Farrah McDaid Ting, Legislative Representative*
Michelle Gibbons, Legislative Analyst
- 4:00 p.m. **V. Adjournment**

NOTES:

Please note new passcode digits: 7500559#

For those who wish to attend the meeting, it will be held in CSAC's Peterson Conference Room (1st floor, 1100 K Street, Sacramento).

The conference call number is noted above for those who wish to call in.

Conference Call Etiquette

1. Place your line on **mute** at all times until you wish to participate in the conversation.
2. **DO NOT PLACE THE LINE ON HOLD.**
3. Please identify yourself when speaking.

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April 27, 2015

To: CSAC Health and Human Services Policy Committee

From: Farrah McDaid Ting, Legislative Representative
Michelle Gibbons, Legislative Analyst

Re: Budget and Legislative Update

As the 2015-16 budget and legislative year progresses, CSAC's Health and Human Services staff continues to monitor and weigh in on pertinent HHS-related legislation. Although CSAC staff will provide a verbal budget and legislative update during the April 30, 2015 HHS Policy Committee meeting, we have included a few items of interest for your consumption.

Attachments:

CSAC Opposition Letter – AB 1300

CSAC Laura's Law Chart

SB 277 Sacramento Bee Article: "*California Vaccine Bill approved by Committee on second try*"

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The Honorable Sebastian Ridley-Thomas
Member, California State Assembly
State Capitol, Room 2176
Sacramento, CA 95814

**Re: AB 1300 (Ridley-Thomas) – Mental Health: Involuntary Commitment
As Amended on April 13, 2015 – OPPOSE
Set for Hearing on April 28 – Assembly Judiciary Committee**

Dear Assembly Member Ridley-Thomas:

The California State Association of Counties (CSAC) represents the Board of Supervisors of California's 58 counties, and regretfully must oppose your measure AB 1300.

AB 1300 represents a major reworking of the Lanterman-Petris-Short Act (LPS) and the protections and procedures in place for individuals who are suffering from a mental health emergency and may be detained for up to 72 hours if they are assessed by a behavioral health clinician as posing a danger to themselves or others. This process is often referred to as the "5150" process, a reference to the procedures and rights outlined in section 5150 of the California Welfare and Institutions Code.

The 5150 process was enacted to enable people with mental health disorder needs to obtain assessment, referral and treatment as appropriate in the least restrictive setting as possible. It is a complex process that often involves family members, law enforcement, mobile emergency medical services, hospital emergency rooms and medical staff, mobile crisis teams, the county behavioral health director, county- and community-based treatment facilities, and numerous other professionals dedicated to treating people in crisis.

Changes enacted at the state and federal level since 2011 have significantly impacted the systems and services associated with the 5150 process, including:

- The enactment of 2011 Realignment, wherein county law enforcement, probation, mental health, and human services departments were all tasked with increasing positive outcomes for current and former county jail inmates;
- SB 364 (Chapter No. 567, Statutes of 2013, authored by Senator Darrell Steinberg), enacted in 2013, increased the types of facilities that can be designated by counties for 5150 assessment, treatment, and holds, clarified LPS Act terminology, and encouraged additional training for personnel.

- SB 82, the Investment in Mental Health Wellness Act of 2013 (Chapter No. 34, Statutes of 2013, presented by the Senate Committee on Budget and Fiscal Review), earmarked more than \$180 million in state General Fund and Mental Health Services Act funds for mental health crisis support programs, including crisis intervention, crisis stabilization, crisis residential treatment, rehabilitative mental health services, and mobile crisis support.
- SB 1054 (Chapter No. 436, Statutes of 2014, authored by Senator Darrell Steinberg), enacted in 2015 re-establishing the Mentally Ill Offender Crime Reduction (MIOCR) Grant program that supports the implementation and evaluation of locally developed demonstration projects designed to reduce recidivism among persons with mental illness. The 2014-15 budget included \$18 million for the MIOCR program.

To date, more than 23 counties have accessed SB 82 grant funding with the goal of creating an additional 2,000 crisis stabilization and crisis residential beds, 25 mobile response teams, and 600 crisis triage personnel.

The above recent efforts by the Legislature and Administration reflect the state and counties' commitment to providing timely treatment and services to those in crisis. The SB 82 funding alone is transforming how county behavioral health and local law enforcement approach the people that both systems serve. By pairing clinicians with deputies in some of the county mobile crisis team models, the SB 82 grant funding has destroyed the silos that had occasionally contributed to long wait times, delays in treatment, and mismanagement of the LPS 5150 process.

A core issue for law enforcement, county behavioral health, and hospitals is the dearth of sufficient psychiatric bed space in California. CSAC has worked at the state and national levels to encourage the creation of more bed space and address the complicated and limiting funding mechanisms associated with Institutes of Mental Disease (IMD). Counties are also accessing the SB 82 funds for brick-and-mortar facilities and providing more flexible crisis intervention and prevention programs – such as 24-hour crisis stabilization services as opposed to the more restrictive 72-hour LPS holds – to address the bed space issue.

Combined, these efforts have nearly transformed the provision of services for those in a mental health crisis. And this leads to our concerns with AB 1300, a measure sponsored by the California Hospital Association to further amend the LPS process.

Specific provisions of the bill that are of particular concern to counties include, but are not limited to, the following:

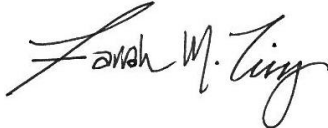
- the move to authorize counties to designate local or regional liaisons to assist a person who is a patient in an emergency department and who has been detained or will require detention,

- attempting to change the process and liability for detaining individuals for evaluation and treatment,
- reworking how and when individuals can be transferred between facilities and by whom,
- and implementing a new definition of when the 72-hour hold “clock” starts.

Each of these proposed changes in AB 1300 would reduce the treatment time for those in mental health crisis by condensing the 72-hour hold clock and imposing other arbitrary timelines on the stabilization, assessment, transportation, and levels of treatment provided to individuals.

AB 1300 moves in the opposite direction of the progress made in the last four years by imposing and creating new silos, costs, and liabilities surrounding the timely treatment for mentally ill individuals. Counties believe that the recent additional funding, innovative programming, and a focus on increasing psychiatric bed space have all contributed to a more robust and responsible 72-hour hold process in California. It is for these reasons that we must OPPOSE AB 1300. Should you have any questions about our concerns, please do not hesitate to contact me at 650-8110, or fmcdaid@counties.org. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Farrah M. Ting". The signature is written in a cursive style with a large, stylized initial 'F'.

Farrah McDaid Ting
Legislative Representative

Laura's Law County Implementation

As of April 27, 2015

County	Resolution Date(s)	Implementation Dates	Comments
Contra Costa County	Resolution adopted in February 2015		<ul style="list-style-type: none"> Resolution No. 2015/9 to implement Laura's law as 3-year pilot presented to the Board in October 2014. Board instructed staff to return within 90 days with a proposed model to implement a 37 person AOT program. Resolution authorizing the implementation of Laura's Law for a 3 year period passed in February 2015.
Los Angeles	Resolution adopted July 2013	Implementation plan adopted November 2014	Approved within Board's MH Services plan
Mendocino	Approved pilot in November 2014	Unknown	One-year pilot; estimated cost \$160,000
Nevada	Approved implementation in April 2008	Services began in April 2008	<p>As of December 2010:</p> <ul style="list-style-type: none"> 37 ppl referred and evaluated 22 agreed to treatment w/o court order 11 treated w/court order 4 didn't accept treatment <p>As of November 2013</p> <ul style="list-style-type: none"> Homeless decreased by 54% Jailed patients decreased by 52% Psychiatric hospital stays decreased by 43 percent
Orange	In May 2014, the Board unanimously voted to implement Laura's law.	Implemented in November 2014	
Placer	In August 2014, the Board unanimously voted to implement Laura's law.	Implementation was set to begin January 2015	
San Diego	In April 2015, the County Board of Supervisors approved Laura's Law.	First referral is expected in spring 2016	<p>Prior 3-year pilot program January 2012-Sept 2014</p> <ul style="list-style-type: none"> 1082 referrals 413 referrals met IHOT eligibility criteria 125 determined potential Laura's Law candidates 10 successfully linked to services

Laura's Law
County Implementation
As of April 27, 2015

County	Resolution Date(s)	Implementation Dates	Comments
San Francisco	In July 2014, the Board voted to implement Laura's law.	Unknown	9-2 vote
Santa Barbara	In September 2014, the Board unanimously agreed to study <i>how</i> Laura's Law could be implemented.		
Yolo County	In June 2013, the Board unanimously approved a one-year pilot program.	Board fully implemented from a pilot to an ongoing program in June 2014.	

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California vaccine bill approved by committee on second try

BY JEREMY B. WHITE - JWHITE@SACBEE.COM

04/22/2015 9:25 AM | Updated: 04/22/2015 10:14 PM





Sens. Ben Allen, right, and Richard Pan discuss the amendments they made to SB 277 in order to win the approval of a Senate committee. RENÉE C. BYER RBYER@SACBEE.COM

Story

Comments

Legislation requiring vaccinations for nearly all California schoolchildren revived Wednesday, winning the approval of a Senate committee that a week earlier looked poised to reject the measure.

Amendments giving non-vaccinated children more educational options beyond traditional schooling generated enough support to push Senate Bill 277 out of the Senate Education Committee on a 7-2 vote.

The bill heads to the Senate Judiciary Committee, the next step in a potentially long odyssey winding through several committees and floor votes in both the Assembly and Senate. Every Democrat on the Judiciary Committee is either a co-sponsor of the bill or has voted for it.

Still, they will wrestle with issues that could include whether an exemption for parents who object to vaccinations on religious grounds would be legally feasible. Multiple lawmakers said Wednesday that the legislation will require more changes if it is to make it to Gov. Jerry Brown's desk and win his signature.

ated



... issue is more than vaccination verses non vaccination, mandatory vaccination verses a more responsible vaccination," explained Jennifer Aleksic, left, of Folsom who is in opposition to SB277, a measure that will require California schoolchildren to get vaccinated, at the Capitol in Sacramento, Calif. Wednesday, April 22, 2015. Holding photographs that represent children who have been injured or died from vaccinations she came with her daughter Kiley Michalec, 20, right. Michalec was vaccinated when she was 10 months old and 15 minutes after had a seizure and was taken to ER said Aleksic. The bill by Sens. Ben Allen, D-Santa Monica, and Richard Pan, D-Sacramento, was approved by the Senate Education Committee on a 7-2 vote after the committee made amendments that allows families who chose to not vaccinate to homeschool children together and allows for independent study. The bill now goes to the Senate Judiciary Committee. | Renee C. Byer rbyer@sacbee.com

Capitol lobbyists, staff jump security line during vaccine debate

Legislation complicates California vaccine debate

California vaccine bill changes seek to protect children, win votes

Editorial: Panel, CTA should back vaccine bill

“There’s a lot of work we still have to do,” Sen. Ben Allen, D-Santa Monica, said after the hearing.

While proponents frame SB 277 as a public health measure needed to protect Californians who are too young or sick to be immunized against diseases like measles and whooping cough, the bill faltered last week under questions about whether unvaccinated children could still exercise their constitutional right to an education. SB 277 would preserve medical exemptions but nix a broad personal belief exemption, prompting many parents to threaten to pull their children from school.

In the meantime, Allen of Santa Monica and Sen. Richard Pan, D-Sacramento, crafted amendments to placate skeptics. The changes expand the home-schooling and independent study options available to children who are not vaccinated and therefore cannot attend conventional public or private schools.

Now, unvaccinated children could get an education through private home-schools that cover multiple families – in the bill’s previous version only those serving a single family or household had qualified. The bill changes also clarified that unvaccinated kids could receive schooling through independent study programs that are overseen by school districts and given access to public school curricula.

“I appreciate your work to try and expand options for those who choose not to vaccinate to pursue the education of their children,” said Sen. Bill Monning, D-Carmel, while ensuring that for families of children with immune-compromising diseases like leukemia, “there are public schools where their children can attend without the risk of

ery: Vaccine Vote

being exposed.”

Again and again last week, dissenters returned to that core tension: How to balance students’ ability to attend school without fear of infection against children’s fundamental right to an education.

“The amendments are an attempt to strike that balance,” Allen said. “This is a committee that cares about educational options for families, and they felt that we hadn’t adequately fleshed out certain aspects of the options we may provide for those families who choose not to vaccinate. We got through the committee today because the committee felt as though our amendments addressed the core concerns they had about access.”

The vote tally supported Allen’s contention. The committee’s chair, Sen. Carol Liu, D-La Cañada Flintridge, backed SB 277 after questioning last week whether public safety merited children leaving school. After expressing similar concerns last week, Sen. Loni Hancock, a Berkeley Democrat whose district houses many non-vaccinating families, voted in favor.

“I supported SB 277 because I strongly believe in the validity and importance of vaccinations,” Hancock said in a statement after the vote. “My concern has always been to ensure that all children have access to educational opportunities. I believe that the current bill, as amended, does a good job of balancing the state’s constitutional requirement to provide access to public education with the public health benefits of vaccinations.”

Still, the amendments did not convince lawmakers who worried that, given the burdens of home-schooling, some children would still struggle to obtain an education should the bill become law.

“I just still have a concern that this will not go far enough to help a two-income family who cannot home-school their child or a single working parent,” said Sen. Connie Leyva, D-Chino.

The Education Committee carried a different roster from the one that halted the bill last week. Gone was Senate Republican leader Bob Huff of Diamond Bar, who had said he could not support SB 277. His replacement, Sen. Sharon Runner, R-Lancaster, voted no. Appointed to fill a vacancy on the panel was Monning, who voted for the bill in its previous committee. He voted in favor again Wednesday.

Legislative leaders described the development as a routine product of the seat-shuffling set off by cascading rounds of elections. A new Democrat will soon fill an empty Senate seat in the 7th District. Runner recently won the seat that now-Rep. Steve Knight, R-Lancaster, vacated after he won a spot in Congress.

“At the beginning of the legislative year, Senate Republicans decided upon which committee posts they would take, with the understanding that two new Republicans would soon be taking office after they won special elections,” Huff spokesman William Bird said in a statement. “The understanding was that

committee assignments would shift somewhat, when the two new members took office.”

But SB 277 opponents cried foul. A press release from the California Coalition for Health Choice denounced the change as “outright rigging the results of a vote.”

Wednesday’s vote offered none of the drama of the previous Senate Education Committee hearing, when SB 277’s authors agreed to delay a vote in the face of hours of stinging testimony and pointed questions from fellow legislators.

This time, no public testimony was allowed, though red-clad opponents still filled the hearing room. In numbers and vociferousness they have easily eclipsed proponents at hearings, though unvaccinated children account for a small minority of California youths.

Many of them attended Wednesday’s hearing carrying scarlet flowers, which they then delivered to the offices of Senate President Pro Tem Kevin de León, D-Los Angeles, and Senate Judiciary Committee chair Hannah-Beth Jackson, D-Santa Barbara, whose panel will hear the bill Tuesday.

Motivated enough to travel to a hearing where they would not be permitted to speak, critics said they planned to maintain their pressure on lawmakers.

“This is a terrible bill. It’s a ridiculous bill that needs to not pass,” said Joni Martin, who has selectively vaccinated her two children and departed from the Santa Cruz area before 5 a.m. to attend Wednesday’s hearing. “I’m going to come any time I need to come to listen to what they say, and I’m going to continue to work on getting the message out about all the reasons the bill is not justified.”

Call Jeremy B. White, Bee Capitol Bureau, (916) 326-5543.

HOW THEY VOTED

Here is how the Senate Education Committee voted on Senate Bill 277:

Richard Pan, D-Sacramento Y

Carol Liu, D-La Cañada Flintridge Y

Bill Monning, D-Carmel Y

Andy Vidak, R-Hanford Y

Tony Mendoza, D-Artesia Y

Connie Leyva, D-Chino N

Marty Block, D-San Diego Y

Sharon Runner, R-Lancaster N

Loni Hancock, D-Berkeley Y

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April 27, 2015

To: CSAC Health and Human Services Policy Committee

From: Farrah McDaid Ting, Legislative Representative
Michelle Gibbons, Legislative Analyst

Re: **Proposed Tobacco-Related Legislation in 2015 – ACTION ITEM**

Background. On March 25, CSAC staff presented tobacco-related legislation as an informational item before the Health and Human Services Policy Committee. Based on the discussion, the committee requested that several bills – SB 24 (Hill), SB 140 (Leno), SB 151 (Hernandez) and AB 216 (Garcia) – be brought before the committee for a vote during the following HHS policy committee meeting. Presented below is the analysis of the aforementioned bills prepared by CSAC staff.

Process. The CSAC Health and Human Services Policy Committee may review and make a recommendation for the Association’s position on each bill. CSAC positions include SUPPORT, SUPPORT IF AMENDED, NEUTRAL, OPPOSE, OPPOSE UNLESS AMENDED, and PENDING. Should the HHS policy committee make any recommendations on positions, the CSAC Board of Directors will be notified and staff will adopt those recommendations on the legislation as currently in print.

Staff Analysis:

The first three bills presented below all involve regulations pertaining to electronic cigarettes.

E-cigarettes are battery-heated devices that contain liquid nicotine and chemicals introduced into a vehicle to produce aromas and various flavors in various forms. Some e-cigarettes look like conventional cigarettes, but many are shaped like other common items, such as pens. The use of e-cigarettes is on the rise. This month, according to the National Institute on Drug Abuse, youth use is now higher than that of traditional cigarettes: 17.1 percent of 12th graders reported using e-cigarettes in the past month, versus 13.6 percent who reportedly used traditional cigarettes.

The Food and Drug Administration has not fully studied the safety of e-cigarettes. Meanwhile, according to the Department of Public Health’s State Health Officer report, “A Community Health Threat,” it was noted that e-cigarette poisonings increased from 7 in 2012 to 154 in 2014. Young children were reported to be the victims in more than 60 percent of all e-cigarette poisonings.

SB 24 (Hill) Electronic Cigarettes: Licensing and Restrictions

As Amended on April 21, 2014

SB 24, by Senator Jerry Hill, would 1) extend the Stop Tobacco Access to Kids Enforcement Act (STAKE ACT) to include the sale of electronic cigarettes (e-cigarettes) to persons under the age of 21, to be enforced beginning July 1, 2016; 2) Add e-cigarettes to current smoke-free laws; 3) require cartridges and solutions for filling e-cigarettes to be in childproof packaging; and 4) require retailers to apply for a license from the Board of Equalization (BOE) starting July 1, 2016, and for those licenses to be displayed by each retailer by September 30, 2016.

Supporters of SB 24 believe that including the sale of e-cigarettes in the STAKE ACT will reduce the use of electronic cigarettes by minors. Additionally, supporters believe that requiring childproof packaging will reduce the number of e-cigarette poisonings that occur.

While opponents of this bill can agree, many public health advocates are in opposition to SB 24 as a result of how the bill defines e-cigarettes. Section 22950.1(c) of the bill language reads:

“(c) “Electronic cigarette” has the same meaning as that term is line 7 defined in subdivision (b) of Section 119405 of the Health and line 8 Safety Code and shall also include any aerosol or vapor cartridge line 9 or other container of a solution, that may or may not contain line 10 nicotine, that is intended to be used with or in an electronic line 11 cigarette.”

By defining e-cigarettes as such, it creates a distinct classification from other tobacco products for e-cigs, thereby, advocates contend, weakening the overall regulation of e-cigarettes.

Public health advocates in opposition to SB 24 believe that the definition included in SB 24 threatens overall tobacco control and public health campaigns in California. These advocates have asked for the bill to be amended to include only the requirement that e-cigarette cartridges be packaged in a childproof manner. It should be noted that those who oppose SB 24 are in support of SB 140 by Senator Leno, which also extends the STAKE ACT to include e-cigarettes and aligns the definition of an e-cigarette to that of other tobacco products.

Supporters of SB 24 include:

- California College and University Police Chiefs
- California Poison Control System
- Coalition Engaged in a Smoke-free Effort (CEASE)
- Junior League of California, State Public Affairs Committee
- Kings County Tobacco-Free Partnership

Opposition include:

- American Cancer Society Cancer Action Network (unless amended)
- American Heart Association/American Stroke Association (unless amended)
- American Lung Association in California (unless amended)
- California Medical Association (unless amended)
- Health Access California (unless amended)

SB 140 (Leno) Electronic Cigarettes

As Amended on April 13, 2014

Senator Leno's SB 140 would: 1) define the term “smoking” for purposes of the STAKE ACT; and 2) expand the STAKE Act's definition of tobacco products to include electronic devices that deliver nicotine or vaporized liquids, and 3) make it illegal to furnish such products to minors.

Similar to SB 24, this bill also seeks to address the rising use of e-cigarettes by minors. As noted in the analysis to SB 24 above, many advocates in opposition to SB 24 are in support of SB 140 because they believe it accomplishes the same goal of decreasing use by minors

while aligning the definition of e-cigarettes with the existing definition of other tobacco products.

The California Chapter of the National Organization for Reform of Marijuana Laws (NORML) is the only opposition on record for SB 140 and is opposing the bill's requirement for medical marijuana patients to use medical marijuana vapor products outside or in designated smoking rooms – which contain harmful cigarette smoke. They believe this type of vaping is different because they contend it does not cause smoking-related diseases and that e-cigs a harm reduction tool that help users quit smoking standard cigarettes. NORML recommends that the definition of tobacco product be amended to remove “other substances”.

There is strong support for SB 140 as listed below:

- American Cancer Society Cancer Action Network (co-sponsor)
- American Heart Association/American Stroke Association (co-sponsor)
- American Lung Association (co-sponsor)
- Association of Northern California Oncologists
- Breathe California
- California Alliance for Retired Americans
- California Chapter of the American College of Cardiology
- California Chapter of American College of Emergency Physicians
- California College and University Police Chiefs Association
- California Medical Association
- California Narcotic Officers Association
- California Pan-Ethnic Health Network
- California Pharmacists Association
- California Police Chiefs Association
- California School Employees Association, AFL-CIO
- Campaign for Tobacco-free Kids
- Coalition for a Tobacco-free Sonoma County
- Health Officers Association of California
- Kaiser Permanente
- March of Dimes California Chapter
- Medical Oncology Association of Southern California
- San Luis Obispo County Tobacco Control Coalition
- San Mateo County Tobacco Education Coalition
- SEIU-UHW
- Solano County Tobacco Education Coalition
- Yolo County Tobacco Prevention Coalition
- Yuba County Tobacco Coalition

AB 216 (Garcia) Product Sales to Minors: Vapor Products

As Amended on April 13, 2014

AB 216, by Assembly Member Garcia, would prohibit the sale of any vaping device to a person under the age of 18, with the exception of a drug or medical device approved by the federal Food and Drug Administration.

This bill, like those above, is attempting to reduce the use of e-cigarettes by minors, by imposing a fine not exceeding \$500 for the first violation; \$1000 for the second violation and \$1500 for the third and any subsequent violation.

Supporters of AB 216 include:

- Breast Cancer Fund
- California Narcotic Officers Association
- California School Employee Association

There is no opposition on file at this time.

SB 151 (Hernandez) Tobacco Products: Minimum Legal Age
As Introduced on January 29, 2015

According to the author, an estimated 90 percent of tobacco users start prior to age 21 and 80 percent of lifetime users started before the age of 18. SB 151 by Senator Hernandez attempts to prevent young initiation ages for smoking by raising the age for restricted access to tobacco products from 18 to 21 years of age.

In 2009, the Family Smoking Prevention and Tobacco Control Act directed the U.S. Food and Drug Administration to convene a panel of experts to conduct a study on the public health implications of raising the minimum age for buying tobacco products. The findings were reported in "Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products". According to this report, raising the minimum age to at least 21 would likely lead to substantial reductions in smoking prevalence and reductions in tobacco-related diseases.

Those most impacted by raising the minimum age to 21 are those between ages 15 and 17 years of age. Many 18-year-olds still have social networks that include younger peers since this age group often still attends high school. These older peers are able to buy and supply tobacco products to their minor friends. However, by raising the minimum age to age 21, the likelihood of mixed-age minors being in the same social networks is decreased, which would possibly decrease the chances of the initiation age occurring before the age of 18.

Supporters of the bill argue that California has a rich history of tobacco control, which has helped to reduce the smoking rates, smoking-related diseases, and the costs of both. Because the negative effects of smoking are a well-known and costly burden to society, supporters claim it is necessary to restrict young adult access to tobacco products. .

However, the Cigar Association of America (CAA), the sole registered opposition to the bill, argues that at age 18, an individual is able to vote, serve in the military, and enter into contracts, and therefore should be able to make the decision to consume tobacco products. CAA also argues that increasing the minimum age to 21 would decrease tax revenues to California and addressing public health concerns should not be done through law, but instead through education and treatment.

Supporters of SB 151 include:

- American Federation of State, County and Municipal Employees (AFL-CIO)
- American Cancer Society Cancer Action Network
- American Heart Association/American Stroke Association

- American Lung Association in California
- California Black Health Network
- El Monte/South El Monte Chamber of Commerce
- March of Dimes California Chapter

Opposition:

- Cigar Association of America

Recommendations:

Staff recommends that the CSAC Health and Human Services Policy Committee take the following positions:

- SB 24 (Hill) – **Watch**
- SB 140 (Leno) - **Support**
- AB 216 (Garcia) - **Watch**
- SB 151 (Hernandez) - **Watch**

Attachments:

- SB 24 (Hill) Electronic Cigarettes: Licensing and Restrictions
- SB 24 Factsheet
- SB 140 (Leno) Electronic Cigarettes
- SB 140 Applying Public Health Protections to Electronic Cigarettes - Factsheet
- SB 151 (Hernandez) Tobacco Products: Minimum Age
- SB 151 Tobacco 21 Factsheet
- AB 216 (Garcia) Product Sales to Minors: Vapor Products
- AB 216 Factsheet
- Institute of Medicine brief: “*Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*” – March 2015
- State Health Officer’s Report on E-Cigarettes: “*A Community Health Threat*” – January 2015

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AMENDED IN SENATE APRIL 21, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 24

Introduced by Senator Hill

December 1, 2014

An act to amend Sections 22950.5, 22951, 22952, 22956, 22958, 22960, 22961, 22962, 22963, 22970.2, 22971, 22972, 22973, 22974, 22974.7, 22980, 22980.1, 22980.2, 22980.3, and 22980.4 of, and to add Section 22950.1 to, the Business and Professions Code, to amend Section 1947.5 of the Civil Code, to amend Section 48901 of the Education Code, to amend Section 7597 of the Government Code, to amend Sections 1234, 1286, 1530.7, 1596.795, 104495, 113953.3, 113977, 113978, 114332.3, 114371, 118910, 118925, 118930, 118935, ~~and 118948~~ 118498, *and 119405* of, and to add Section 119406 to, the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Sections 308 and 640 of the Penal Code, to amend Sections 561 and 99580 of the Public Utilities Code, and to amend Sections 12523 and 12523.5 of the Vehicle Code, relating to electronic cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

SB 24, as amended, Hill. Electronic cigarettes: licensing and restrictions.

(1) Existing law, the Stop Tobacco Access to Kids Enforcement Act (STAKE Act), establishes various requirements for distributors and retailers relating to tobacco sales to ~~minors~~ *persons under 18 years of age*. Existing law makes it a crime, punishable by a fine not to exceed \$500 or by imprisonment not exceeding 30 days in a county jail, to fail to post a notice, at each point of purchase, stating that the sale of tobacco products to ~~minors~~ *persons under 18 years of age* is illegal. Existing

law also permits enforcing agencies to assess various civil penalties for violations of the STAKE Act.

This bill would extend the applicability of the STAKE Act's provisions to persons under 21 years of age. The bill would extend the requirements of the STAKE Act to the sale of electronic cigarettes to ~~minors~~ persons under 21 years of age. The bill would require the State Department of Public Health to enforce the STAKE Act's provisions with regard to sales of electronic cigarettes commencing July 1, 2016.

The bill would make the failure to post a notice, on and after July 1, 2016, at each point of purchase, stating that the sale of electronic cigarettes to ~~minors~~ persons under 21 years of age is illegal, a crime. By expanding the scope of existing crimes, the bill would impose a state-mandated local program.

The bill would provide that the STAKE Act does not invalidate existing local government ordinances regulating the distribution or sale of cigarettes, electronic cigarettes, or tobacco products, or prohibit local governments from adopting ordinances regulating the distribution or sale of cigarettes, electronic cigarettes, or tobacco products that are more restrictive than state law.

(2) Existing law prohibits a person from selling or otherwise furnishing an electronic cigarette to minors, and makes a violation punishable as an infraction.

The bill would prohibit a person from selling or otherwise furnishing an electronic cigarette to persons under 21 years of age. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The bill would require that cartridges for electronic cigarettes and solutions for filling electronic cigarettes be in child-proof packaging to protect children from opening and ingesting the contents.

(3) Existing law, the Cigarette and Tobacco Products Licensing Act, requires the State Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products. Existing law makes a violation of the Cigarette and Tobacco Products Licensing Act a misdemeanor punishable by a fine not to exceed \$5,000, by imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment. Existing law also permits the State Board of Equalization to assess various civil penalties for violations of the Cigarette and Tobacco Products Licensing Act.

The bill would require retailers to apply for a license to sell electronic cigarettes commencing July 1, 2016, and to display the license at each retail location commencing September 30, 2016. The bill would require the State Board of Equalization to administer a statewide program to license retailers of electronic cigarettes. The bill would also make retailers of electronic cigarettes subject to various civil and criminal penalties if they fail to comply with licensing requirements.

(4) Existing law prohibits the smoking of cigarettes and other tobacco products in a variety of specified areas. Under existing law, a violation of some of these provisions is punishable as a crime.

This bill would prohibit the use of electronic cigarettes in a variety of specified areas where the smoking of cigarettes and other tobacco products is prohibited. The bill would also make corresponding changes. The bill would make the use of electronic cigarettes in some of these restricted locations a violation punishable as a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 22950.1 is added to the Business and
2 Professions Code, to read:

3 22950.1. Nothing in this division nor any other law shall be
4 construed to invalidate an existing ordinance of, or prohibit the
5 adoption of an ordinance by, a city or county that regulates the
6 distribution or sale of cigarettes, electronic cigarettes, or tobacco
7 products in a manner that is more restrictive than this division, to
8 the extent that the ordinance is not otherwise prohibited by federal
9 law.

10 SEC. 2. Section 22950.5 of the Business and Professions Code
11 is amended to read:

12 22950.5. For purposes of this division, the following terms
13 have the following meanings:

14 (a) "Department" means the State Department of Public Health.

1 (b) “Enforcing agency” means the State Department of Public
2 Health, another state agency, including, but not limited to, the
3 office of the Attorney General, or a local law enforcement agency,
4 including, but not limited to, a city attorney, district attorney, or
5 county counsel.

6 (c) “Electronic cigarette” has the same meaning as that term is
7 defined in subdivision (b) of Section 119405 of the Health and
8 Safety Code and shall also include any aerosol or vapor cartridge
9 or other container of a solution, that may or may not contain
10 nicotine, that is intended to be used with or in an electronic
11 cigarette.

12 SEC. 3. Section 22951 of the Business and Professions Code
13 is amended to read:

14 22951. The Legislature finds and declares that reducing and
15 eventually eliminating the illegal purchase and consumption of
16 tobacco products and electronic cigarettes by minors is critical to
17 ensuring the long-term health of our state’s citizens. Accordingly,
18 California must fully comply with federal regulations, particularly
19 the “Synar Amendment,” that restrict tobacco sales to minors and
20 require states to vigorously enforce their laws prohibiting the sale
21 and distribution of tobacco products to persons under 18 years of
22 age. Full compliance and vigorous enforcement of the “Synar
23 Amendment” requires the collaboration of multiple state and local
24 agencies that license, inspect, or otherwise conduct business with
25 retailers, distributors, or wholesalers that sell tobacco.

26 SEC. 4. Section 22952 of the Business and Professions Code
27 is amended to read:

28 22952. The State Department of Public Health shall do all of
29 the following:

30 (a) Establish and develop a program to reduce the availability
31 of tobacco products and electronic cigarettes to persons under ~~18~~
32 *21* years of age through the enforcement activities authorized by
33 this division.

34 (b) Establish requirements that retailers of tobacco products or
35 electronic cigarettes post conspicuously, at each point of purchase,
36 a notice stating that selling tobacco products or electronic cigarettes
37 to anyone under ~~18~~ *21* years of age is illegal and subject to
38 penalties. The notice shall also state that the law requires that all
39 persons selling tobacco products or electronic cigarettes check the
40 identification of a purchaser of tobacco products or electronic

1 cigarettes who reasonably appears to be under ~~18~~ 21 years of age.
2 The warning signs shall include a toll-free telephone number to
3 the department for persons to report unlawful sales of tobacco
4 products or electronic cigarettes to ~~minors~~ *persons under 21 years*
5 *of age*.

6 (c) Provide that primary responsibility for enforcement of this
7 division shall be with the department. In carrying out its
8 enforcement responsibilities, the department shall conduct random,
9 onsite sting inspections at retail sites and shall enlist the assistance
10 of persons that are ~~15 and 16~~ *under 21* years of age in conducting
11 these enforcement activities. The department may conduct onsite
12 sting inspections in response to public complaints or at retail sites
13 where violations have previously occurred, and investigate illegal
14 sales of tobacco products or electronic cigarettes to ~~minors~~ *persons*
15 *under 21 years of age* by telephone, mail, or the Internet.
16 Participation in these enforcement activities by a person under ~~18~~
17 *21* years of age does not constitute a violation of subdivision (b)
18 of Section 308 of the Penal Code for the person under ~~18~~ *21* years
19 of age, and the person under ~~18~~ *21* years of age is immune from
20 prosecution thereunder, or under any other provision of law
21 prohibiting the purchase of these products by a person under ~~18~~
22 *21* years of age.

23 (d) In accordance with Chapter 3.5 (commencing with Section
24 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
25 the department shall adopt and publish guidelines for the use of
26 persons under ~~18~~ *21* years of age in inspections conducted pursuant
27 to subdivision (c) that shall include, but not be limited to, all of
28 the following:

29 (1) An enforcing agency may use persons under ~~18~~ *21* years of
30 age ~~who are 15 or 16 years of age~~ in random inspections to
31 determine if sales of cigarettes, electronic cigarettes, or other
32 tobacco products are being made to persons under ~~18~~ *21* years of
33 age.

34 (2) A photograph or video recording of the person under ~~18~~ *21*
35 years of age shall be taken prior to each inspection or shift of
36 inspections and retained by the enforcing agency for purposes of
37 verifying appearances.

38 (3) An enforcing agency may use video recording equipment
39 when conducting the inspections to record and document illegal
40 sales or attempted sales.

1 (4) The person under ~~18~~ 21 years of age, if questioned about
2 his or her age, need not state his or her actual age but shall present
3 a true and correct identification if verbally asked to present it. Any
4 failure on the part of the person under ~~18~~ 21 years of age to provide
5 true and correct identification, if verbally asked for it, shall be a
6 defense to an action pursuant to this section.

7 (5) The person under ~~18~~ 21 years of age shall be under the
8 supervision of a regularly employed peace officer during the
9 inspection.

10 (6) All persons under ~~18~~ 21 years of age used in this manner by
11 an enforcing agency shall display the appearance of a person under
12 ~~18~~ 21 years of age. It shall be a defense to an action under this
13 division that the person's appearance was not that which could be
14 generally expected of a person under ~~18~~ 21 years of age, under the
15 actual circumstances presented to the seller of the cigarettes,
16 electronic cigarettes, or other tobacco products at the time of the
17 alleged offense.

18 (7) Following the completion of the sale, the peace officer
19 accompanying the person under ~~18~~ 21 years of age shall reenter
20 the retail establishment and shall inform the seller of the random
21 inspection. Following an attempted sale, the enforcing agency shall
22 notify the retail establishment of the inspection.

23 (8) Failure to comply with the procedures set forth in this
24 subdivision shall be a defense to an action brought pursuant to this
25 section.

26 (e) Be responsible for ensuring and reporting the state's
27 compliance with Section 1926 of Title XIX of the federal Public
28 Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing
29 regulations adopted in relation thereto by the United States
30 Department of Health and Human Services. A copy of this report
31 shall be made available to the Governor and the Legislature.

32 (f) Provide that any civil penalties imposed pursuant to Section
33 22958 shall be enforced against the owner or owners of the retail
34 business and not the employees of the business.

35 (g) The amendments made to this section by the act adding this
36 subdivision shall become operative on July 1, 2016.

37 SEC. 5. Section 22956 of the Business and Professions Code
38 is amended to read:

39 22956. All persons engaging in the retail sale of tobacco
40 products or electronic cigarettes shall check the identification of

1 purchasers of those items, to establish the age of the purchaser, if
2 the purchaser reasonably appears to be under ~~18~~ 21 years of age.

3 SEC. 6. Section 22958 of the Business and Professions Code
4 is amended to read:

5 22958. (a) An enforcing agency may assess civil penalties
6 against any person, firm, or corporation that sells, gives, or in any
7 way furnishes to another person who is under ~~the age of 18~~ 21
8 years *of age*, any tobacco, cigarette, electronic cigarette, cigarette
9 papers, any other instrument or paraphernalia that is designed for
10 the smoking or ingestion of tobacco, products prepared from
11 tobacco, or any controlled substance, according to the following
12 schedule: (1) a civil penalty of from four hundred dollars (\$400)
13 to six hundred dollars (\$600) for the first violation, (2) a civil
14 penalty of from nine hundred dollars (\$900) to one thousand dollars
15 (\$1,000) for the second violation within a five-year period, (3) a
16 civil penalty of from one thousand two hundred dollars (\$1,200)
17 to one thousand eight hundred dollars (\$1,800) for a third violation
18 within a five-year period, (4) a civil penalty of from three thousand
19 dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth
20 violation within a five-year period, or (5) a civil penalty of from
21 five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for
22 a fifth violation within a five-year period.

23 (b) (1) In addition to the civil penalties described in subdivision
24 (a), upon the assessment of a civil penalty for the third, fourth, or
25 fifth violation, the department, within 60 days of the date of service
26 of the final administrative adjudication on the parties or payment
27 of the civil penalty for an uncontested violation, shall notify the
28 State Board of Equalization of the violation. The State Board of
29 Equalization shall then assess a civil penalty of two hundred fifty
30 dollars (\$250) and suspend or revoke a license issued pursuant to
31 Chapter 2 (commencing with Section 22972) of Division 8.6 in
32 accordance with the following schedule:

33 (A) A 45-day suspension of the license for a third violation at
34 the same location within a five-year period.

35 (B) A 90-day suspension of the license for a fourth violation at
36 the same location within a five-year period.

37 (C) Revocation of the license for a fifth violation at the same
38 location within a five-year period.

39 (2) The provisions of Chapter 4 (commencing with Section
40 55121) of Part 30 of Division 2 of the Revenue and Taxation Code

1 apply with respect to the collection of the penalty imposed by the
2 State Board of Equalization pursuant to paragraph (1).

3 (c) (1) For each suspension or revocation pursuant to
4 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)
5 assessed pursuant to that subdivision, notwithstanding Section
6 22953, shall be deposited into the Cigarette and Tobacco Products
7 Compliance Fund established pursuant to Section 22990. Moneys
8 from that civil penalty deposited into this fund shall be made
9 available to the State Board of Equalization, upon appropriation
10 by the Legislature, for the purposes of meeting its duties under
11 subdivision (b).

12 (2) The department shall, upon request, provide to the State
13 Board of Equalization information concerning any person, firm,
14 or corporation that has been assessed a civil penalty for violation
15 of the STAKE Act pursuant to this section when the department
16 has notified the State Board of Equalization of the violation.

17 (d) The enforcing agency shall assess penalties pursuant to the
18 schedule set forth in subdivision (a) against a person, firm, or
19 corporation that sells, offers for sale, or distributes tobacco products
20 or electronic cigarettes from a cigarette or tobacco products vending
21 machine, or a person, firm, or corporation that leases, furnishes,
22 or services these machines in violation of Section 22960.

23 (e) An enforcing agency may assess civil penalties against a
24 person, firm, or corporation that sells or deals in tobacco or any
25 preparation thereof, and fails to post conspicuously and keep posted
26 in the place of business at each point of purchase the notice
27 required pursuant to subdivision (b) of Section 22952. The civil
28 penalty shall be in the amount of two hundred dollars (\$200) for
29 the first offense and five hundred dollars (\$500) for each additional
30 violation.

31 (f) An enforcing agency shall assess penalties in accordance
32 with the schedule set forth in subdivision (a) against a person, firm,
33 or corporation that advertises or causes to be advertised a tobacco
34 product or electronic cigarette on an outdoor billboard in violation
35 of Section 22961.

36 (g) If a civil penalty has been assessed pursuant to this section
37 against a person, firm, or corporation for a single, specific violation
38 of this division, the person, firm, or corporation shall not be
39 prosecuted under Section 308 of the Penal Code for a violation
40 based on the same facts or specific incident for which the civil

1 penalty was assessed. If a person, firm, or corporation has been
2 prosecuted for a single, specific violation of Section 308 of the
3 Penal Code, the person, firm, or corporation shall not be assessed
4 a civil penalty under this section based on the same facts or specific
5 incident upon which the prosecution under Section 308 of the Penal
6 Code was based.

7 (h) (1) In the case of a corporation or business with more than
8 one retail location, to determine the number of accumulated
9 violations for purposes of the penalty schedule set forth in
10 subdivision (a), violations of this division by one retail location
11 shall not be accumulated against other retail locations of that same
12 corporation or business.

13 (2) In the case of a retail location that operates pursuant to a
14 franchise as defined in Section 20001, violations of this division
15 accumulated and assessed against a prior owner of a single
16 franchise location shall not be accumulated against a new owner
17 of the same single franchise location for purposes of the penalty
18 schedule set forth in subdivision (a).

19 (i) Proceedings under this section shall be conducted pursuant
20 to Section 131071 of the Health and Safety Code, except in cases
21 where a civil penalty is assessed by an enforcing agency other than
22 the department, in which case proceedings shall be conducted
23 pursuant to the procedures of that agency that are consistent with
24 Section 131071 of the Health and Safety Code.

25 SEC. 7. Section 22960 of the Business and Professions Code
26 is amended to read:

27 22960. (a) Except as provided in subdivision (b), a cigarette,
28 electronic cigarette, or tobacco product shall not be sold, offered
29 for sale, or distributed from a vending machine or appliance, or
30 any other coin or token operated mechanical device designed or
31 used for vending purposes, including, but not limited to, machines
32 or devices that use remote control locking mechanisms.

33 (b) (1) Cigarette, electronic cigarette, or tobacco product
34 vending machines or appliances may be located at least 15 feet
35 away from the entrance of a premise issued an on-sale public
36 premises license as defined in Section 23039 by the Department
37 of Alcoholic Beverage Control to sell alcoholic beverages.

38 (2) As used in this subdivision “at least 15 feet away from the
39 entrance” means within the premises of the licensed establishment
40 and not outside those premises.

1 (c) This section and subdivision (b) of Section 22958 set forth
2 minimum state restrictions on the sale of cigarettes, electronic
3 cigarettes, or tobacco products from vending machines or devices
4 and do not preempt or otherwise prohibit the adoption of a local
5 standard that further restricts access to and reduces the availability
6 of cigarettes, electronic cigarettes, or tobacco products from
7 vending machines or devices or that imposes a complete ban on
8 the sale of cigarettes or tobacco products from vending machines
9 or devices. A local standard that further restricts or imposes a
10 complete ban on the sale of cigarettes, electronic cigarettes, or
11 tobacco products from vending machines or devices shall control
12 in the event of an inconsistency between this section and a local
13 standard.

14 (d) The amendments made to this section by the act adding this
15 subdivision shall become operative on July 1, 2016.

16 SEC. 8. Section 22961 of the Business and Professions Code
17 is amended to read:

18 22961. (a) No person, firm, corporation, partnership, or other
19 organization shall advertise or cause to be advertised any tobacco
20 products or electronic cigarettes on any outdoor billboard located
21 within 1,000 feet of any public or private elementary school, junior
22 high school, or high school, or public playground.

23 (b) This section sets forth minimum state restrictions on the
24 advertisement of any tobacco products or electronic cigarettes on
25 outdoor billboards near schools and public playgrounds and does
26 not preempt or otherwise prohibit the adoption of a local standard
27 that imposes a more restrictive or complete ban on billboard
28 advertising or on tobacco-related billboard advertising. A local
29 standard that imposes a more restrictive or complete ban on
30 billboard advertising or on tobacco-related billboard advertising
31 shall control in the event of any inconsistency between this section
32 and a local standard.

33 (c) This section shall not be construed to prohibit the display
34 of a message or advertisement opposing the use of tobacco products
35 or electronic cigarettes. However, this subdivision shall not be
36 construed to permit an advertisement promoting the use of tobacco
37 products or electronic cigarettes by including a message opposing
38 the use of tobacco products or electronic cigarettes within that
39 advertisement.

1 SEC. 9. Section 22962 of the Business and Professions Code
2 is amended to read:

3 22962. (a) For purposes of this section, the following terms
4 have the following meanings:

5 (1) “Self-service display” means the open display of electronic
6 cigarettes, tobacco products, or tobacco paraphernalia in a manner
7 that is accessible to the general public without the assistance of
8 the retailer or employee of the retailer.

9 (2) “Tobacco paraphernalia” means cigarette papers or wrappers,
10 blunt wraps as defined in Section 308 of the Penal Code, pipes,
11 holders of smoking materials of all types, cigarette rolling
12 machines, or other instruments or things designed for the smoking
13 or ingestion of tobacco products.

14 (3) “Tobacco product” means any product containing tobacco
15 leaf, including, but not limited to, cigarettes, cigars, pipe tobacco,
16 snuff, chewing tobacco, dipping tobacco, bidis, or any other
17 preparation of tobacco.

18 (4) “Tobacco store” means a retail business that meets all of the
19 following requirements:

20 (A) Primarily sells tobacco products or electronic cigarettes.

21 (B) Generates more than 60 percent of its gross revenues
22 annually from the sale of electronic cigarettes, tobacco products,
23 and tobacco paraphernalia.

24 (C) Does not permit any person under ~~18~~ 21 years of age to be
25 present or enter the premises at any time, unless accompanied by
26 the person’s parent or legal guardian, as defined in Section 6903
27 of the Family Code.

28 (D) Does not sell alcoholic beverages or food for consumption
29 on the premises.

30 (b) (1) (A) Except as permitted in subdivision (b) of Section
31 22960, it is unlawful for a person engaged in the retail sale of
32 tobacco products or electronic cigarettes to sell, offer for sale, or
33 display for sale any electronic cigarette, tobacco product, or tobacco
34 paraphernalia by self-service display. A person who violates this
35 section is subject to those civil penalties specified in the schedule
36 in subdivision (a) of Section 22958.

37 (B) A person who violates this section is subject to those civil
38 penalties specified in the schedule in subdivision (a) of Section
39 22958.

1 (2) It is unlawful for a person engaged in the retail sale of blunt
2 wraps to place or maintain, or to cause to be placed or maintained,
3 any blunt wraps advertising display within two feet of candy,
4 snack, or nonalcoholic beverage displayed inside any store or
5 business.

6 (3) It is unlawful for any person or business to place or maintain,
7 or cause to be placed or maintained, any blunt wrap advertising
8 display that is less than four feet above the floor.

9 (c) Subdivision (b) shall not apply to the display in a tobacco
10 store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping
11 tobacco, provided that in the case of cigars they are generally not
12 sold or offered for sale in a sealed package of the manufacturer or
13 importer containing less than six cigars. In any enforcement action
14 brought pursuant to this division, the retail business that displays
15 any of the items described in this subdivision in a self-service
16 display shall have the burden of proving that it qualifies for the
17 exemption established in this subdivision.

18 (d) The Attorney General, a city attorney, a county counsel, or
19 a district attorney may bring a civil action to enforce this section.

20 (e) This section does not preempt or otherwise prohibit the
21 adoption of a local standard that imposes greater restrictions on
22 the access to tobacco products or electronic cigarettes than the
23 restrictions imposed by this section. To the extent that there is an
24 inconsistency between this section and a local standard that
25 imposes greater restrictions on the access to tobacco products or
26 electronic cigarettes, the greater restriction on the access to tobacco
27 products or electronic cigarettes in the local standard shall prevail.

28 SEC. 10. Section 22963 of the Business and Professions Code
29 is amended to read:

30 22963. (a) The sale, distribution, or nonsale distribution of
31 tobacco products or electronic cigarettes directly or indirectly to
32 any person under ~~the age of 18~~ *21 years of age* through the United
33 States Postal Service or through any other public or private postal
34 or package delivery service at locations, including, but not limited
35 to, public mailboxes and mailbox stores, is prohibited.

36 (b) Any person selling or distributing, or engaging in the nonsale
37 distribution of, tobacco products or electronic cigarettes directly
38 to a consumer in the state through the United States Postal Service
39 or by any other public or private postal or package delivery service,

1 including orders placed by mail, telephone, facsimile transmission,
2 or the Internet, shall comply with the following provisions:

3 (1) (A) Before enrolling a person as a customer, or distributing
4 or selling, or engaging in the nonsale distribution of, the tobacco
5 product or electronic cigarette through any of these means, the
6 distributor or seller shall verify that the purchaser or recipient of
7 the product is ~~18~~ 21 years of age or older. The distributor or seller
8 shall attempt to match the name, address, and date of birth provided
9 by the customer to information contained in records in a database
10 of individuals whose age has been verified to be ~~18~~ 21 years or
11 older by reference to an appropriate database of government records
12 kept by the distributor, a direct marketing firm, or any other entity.
13 In the case of a sale, the distributor or seller shall also verify that
14 the billing address on the check or credit card offered for payment
15 by the purchaser matches the address listed in the database.

16 (B) If the seller, distributor, or nonsale distributor, is unable to
17 verify that the purchaser or recipient is ~~18~~ 21 years of age or older
18 pursuant to subparagraph (A), he or she shall require the customer
19 or recipient to submit an age-verification kit consisting of an
20 attestation signed by the customer or recipient that he or she is ~~18~~
21 21 years of age or older and a copy of a valid form of government
22 identification. For the purposes of this section, a valid form of
23 government identification includes a driver's license, state
24 identification card, passport, an official naturalization or
25 immigration document, such as an alien registration receipt card
26 (commonly known as a "green card") or an immigrant visa, or
27 military identification. In the case of a sale, the distributor or seller
28 shall also verify that the billing address on the check or credit card
29 provided by the consumer matches the address listed in the form
30 of government identification.

31 (2) In the case of a sale, the distributor or seller shall impose a
32 two-carton minimum on each order of cigarettes, and shall require
33 payment for the purchase of any tobacco product or electronic
34 cigarette to be made by personal check of the purchaser or the
35 purchaser's credit card. No money order or cash payment shall be
36 received or permitted. The distributor or seller shall submit to each
37 credit card acquiring company with which it has credit card sales
38 identification information in an appropriate form and format so
39 that the words "tobacco product" or "electronic cigarette" may be
40 printed in the purchaser's credit card statement when a purchase

1 of a tobacco product or electronic cigarette is made by credit card
2 payment.

3 (3) In the case of a sale, the distributor or seller shall make a
4 telephone call after 5 p.m. to the purchaser confirming the order
5 prior to shipping the tobacco products or electronic cigarettes. The
6 telephone call may be a person-to-person call or a recorded
7 message. The distributor or seller is not required to speak directly
8 with a person and may leave a message on an answering machine
9 or by voice mail.

10 (4) The nonsale distributor shall deliver the tobacco product or
11 electronic cigarette to the recipient’s verified mailing address, or
12 in the case of a sale, the seller or distributor shall deliver the
13 tobacco product or electronic cigarette to the purchaser’s verified
14 billing address on the check or credit card used for payment. No
15 delivery described under this section shall be permitted to any post
16 office box.

17 (c) Notwithstanding subdivisions (a) and (b), if a seller,
18 distributor, or nonsale distributor, complies with all of the
19 requirements of this section and a ~~minor~~ *person under 21 years of*
20 *age* obtains a tobacco product or electronic cigarette by any of the
21 means described in subdivision (b), the seller, distributor, or
22 nonsale distributor is not in violation of this section.

23 (d) For the purposes of the enforcement of this section pursuant
24 to Section 22958, the acts of the United States Postal Service or
25 other common carrier when engaged in the business of transporting
26 and delivering packages for others, and the acts of a person,
27 whether compensated or not, who transports or delivers a package
28 for another person without any reason to know of the package’s
29 contents, are not unlawful and are not subject to civil penalties.

30 (e) (1) (A) For the purposes of this section, a “distributor” is
31 any person or entity, within or outside the state, who agrees to
32 distribute tobacco products or electronic cigarettes to a customer
33 or recipient within the state. The United States Postal Service or
34 any other public or private postal or package delivery service are
35 not distributors within the meaning of this section.

36 (B) A “nonsale distributor” is any person inside or outside of
37 this state who, directly or indirectly, knowingly provides tobacco
38 products or electronic cigarettes to any person in this state as part
39 of a nonsale transaction. “Nonsale distributor” includes the person
40 or entity who provides the tobacco product or electronic cigarette

1 for delivery and the person or entity who delivers the product to
2 the recipient as part of a nonsale transaction.

3 (C) “Nonsale distribution” means to give electronic cigarettes,
4 smokeless tobacco, or cigarettes to the general public at no cost,
5 or at nominal cost, or to give coupons, coupon offers, gift
6 certificates, gift cards, or other similar offers, or rebate offers for
7 electronic cigarettes, smokeless tobacco, or cigarettes to the general
8 public at no cost or at nominal cost. Distribution of electronic
9 cigarettes, tobacco products, coupons, coupon offers, gift
10 certificates, gift cards, or other similar offers, or rebate offers in
11 connection with the sale of another item, including electronic
12 cigarettes, tobacco products, cigarette lighters, magazines, or
13 newspapers shall not constitute nonsale distribution.

14 (2) For the purpose of this section, a “seller” is any person or
15 entity, within or outside the state, who agrees to sell tobacco
16 products or electronic cigarettes to a customer within the state.
17 The United States Postal Service or any other public or private
18 postal or package delivery service are not sellers within the
19 meaning of this section.

20 (3) For the purpose of this section, a “carton” is a package or
21 container that contains 200 cigarettes.

22 (f) A district attorney, city attorney, or the Attorney General
23 may assess civil penalties against any person, firm, corporation,
24 or other entity that violates this section, according to the following
25 schedule:

26 (1) A civil penalty of not less than one thousand dollars (\$1,000)
27 and not more than two thousand dollars (\$2,000) for the first
28 violation.

29 (2) A civil penalty of not less than two thousand five hundred
30 dollars (\$2,500) and not more than three thousand five hundred
31 dollars (\$3,500) for the second violation.

32 (3) A civil penalty of not less than four thousand dollars (\$4,000)
33 and not more than five thousand dollars (\$5,000) for the third
34 violation within a five-year period.

35 (4) A civil penalty of not less than five thousand five hundred
36 dollars (\$5,500) and not more than six thousand five hundred
37 dollars (\$6,500) for the fourth violation within a five-year period.

38 (5) A civil penalty of ten thousand dollars (\$10,000) for a fifth
39 or subsequent violation within a five-year period.

1 SEC. 11. Section 22970.2 of the Business and Professions
2 Code is amended to read:

3 22970.2. The board shall administer a statewide program to
4 license manufacturers, importers, distributors, wholesalers, and
5 retailers of cigarettes and tobacco products, and retailers of
6 electronic cigarettes.

7 SEC. 12. Section 22971 of the Business and Professions Code
8 is amended to read:

9 22971. For purposes of this division, the following terms shall
10 have the following meanings:

11 (a) “Board” means the State Board of Equalization.

12 (b) “Brand family” has the same meaning as that term is defined
13 in paragraph (2) of subdivision (a) of Section 30165.1 of the
14 Revenue and Taxation Code.

15 (c) (1) “Cigarette” means a cigarette as defined in Section 30003
16 of the Revenue and Taxation Code.

17 (2) “Electronic cigarette” means a device as defined in
18 subdivision (c) of Section 22950.5.

19 (d) (1) “Control” or “controlling” means possession, direct or
20 indirect, of the power:

21 (A) To vote 25 percent or more of any class of the voting
22 securities issued by a person.

23 (B) To direct or cause the direction of the management and
24 policies of a person, whether through the ownership of voting
25 securities, by contract, other than a commercial contract for goods
26 or nonmanagement services, or as otherwise provided; however,
27 no individual shall be deemed to control a person solely on account
28 of being a director, officer, or employee of that person.

29 (2) For purposes of subparagraph (B) of paragraph (1), a person
30 who, directly or indirectly, owns, controls, holds, with the power
31 to vote, or holds proxies representing 10 percent or more of the
32 then outstanding voting securities issued by another person, is
33 presumed to control that other person.

34 (3) For purposes of this division, the board may determine
35 whether a person in fact controls another person.

36 (e) “Display for sale” means the placement of cigarettes,
37 electronic cigarettes, or tobacco products in a vending machine or
38 in retail stock for the purpose of selling or gifting the cigarettes,
39 electronic cigarettes, or tobacco products. For purposes of this
40 definition, the clear and easily visible display of cigarettes,

1 electronic cigarettes, or tobacco products shall create a rebuttable
2 presumption that the products were displayed for sale.

3 (f) “Distributor” means a distributor as defined in Section 30011
4 of the Revenue and Taxation Code.

5 (g) “Gifting” means any transfer of title or possession without
6 consideration, exchange, or barter, in any manner or by any means,
7 of cigarettes, electronic cigarettes, or tobacco products that have
8 been purchased for resale under a license issued pursuant to this
9 division if the transfer occurs while the license is suspended or
10 after the effective date of its revocation.

11 (h) “Importer” means an importer as defined in Section 30019
12 of the Revenue and Taxation Code.

13 (i) “Law enforcement agency” means a sheriff, a police
14 department, or a city, county, or city and county agency or
15 department designated by the governing body of that agency to
16 enforce this chapter or to enforce local smoking and tobacco
17 ordinances and regulations.

18 (j) “License” means a license issued by the board pursuant to
19 this division.

20 (k) “Licensee” means any person holding a license issued by
21 the board pursuant to this division.

22 (l) “Manufacturer” means a manufacturer of cigarettes or
23 tobacco products sold in this state.

24 (m) “Notice” or “notification” means, unless as otherwise
25 provided, the written notice or notification provided to a licensee
26 by the board by either actual delivery to the licensee or by
27 first-class mail addressed to the licensee at the address on the
28 license.

29 (n) “Package of cigarettes” means a package as defined in
30 Section 30015 of the Revenue and Taxation Code.

31 (o) “Person” means a person as defined in Section 30010 of the
32 Revenue and Taxation Code.

33 (p) “Retailer” means a person who engages in this state in the
34 sale of cigarettes, electronic cigarettes, or tobacco products directly
35 to the public from a retail location. Retailer includes a person who
36 operates vending machines from which cigarettes, electronic
37 cigarettes, or tobacco products are sold in this state.

38 (q) “Retail location” means both of the following:

39 (1) Any building from which cigarettes, electronic cigarettes,
40 or tobacco products are sold at retail.

1 (2) A vending machine.

2 (r) “Sale” or “sold” means a sale as defined in Section 30006
3 of the Revenue and Taxation Code.

4 (s) “Tobacco products” means tobacco products as defined in
5 subdivision (b) of Section 30121 and subdivision (b) of Section
6 30131.1 of the Revenue and Taxation Code.

7 (t) “Unstamped package of cigarettes” means a package of
8 cigarettes that does not bear a tax stamp as required under Part 13
9 (commencing with Section 30001) of Division 2 of the Revenue
10 and Taxation Code, including a package of cigarettes that bears a
11 tax stamp of another state or taxing jurisdiction, a package of
12 cigarettes that bears a counterfeit tax stamp, or a stamped or
13 unstamped package of cigarettes that is marked “Not for sale in
14 the United States.”

15 (u) “Wholesaler” means a wholesaler as defined in Section
16 30016 of the Revenue and Taxation Code.

17 SEC. 13. Section 22972 of the Business and Professions Code
18 is amended to read:

19 22972. (a) A retailer shall have in place and maintain a license
20 to engage in the sale of cigarettes, electronic cigarettes, or tobacco
21 products. A retailer that owns or controls more than one retail
22 location shall obtain a separate license for each retail location, but
23 may submit a single application for those licenses.

24 (b) The retailer shall conspicuously display the license at each
25 retail location in a manner visible to the public.

26 (c) A license is not assignable or transferable. A person who
27 obtains a license as a retailer who ceases to do business as specified
28 in the license, or who never commenced business, or whose license
29 is suspended or revoked, shall immediately surrender the license
30 to the board.

31 (d) A license shall be valid for a 12-month period, and shall be
32 renewed annually.

33 (e) The amendments made to this section by the act adding this
34 subdivision that require the licensure of a retail seller of electronic
35 cigarettes shall become operative on September 30, 2016.

36 SEC. 14. Section 22973 of the Business and Professions Code
37 is amended to read:

38 22973. (a) An application for a license shall be filed on a form
39 prescribed by the board and shall include the following:

40 (1) The name, address, and telephone number of the applicant.

1 (2) The business name, address, and telephone number of each
2 retail location. For applicants who control more than one retail
3 location, an address for receipt of correspondence or notices from
4 the board, such as a headquarters or corporate office of the retailer,
5 shall also be included on the application and listed on the license.
6 Citations issued to licensees shall be forwarded to all addressees
7 on the license.

8 (3) A statement by the applicant affirming that the applicant
9 has not been convicted of a felony and has not violated and will
10 not violate or cause or permit to be violated any of the provisions
11 of this division or any rule of the board applicable to the applicant
12 or pertaining to the manufacture, sale, or distribution of cigarettes
13 or tobacco products, or manufacture or sale of electronic cigarettes.
14 If the applicant is unable to affirm this statement, the application
15 shall contain a statement by the applicant of the nature of any
16 violation or the reasons that will prevent the applicant from
17 complying with the requirements with respect to the statement.

18 (4) If any other licenses or permits have been issued by the
19 board or the Department of Alcoholic Beverage Control to the
20 applicant, the license or permit number of those licenses or permits
21 then in effect.

22 (5) A statement by the applicant that the contents of the
23 application are complete, true, and correct. Any person who signs
24 a statement pursuant to this subdivision that asserts the truth of
25 any material matter that he or she knows to be false is guilty of a
26 misdemeanor punishable by imprisonment of up to one year in the
27 county jail, or a fine of not more than one thousand dollars
28 (\$1,000), or both the imprisonment and the fine.

29 (6) The signature of the applicant.

30 (7) Any other information the board may require.

31 (b) The board may investigate to determine the truthfulness and
32 completeness of the information provided in the application. The
33 board may issue a license without further investigation to an
34 applicant for a retail location if the applicant holds a valid license
35 from the Department of Alcoholic Beverage Control for that same
36 location.

37 (c) The board shall provide electronic means for applicants to
38 download and submit applications.

39 (d) (1) A one-time license fee of one hundred dollars (\$100)
40 shall be submitted with each application. An applicant that owns

1 or controls more than one retail location shall obtain a separate
2 license for each retail location, but may submit a single application
3 for those licenses with a one-time license fee of one hundred dollars
4 (\$100) per location.

5 (2) The one-time fee required by this subdivision does not apply
6 to an application for renewal of a license for a retail location for
7 which the one-time license fee has already been paid. If a license
8 is reinstated after its expiration, the retailer, as a condition
9 precedent to its reinstatement, shall pay a reinstatement fee of one
10 hundred dollars (\$100).

11 (e) The amendments made to this section by the act adding this
12 subdivision shall become operative on July 1, 2016.

13 SEC. 15. Section 22974 of the Business and Professions Code
14 is amended to read:

15 22974. A retailer shall retain purchase invoices that meet the
16 requirements set forth in Section 22978.4 for all cigarettes or
17 tobacco products the retailer purchased for a period of four years.
18 The records shall be kept at the retail location for at least one year
19 after the purchase. Invoices shall be made available upon request
20 during normal business hours for review inspection and copying
21 by the board or by a law enforcement agency. Any retailer found
22 in violation of these requirements or any person who fails, refuses,
23 or neglects to retain or make available invoices for inspection and
24 copying in accordance with this section shall be subject to penalties
25 pursuant to Section 22981.

26 SEC. 16. Section 22974.7 of the Business and Professions
27 Code is amended to read:

28 22974.7. In addition to any other civil or criminal penalty
29 provided by law, upon a finding that a retailer has violated any
30 provision of this division, the board may take the following actions:

31 (a) In the case of the first offense, the board may revoke or
32 suspend the license or licenses of the retailer pursuant to the
33 procedures applicable to the revocation of a license set forth in
34 Section 30148 of the Revenue and Taxation Code.

35 (b) In the case of a second or any subsequent offense, in addition
36 to the action authorized under subdivision (a), the board may
37 impose a civil penalty in an amount not to exceed the greater of
38 either of the following:

39 (1) Five times the retail value of the seized cigarettes, electronic
40 cigarettes, or tobacco products.

1 (2) Five thousand dollars (\$5,000).

2 SEC. 17. Section 22980 of the Business and Professions Code
3 is amended to read:

4 22980. (a) (1) Any peace officer, or board employee granted
5 limited peace officer status pursuant to paragraph (6) of subdivision
6 (a) of Section 830.11 of the Penal Code, upon presenting
7 appropriate credentials, is authorized to enter any place as described
8 in paragraph (3) and to conduct inspections in accordance with the
9 following paragraphs, inclusive.

10 (2) Inspections shall be performed in a reasonable manner and
11 at times that are reasonable under the circumstances, taking into
12 consideration the normal business hours of the place to be entered.

13 (3) Inspections may be at any place at which cigarettes,
14 electronic cigarettes, or tobacco products are sold, produced, or
15 stored or at any site where evidence of activities involving evasion
16 of cigarette or tobacco products tax and violations of Section
17 30165.1 of the Revenue and Taxation Code may be discovered.

18 (4) Inspections shall be requested or conducted no more than
19 once in a 24-hour period.

20 (b) Any person that refuses to allow an inspection shall be
21 subject to the penalties imposed pursuant to Section 22981.

22 SEC. 18. Section 22980.1 of the Business and Professions
23 Code is amended to read:

24 22980.1. (a) A manufacturer or importer shall not sell
25 cigarettes or tobacco products to a distributor, wholesaler, retailer,
26 or any other person who is not licensed pursuant to this division
27 or whose license has been suspended or revoked.

28 (b) (1) Except as provided in paragraph (2), no distributor or
29 wholesaler shall sell cigarettes or tobacco products to a retailer,
30 wholesaler, distributor, or any other person who is not licensed
31 pursuant to this division or whose license has been suspended or
32 revoked.

33 (2) This subdivision does not apply to any sale of cigarettes or
34 tobacco products by a distributor, wholesaler, or any other person
35 to a retailer, wholesaler, distributor, or any other person that the
36 state, pursuant to the United States Constitution, the laws of the
37 United States, or the California Constitution, is prohibited from
38 regulating.

39 (c) No retailer, distributor, or wholesaler shall purchase packages
40 of cigarettes or tobacco products from a manufacturer or importer

1 who is not licensed pursuant to this division or whose license has
2 been suspended or revoked.

3 (d) (1) ~~No retailer,~~ A retailer or wholesaler shall *not* purchase
4 ~~cigarettes, cigarettes~~ or tobacco products from any person who is
5 not licensed pursuant to this division or whose license has been
6 suspended or revoked.

7 (2) Notwithstanding subdivision (c), ~~no~~ a distributor shall *not*
8 purchase cigarettes or tobacco products from any person who is
9 required to be licensed pursuant to this division but who is not
10 licensed or whose license has been suspended or revoked.

11 (e) Each separate sale to, or by, a retailer, wholesaler, distributor,
12 importer, manufacturer, or any other person who is not licensed
13 pursuant to this division shall constitute a separate violation.

14 (f) A manufacturer, distributor, wholesaler, or importer shall
15 not sell cigarettes or tobacco products to any retailer or wholesaler
16 whose license has been suspended or revoked unless all outstanding
17 debts of that retailer or wholesaler that are owed to a wholesaler
18 or distributor for cigarettes or tobacco products are paid and the
19 license of that retailer or wholesaler has been reinstated by the
20 board. Any payment received from a retailer or wholesaler shall
21 be credited first to the outstanding debt for cigarettes or tobacco
22 products and must be immediately reported to the board. The board
23 shall determine the debt status of a suspended retailer or wholesaler
24 licensee 25 days prior to the reinstatement of the license.

25 (g) ~~No~~ An importer, distributor, or wholesaler, or distributor
26 functioning as a wholesaler, or retailer, shall *not* purchase, obtain,
27 or otherwise acquire any package of cigarettes to which a stamp
28 or meter impression may not be affixed in accordance with
29 subdivision (b) of Section 30163 or subdivision (e) of Section
30 30165.1 of the Revenue and Taxation Code, or any cigarettes
31 obtained from a manufacturer or importer that cannot demonstrate
32 full compliance with all requirements of the federal Cigarette
33 Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for
34 the reporting of ingredients added to cigarettes.

35 (h) (1) Failure to comply with the provisions of this section
36 shall be a misdemeanor subject to penalties pursuant to Section
37 22981.

38 (2) Notwithstanding paragraph (1), a manufacturer or importer
39 who uses the most up-to-date licensing information provided by

1 the board on the board’s Internet Web site to determine a person’s
2 licensing status is presumed to be in compliance with this section.

3 SEC. 19. Section 22980.2 of the Business and Professions
4 Code is amended to read:

5 22980.2. (a) A person or entity that engages in the business
6 of selling cigarettes or tobacco products in this state, or a retailer
7 that engages in the business of selling cigarettes, electronic
8 cigarettes, or tobacco products in this state, either without a valid
9 license or after a license has been suspended or revoked, and each
10 officer of any corporation that so engages in this business, is guilty
11 of a misdemeanor punishable as provided in Section 22981.

12 (b) (1) Each day after notification by the board or by a law
13 enforcement agency that a manufacturer, wholesaler, distributor,
14 importer, retailer, or any other person required to be licensed under
15 this division offers cigarettes and tobacco products for sale or
16 exchange without a valid license for the location from which they
17 are offered for sale shall constitute a separate violation.

18 (2) Each day after notification by the board or by a law
19 enforcement agency that a retailer offers electronic cigarettes for
20 sale or exchange without a valid license for the location from which
21 they are offered for sale shall constitute a separate violation.

22 (c) (1) Continued sales or gifting of cigarettes and tobacco
23 products either without a valid license or after a notification of
24 suspension or revocation shall constitute a violation punishable as
25 provided in Section 22981, and shall result in the seizure of all
26 cigarettes and tobacco products in the possession of the person by
27 the board or a law enforcement agency. Any cigarettes and tobacco
28 products seized by the board or by a law enforcement agency shall
29 be deemed forfeited.

30 (2) Continued sale or gifting of electronic cigarettes by a retailer
31 either without a valid license or after a notification of suspension
32 or revocation shall constitute a violation punishable as provided
33 in Section 22981, and shall result in the seizure of all electronic
34 cigarettes in the possession of the person by the board or a law
35 enforcement agency. Any electronic cigarettes seized by the board
36 or by a law enforcement agency shall be forfeited.

37 SEC. 20. Section 22980.3 of the Business and Professions
38 Code is amended to read:

1 22980.3. (a) Licenses issued pursuant to this division shall be
2 subject to suspension or revocation for violations of this division
3 or the Revenue and Taxation Code as provided in this section.

4 (1) In addition to any applicable fines or penalties for a violation,
5 upon first conviction of a violation, a licensee shall receive a
6 written notice from the board detailing the suspension and
7 revocation provisions of this division. At its discretion, the board
8 may also suspend a license for up to 30 days.

9 (2) In addition to any applicable fines or penalties for a violation,
10 upon a second conviction of a violation within four years of a
11 previous violation, the license shall be revoked.

12 (b) The date of the occurrence of a violation shall be used to
13 calculate the duration between subsequent violations. A violation
14 shall be noted in the license record at the board only after judicial
15 conviction or final adjudication of a violation.

16 (c) Upon updating a record for a violation triggering a
17 suspension, the board shall serve the licensee with a notice of
18 suspension and shall order the licensee to cease the sale, gifting,
19 or displaying for sale of cigarettes or tobacco products for the
20 period of the suspension, and in the case of a licensee that is a
21 retailer, shall also order the retailer to cease the sale, gifting, or
22 displaying for sale of electronic cigarettes, for the period of the
23 suspension. The notice of suspension shall inform the licensee of
24 the effective dates of the suspension.

25 (d) Continued sales or gifting of cigarettes or tobacco products,
26 or electronic cigarettes in the case of a retailer, after the effective
27 date of the suspension shall constitute a violation of this division
28 and result in the revocation of a license.

29 (e) Upon completion of a suspension period, a license shall be
30 reinstated by the board upon certification that all outstanding debts
31 of that retailer or wholesaler that are owed to a wholesaler or
32 distributor for the purchase of cigarettes and tobacco products are
33 paid.

34 (f) Upon updating a record for a violation triggering a
35 revocation, the board shall serve the licensee with a notice of
36 revocation and shall order the licensee to cease the sale, gifting,
37 or displaying for sale of cigarettes or tobacco products, and in the
38 case of a licensee that is a retailer, shall also order the retailer to
39 cease the sale, gifting, or displaying for sale of electronic cigarettes,
40 on and after the effective date of the revocation. The notice of

1 revocation shall inform the licensee of the effective date of the
2 revocation.

3 (g) After a revocation, a previously licensed applicant may apply
4 for a new license after six months. The board may, at its discretion,
5 issue a new license.

6 (h) Upon updating a license record for a violation, suspension,
7 or revocation to a license of a person or entity that owns or controls
8 more than one location, the board shall send notice in writing of
9 the violations, suspensions, or revocations within 15 days of the
10 board's action to the address included in the application and listed
11 on the license for receipt of correspondence or notices from the
12 board.

13 (i) Upon suspension or revocation of a license pursuant to this
14 section, the board shall notify all licensed distributors and
15 wholesalers by electronic mail within 48 hours of the suspension
16 or revocation of that license. All licensed distributors and
17 wholesalers shall provide the board and shall update, as necessary,
18 an electronic mail address that the board can use for purposes of
19 making the notifications required by this subdivision.

20 (j) Violations by a licensee at one location may not be
21 accumulated against other locations of that same licensee.
22 Violations accumulated against a prior owner at a licensed location
23 may not be accumulated against a new owner at the same licensed
24 location.

25 (k) For purposes of this section, a violation includes violations
26 of the Revenue and Taxation Code relating to cigarettes and
27 tobacco products, and violations of this division. Only one violation
28 per discrete action shall be counted toward a suspension or
29 revocation of a license.

30 SEC. 21. Section 22980.4 of the Business and Professions
31 Code is amended to read:

32 22980.4. A person who, after receiving a notice of suspension
33 or revocation, continues to display for sale cigarettes or tobacco
34 products, or in the case of a retailer also continues to display for
35 sale electronic cigarettes, shall be subject to a civil penalty of one
36 thousand dollars (\$1,000) for each offense, and shall not be subject
37 to Section 22981.

38 SEC. 22. Section 1947.5 of the Civil Code is amended to read:

39 1947.5. (a) A landlord of a residential dwelling unit, as defined
40 in Section 1940, or his or her agent, may prohibit the smoking of

1 a cigarette, as defined in Section 104556 of the Health and Safety
2 Code, or other tobacco product, or *the* using *of* an electronic
3 cigarette, as defined in subdivision (c) of Section 22950.5 of the
4 Business and Professions Code, on the property or in any building
5 or portion of the building, including any dwelling unit, other
6 interior or exterior area, or the premises on which it is located, in
7 accordance with this article.

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

16 (2) For a lease or rental agreement entered into before January
17 1, 2012, a prohibition against the smoking of cigarettes or other
18 tobacco products, or *the* using *of* an electronic cigarette, in any
19 portion of the property in which smoking or using an electronic
20 cigarette was previously permitted shall constitute a change of the
21 terms of tenancy, requiring adequate notice in writing, to be
22 provided in the manner prescribed in Section 827.

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

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

35 (e) A limitation or prohibition of the use of any tobacco product
36 or the use of an electronic cigarette shall not affect any other term
37 or condition of the tenancy, nor shall this section be construed to
38 require statutory authority to establish or enforce any other lawful
39 term or condition of the tenancy.

1 SEC. 23. Section 48901 of the Education Code is amended to
2 read:

3 48901. (a) A school shall not permit the smoking or use of
4 tobacco, or any product containing tobacco or nicotine products,
5 or using an electronic cigarette as defined in subdivision (c) of
6 Section 22950.5 of the Business and Professions Code, by pupils
7 of the school while the pupils are on campus, or while attending
8 school-sponsored activities or while under the supervision and
9 control of school district employees.

10 (b) The governing board of any school district maintaining a
11 high school shall take all steps it deems practical to discourage
12 high school students from smoking or from using an electronic
13 cigarette.

14 SEC. 24. Section 7597 of the Government Code is amended
15 to read:

16 7597. (a) A public employee or member of the public shall
17 not smoke any tobacco product, or use an electronic cigarette as
18 defined in subdivision (c) of Section 22950.5 of the Business and
19 Professions Code, inside a public building, or in an outdoor area
20 within 20 feet of a main exit, entrance, or operable window of a
21 public building, or in a passenger vehicle, as defined by Section
22 465 of the Vehicle Code, owned by the state.

23 (b) This section does not preempt the authority of any county,
24 city, city and county, California Community College campus,
25 campus of the California State University, or campus of the
26 University of California to adopt and enforce additional smoking
27 and tobacco control, and electronic cigarette, ordinances,
28 regulations, or policies that are more restrictive than the applicable
29 standards required by this chapter.

30 SEC. 25. Section 1234 of the Health and Safety Code is
31 amended to read:

32 1234. (a) Smoking, or using an electronic cigarette as defined
33 in subdivision (c) of Section 22950.5 of the Business and
34 Professions Code, is prohibited in patient areas of a clinic except
35 those rooms designated for occupancy exclusively by smokers.

36 (b) Clearly legible signs shall either:

37 (1) State that smoking, or using an electronic cigarette, is
38 unlawful and be conspicuously posted by, or on behalf of, the
39 owner or manager of such clinic, in all areas of a clinic where
40 smoking, or using an electronic cigarette, is unlawful.

1 (2) Identify “smoking permitted” areas, and be posted by, or
2 on behalf of, the owner or manager of such clinic, only in areas of
3 a clinic where smoking, or using an electronic cigarette, is lawfully
4 permitted.

5 If “smoking permitted” signs are posted, there shall also be
6 conspicuously posted, near all major entrances, clearly legible
7 signs stating that smoking, or using an electronic cigarette, is
8 unlawful except in areas designated “smoking permitted.”

9 (c) This section shall not apply to skilled nursing facilities,
10 intermediate care facilities, and intermediate care facilities for the
11 developmentally disabled.

12 SEC. 26. Section 1286 of the Health and Safety Code is
13 amended to read:

14 1286. (a) Smoking, or using an electronic cigarette as defined
15 in subdivision (c) of Section 22950.5 of the Business and
16 Professions Code, is prohibited in patient care areas, waiting rooms,
17 and visiting rooms of a health facility, except those areas
18 specifically designated as smoking areas, and in patient rooms as
19 specified in subdivision (b).

20 (b) Smoking, or using an electronic cigarette, shall not be
21 permitted in a patient room unless all persons assigned to such
22 room have requested a room where smoking, or using an electronic
23 cigarette, is permitted. In the event that the health facility
24 occupancy has reached capacity, the health facility shall have
25 reasonable time to reassign patients to appropriate rooms.

26 (c) Clearly legible signs shall either:

27 (1) State that smoking, or using an electronic cigarette, is
28 unlawful and be conspicuously posted by, or on behalf of, the
29 owner or manager of such health facility, in all areas of a health
30 facility where smoking, or using an electronic cigarette, is ~~unlawful,~~
31 ~~or~~ *unlawful*.

32 (2) Identify “smoking permitted” areas, and be posted by, or
33 on behalf of, the owner or manager of such health facility, only in
34 areas of the health facility where smoking, or using an electronic
35 cigarette, is lawfully permitted.

36 If “smoking permitted” signs are posted, there shall also be
37 conspicuously posted, near all major entrances, clearly legible
38 signs stating that smoking, or using an electronic cigarette, is
39 unlawful except in areas designated “smoking permitted.”

1 (d) No signs pertaining to smoking, or using an electronic
2 cigarette, are required to be posted in patient rooms.

3 (e) This section shall not apply to skilled nursing facilities,
4 intermediate care facilities, and intermediate care facilities for the
5 developmentally disabled.

6 SEC. 27. Section 1530.7 of the Health and Safety Code is
7 amended to read:

8 1530.7. (a) Group homes, foster family agencies, small family
9 homes, transitional housing placement providers, and crisis
10 nurseries licensed pursuant to this chapter shall maintain a
11 smoke-free environment, and an environment free of electronic
12 cigarettes as defined in subdivision (c) of Section 22950.5 of the
13 Business and Professions Code, in the facility.

14 (b) A person who is licensed or certified pursuant to this chapter
15 to provide residential care in a foster family home or certified
16 family home shall not smoke, or use an electronic cigarette, or
17 permit any other person to smoke, or use an electronic cigarette,
18 inside the facility, and, when the child is present, on the outdoor
19 grounds of the facility.

20 (c) A person who is licensed or certified pursuant to this chapter
21 to provide residential foster care shall not smoke, or use an
22 electronic cigarette, in any motor vehicle that is regularly used to
23 transport the child.

24 SEC. 28. Section 1596.795 of the Health and Safety Code is
25 amended to read:

26 1596.795. (a) The smoking of tobacco, or use of an electronic
27 cigarette as defined in subdivision (c) of Section 22950.5 of the
28 Business and Professions Code, in a private residence that is
29 licensed as a family day care home is prohibited in the home and
30 in those areas of the family day care home where children are
31 present. Nothing in this section shall prohibit a city or county from
32 enacting or enforcing an ordinance relating to smoking, or using
33 an electronic cigarette, in a family day care home if the ordinance
34 is more stringent than this section.

35 (b) The smoking of tobacco, or using an electronic cigarette,
36 on the premises of a licensed day care center is prohibited.

37 SEC. 29. Section 104495 of the Health and Safety Code is
38 amended to read:

39 104495. (a) For the purposes of this section, the following
40 definitions shall govern:

1 (1) “Playground” means any park or recreational area
2 specifically designed to be used by children that has play equipment
3 installed, or any similar facility located on public or private school
4 grounds, or on city, county, or state park grounds.

5 (2) “Tot lot sandbox area” means a designated play area within
6 a public park for the use by children under five years of age. Where
7 the area is not contained by a fence, the boundary of a tot lot
8 sandbox area shall be defined by the edge of the resilient surface
9 of safety material, such as concrete or wood, or any other material
10 surrounding the tot lot sandbox area.

11 (3) “Public park” includes a park operated by a public agency.

12 (4) “Smoke or smoking” means the carrying of a lighted pipe,
13 lighted cigar, or lighted cigarette of any kind, or the lighting of a
14 pipe, cigar, or cigarette of any kind, including, but not limited to,
15 tobacco, or any other weed or plant.

16 (5) “Cigarette” means the same as defined in Section 104556.

17 (6) “Cigar” means the same as defined in Section 104550.

18 (b) No person shall smoke a cigarette, cigar, or other
19 tobacco-related product, or use an electronic cigarette as defined
20 in subdivision (c) of Section 22950.5 of the Business and
21 Professions Code, within 25 feet of any playground or tot lot
22 sandbox area.

23 (c) No person shall dispose of cigarette butts, cigar butts, or
24 any other tobacco-related waste, or an electronic cigarette or related
25 waste, within 25 feet of a playground or a tot lot sandbox area.

26 (d) No person shall intimidate, threaten any reprisal, or effect
27 any reprisal, for the purpose of retaliating against another person
28 who seeks to attain compliance with this section.

29 (e) Any person who violates this section is guilty of an
30 infraction and shall be punished by a fine of two hundred fifty
31 dollars (\$250) for each violation of this section. Punishment under
32 this section shall not preclude punishment pursuant to Section
33 13002, Section 374.4 of the Penal Code, or any other provision of
34 law proscribing the act of littering.

35 (f) The prohibitions contained in subdivisions (b), (c), and (d)
36 shall not apply to private property.

37 (g) The prohibitions contained in subdivisions (b) and (c) shall
38 not apply to a public sidewalk located within 25 feet of a
39 playground or a tot lot sandbox area.

1 (h) This section does not preempt the authority of any county,
2 city, or city and county to regulate smoking, or the use of an
3 electronic cigarette, around playgrounds or tot lot sandbox areas.
4 Any county, city, or city and county may enforce any ordinance
5 adopted prior to January 1, 2002, or may adopt and enforce new
6 regulations that are more restrictive than this section, on and after
7 January 1, 2002.

8 SEC. 30. Section 113953.3 of the Health and Safety Code is
9 amended to read:

10 113953.3. (a) Except as specified in subdivision (b), all
11 employees shall thoroughly wash their hands and that portion, if
12 any, of their arms exposed to direct food contact with cleanser and
13 warm water by vigorously rubbing together the surfaces of their
14 lathered hands and arms for at least 10 to 15 seconds and
15 thoroughly rinsing with clean running water followed by drying
16 of cleaned hands and that portion, if any, of their arms exposed.
17 Employees shall pay particular attention to the areas underneath
18 the fingernails and between the fingers. Employees shall wash
19 their hands in all of the following instances:

20 (1) Immediately before engaging in food preparation, including
21 working with nonprepackaged food, clean equipment and utensils,
22 and unwrapped single-use food containers and utensils.

23 (2) After touching bare human body parts other than clean hands
24 and clean, exposed portions of arms.

25 (3) After using the toilet room.

26 (4) After caring for or handling any animal allowed in a food
27 facility pursuant to this part.

28 (5) After coughing, sneezing, using a handkerchief or disposable
29 tissue, using tobacco, using an electronic cigarette as defined in
30 subdivision (c) of Section 22950.5 of the Business and Professions
31 Code, eating, or drinking.

32 (6) After handling soiled equipment or utensils.

33 (7) During food preparation, as often as necessary to remove
34 soil and contamination and to prevent cross-contamination when
35 changing tasks.

36 (8) When switching between working with raw food and
37 working with ready-to-eat food.

38 (9) Before initially donning gloves for working with food.

39 (10) Before dispensing or serving food or handling clean
40 tableware and serving utensils in the food service area.

1 (11) After engaging in other activities that contaminate the
2 hands.

3 (b) If approved and capable of removing the types of soils
4 encountered in the food operations involved, an automatic
5 handwashing facility may be used by food employees to clean
6 their hands.

7 SEC. 31. Section 113977 of the Health and Safety Code is
8 amended to read:

9 113977. (a) Except as specified in subdivision (b), an employee
10 shall eat, drink, use any form of tobacco, or use an electronic
11 cigarette as defined in subdivision (c) of Section 22950.5 of the
12 Business and Professions Code, only in designated areas where
13 contamination of nonprepackaged food; clean equipment, utensils,
14 and linens; unwrapped single-use articles; or other items needing
15 protection cannot result.

16 (b) A food employee may drink from a closed beverage
17 container if the container is handled to prevent contamination of
18 the employee's hands, the container, nonprepackaged food, and
19 food-contact surfaces.

20 SEC. 32. Section 113978 of the Health and Safety Code is
21 amended to read:

22 113978. Food facilities shall have a sign that states both "no
23 smoking" and "no using electronic cigarettes" posted in the food
24 preparation, food storage, and warewashing areas.

25 SEC. 33. Section 114332.3 of the Health and Safety Code is
26 amended to read:

27 114332.3. (a) A potentially hazardous food or beverage stored
28 or prepared in a private home shall not be offered for sale, sold,
29 or given away from a nonprofit charitable temporary food facility.
30 Potentially hazardous food shall be prepared in a food
31 establishment or on the premises of a nonprofit charitable
32 temporary food facility.

33 (b) All food and beverage shall be protected at all times from
34 unnecessary handling and shall be stored, displayed, and served
35 so as to be protected from contamination.

36 (c) Potentially hazardous food and beverage shall be maintained
37 at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or
38 above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times.

1 (d) Ice used in beverages shall be protected from contamination
2 and shall be maintained separate from ice used for refrigeration
3 purposes.

4 (e) All food and food containers shall be stored off the floor on
5 shelving or pallets located within the facility.

6 (f) Smoking, or using an electronic cigarette as defined in
7 subdivision (c) of Section 22950.5 of the Business and Professions
8 Code, is prohibited in nonprofit charitable temporary food facilities.

9 (g) (1) Except as provided in paragraph (2), live animals, birds,
10 or fowl shall not be kept or allowed in nonprofit charitable
11 temporary food facilities.

12 (2) Paragraph (1) does not prohibit the presence, in any room
13 where food is served to the public, guests, or patrons, of a guide
14 dog, signal dog, or service dog, as defined by Section 54.1 of the
15 Civil Code, accompanied by a totally or partially blind person,
16 deaf person, person whose hearing is impaired, or handicapped
17 person, or dogs accompanied by persons licensed to train guide
18 dogs for the blind pursuant to Chapter 9.5 (commencing with
19 Section 7200) of Division 3 of the Business and Professions Code.

20 (3) Paragraph (1) does not apply to dogs under the control of
21 uniformed law enforcement officers or of uniformed employees
22 of private patrol operators and operators of a private patrol service
23 who are licensed pursuant to Chapter 11.5 (commencing with
24 Section 7580) of Division 3 of the Business and Professions Code,
25 while these employees are acting within the course and scope of
26 their employment as private patrol persons.

27 (4) The persons and operators described in paragraphs (2) and
28 (3) are liable for any damage done to the premises or facilities by
29 the dog.

30 (5) The dogs described in paragraphs (2) and (3) shall be
31 excluded from food preparation and utensil wash areas. Aquariums
32 and aviaries shall be allowed if enclosed so as not to create a public
33 health problem.

34 (h) All garbage shall be disposed of in a sanitary manner.

35 (i) Employees preparing or handling food shall wear clean
36 clothing and shall keep their hands clean at all times.

37 SEC. 34. Section 114371 of the Health and Safety Code is
38 amended to read:

39 114371. Certified farmers' markets shall meet all of the
40 following requirements:

1 (a) All food shall be stored at least six inches off the floor or
2 ground or under any other conditions that are approved. Tents,
3 canopies, or other overhead coverings are not required for fresh
4 whole produce sales displays or storage, except when specifically
5 required pursuant to this chapter. Flavored nuts and dried fruits
6 that are being sold on a bulk or nonprepackaged basis shall be
7 displayed and dispensed by the producer from covered containers.
8 All processed food products being sold shall be in compliance with
9 Section 113735 and the applicable provisions of Section 110460,
10 114365, or 114365.2.

11 (b) Food preparation is prohibited at certified farmers' markets
12 with the exception of food samples. Trimming whole produce for
13 sale shall not be considered food preparation. Distribution of food
14 samples may occur provided that the following sanitary conditions
15 exist:

16 (1) Samples shall be kept in clean, nonabsorbent, and covered
17 containers intended by the manufacturer for use with foods. Any
18 cutting or distribution of samples shall only occur under a tent,
19 canopy, or other overhead covering.

20 (2) All food samples shall be distributed by the producer in a
21 manner that is sanitary and in which each sample is distributed
22 without the possibility of a consumer touching the remaining
23 samples.

24 (3) Clean, disposable plastic gloves shall be used when cutting
25 food samples.

26 (4) Fresh, whole produce intended for sampling shall be washed
27 or cleaned in another manner of any soil or other material by
28 potable water in order that it is wholesome and safe for
29 consumption.

30 (5) Notwithstanding Section 114205, available potable water
31 may be required for handwashing and sanitizing; the need
32 determined and manner approved by the enforcement agency.

33 (6) Potentially hazardous food samples shall be maintained at
34 or below ~~45°F~~ *45 degrees Fahrenheit* and shall be disposed of
35 within two hours after cutting. A certified farmers' market or an
36 enforcement officer may cause immediate removal and disposal,
37 or confiscate and destroy, any potentially hazardous food samples
38 found not in compliance with this paragraph.

1 (7) Wastewater shall be disposed of in a facility connected to
2 the public sewer system or in a manner approved by the
3 enforcement agency.

4 (8) Utensils and cutting surfaces shall be smooth, nonabsorbent,
5 and easily cleanable, or single-use articles shall be utilized. If the
6 producer uses only single-use articles or maintains an adequate
7 supply of clean replacement articles readily available at the site at
8 the time of use, warewashing facilities shall not be required.

9 (c) Approved toilet and handwashing facilities shall be available
10 within 200 feet travel distance of the premises of the certified
11 farmers' market or as approved by the enforcement officer.

12 (d) No live animals, birds, or fowl shall be kept or allowed, and
13 no individual shall bring a live animal, bird, or fowl, within 20
14 feet of any area where food is stored or held for sale within a
15 certified farmers' market. This subdivision does not apply to guide
16 dogs, signal dogs, or service dogs when used in accordance with
17 the federal Americans with Disabilities Act of 1990 (42 U.S.C.
18 Sec. 12101 et seq.), and as provided in Section 36.104 of Title 28
19 of the Code of Federal Regulations. All guide dogs, signal dogs,
20 and service dogs shall be used and properly identified in accordance
21 with Section 54.1 and subdivision (b) of Section 54.2 of the Civil
22 Code, and Sections 30850, 30851, and 30852 of the Food and
23 Agricultural Code.

24 (e) All garbage and refuse shall be stored and disposed of in a
25 manner approved by the enforcement officer.

26 (f) Smoking of cigarettes, cigars, pipe tobacco, and other
27 nicotine products, or using an electronic cigarette as defined in
28 subdivision (c) of Section 22950.5 of the Business and Professions
29 Code, shall not be permitted within 25 feet of the common
30 commerce area comprised of sales personnel and shopping
31 customers of the certified farmers' market.

32 (g) Notwithstanding Chapter 10 (commencing with Section
33 114294) vendors selling food adjacent to, and under the jurisdiction
34 and management of, a certified farmers' market may store, display,
35 and sell from a table or display fixture apart from the mobile
36 facility in a manner approved by the enforcement agency.

37 (h) Temporary food facilities may be operated at a separate
38 community event adjacent to, and in conjunction with, certified
39 farmers' markets. The organization in control of the community

1 event at which these temporary food facilities operate shall comply
2 with Section 114381.1.

3 (i) All harvested, cut, wrapped, or otherwise processed meat,
4 poultry, and fish products shall be from approved sources as set
5 forth in Section 113735, and shall be properly labeled or have
6 documentation present at the point of sale that demonstrates
7 compliance with this requirement. All harvested, cut, wrapped, or
8 otherwise processed meat, poultry, and fish products offered for
9 sale shall be transported, stored, displayed, and maintained at a
10 temperature of ~~41° F~~ *41 degrees Fahrenheit* or colder. The
11 temperature holding capabilities of the storage containers used
12 shall be sufficient to maintain safe product temperatures. Storage
13 containers for meat, poultry, and fish products shall be insulated
14 and have interior surfaces that are smooth, nonabsorbent, and easily
15 cleanable. All meat, poultry, and fish products shall be stored in
16 a manner that reduces the risk of cross-contamination.

17 SEC. 35. Section 118910 of the Health and Safety Code is
18 amended to read:

19 118910. The Legislature declares its intent not to preempt the
20 field of regulation of the smoking of tobacco, or the use of an
21 electronic cigarette as defined in subdivision (c) of Section 22950.5
22 of the Business and Professions Code. A local governing body
23 may ban completely the smoking of tobacco or using an electronic
24 cigarette, or may regulate smoking or the using *of* an electronic
25 cigarette, in any manner not inconsistent with this article and
26 Article 3 (commencing with Section 118920) or any other provision
27 of state law.

28 SEC. 36. Section 118925 of the Health and Safety Code is
29 amended to read:

30 118925. It is unlawful for any person to smoke tobacco or any
31 other plant product, or use an electronic cigarette as defined in
32 subdivision (c) of Section 22950.5 of the Business and Professions
33 Code, in any vehicle of a passenger stage corporation, the National
34 Railroad Passenger Corporation (Amtrak) except to the extent
35 permitted by federal law, in any aircraft except to the extent
36 permitted by federal law, on a public transportation system, as
37 defined by Section 99211 of the Public Utilities Code, or in any
38 vehicle of an entity receiving any transit assistance from the state.

39 SEC. 37. Section 118930 of the Health and Safety Code is
40 amended to read:

1 118930. A notice prohibiting both smoking and using an
2 electronic cigarette as defined in subdivision (c) of Section 22950.5
3 of the Business and Professions Code, displayed as a symbol and
4 in English, shall be posted in each vehicle or aircraft subject to
5 this article.

6 SEC. 38. Section 118935 of the Health and Safety Code is
7 amended to read:

8 118935. (a) Every person and public agency providing
9 transportation services for compensation, including, but not limited
10 to, the National Railroad Passenger Corporation (Amtrak) to the
11 extent permitted by federal law, passenger stage corporations, and
12 local agencies that own or operate airports, shall designate and
13 post, by signs of sufficient number and posted in locations that
14 may be readily seen by persons within the area, a contiguous area
15 of not less than 75 percent of any area made available by the person
16 or public agency as a waiting room for these passengers where the
17 smoking of tobacco, or using an electronic cigarette as defined in
18 subdivision (c) of Section 22950.5 of the Business and Professions
19 Code, is prohibited. Not more than 25 percent of any given area
20 may be set aside for smokers or users of electronic cigarettes.

21 (b) Every person or public agency subject to subdivision (a)
22 shall also post, by sign of sufficient number and posted in locations
23 as to be readily seen by persons within the area of any building
24 where tickets, tokens, or other evidences that a fare has been paid
25 for transportation services that are provided by the person or public
26 agency, a notice that the smoking of tobacco, or use of an electronic
27 cigarette, by persons waiting in line to purchase the tickets, tokens,
28 or other evidences that a fare has been paid is prohibited.

29 (c) It is unlawful for any person to smoke, or use an electronic
30 cigarette, in an area posted pursuant to this section.

31 SEC. 39. Section 118948 of the Health and Safety Code is
32 amended to read:

33 118948. (a) It is unlawful for a person to smoke a pipe, cigar,
34 or cigarette in a motor vehicle, or use an electronic cigarette as
35 defined in subdivision (c) of Section 22950.5 of the Business and
36 Professions Code, whether in motion or at rest, in which there is
37 a minor.

38 (b) For the purposes of this section, “to smoke” means to have
39 in one’s immediate possession a lighted pipe, cigar, or cigarette
40 containing tobacco or any other plant.

1 (c) A violation of this section is an infraction punishable by a
2 fine not exceeding one hundred dollars (\$100) for each violation.

3 *SEC. 40. Section 119405 of the Health and Safety Code is*
4 *amended to read:*

5 119405. (a) To the extent not preempted by federal law,
6 including, but not limited to, the regulation of electronic cigarettes
7 by the United States Food and Drug Administration, it shall be
8 unlawful for a person to sell or otherwise furnish an electronic
9 cigarette, as defined in subdivision (b), to a person under ~~18~~ 21
10 years of age.

11 (b) “Electronic cigarette” means a device that can provide an
12 inhalable dose of nicotine by delivering a vaporized solution.

13 (c) A violation of this section shall be an infraction punishable
14 by a fine not exceeding two hundred dollars (\$200) for the first
15 violation, by a fine not exceeding five hundred dollars (\$500) for
16 the second violation, or by a fine not exceeding one thousand
17 dollars (\$1,000) for a third or subsequent violation.

18 (d) Nothing in this section nor any other law shall be construed
19 to invalidate an existing ordinance of, or prohibit the adoption of
20 an ordinance by, a city or county that regulates the distribution of
21 electronic cigarettes in a manner that is more restrictive than this
22 section, to the extent that the ordinance is not otherwise prohibited
23 by federal law.

24 ~~SEC. 40.~~

25 *SEC. 41. Section 119406 is added to the Health and Safety*
26 *Code, to read:*

27 119406. (a) All cartridges for electronic cigarettes and
28 solutions for filling or refilling an electronic cigarette shall be in
29 childproof packaging.

30 (b) “Childproof packaging” means packaging that contains
31 elements, including, but not limited to, safety caps or blister packs,
32 designed to protect children from being able to open and ingest
33 the contents.

34 ~~SEC. 41.~~

35 *SEC. 42. Section 6404.5 of the Labor Code is amended to read:*

36 6404.5. (a) The Legislature finds and declares that regulation
37 of smoking in the workplace is a matter of statewide interest and
38 concern. It is the intent of the Legislature in enacting this section
39 to prohibit the smoking of tobacco products, and the use of
40 electronic cigarettes as defined in subdivision (c) of Section

1 22950.5 of the Business and Professions Code, in all (100 percent
2 of) enclosed places of employment in this state, as covered by this
3 section, thereby eliminating the need of local governments to enact
4 workplace smoking restrictions or electronic cigarette restrictions
5 within their respective jurisdictions. It is further the intent of the
6 Legislature to create a uniform statewide standard to restrict and
7 prohibit the smoking of tobacco products, and the use of electronic
8 cigarettes, in enclosed places of employment, as specified in this
9 section, in order to reduce employee exposure to environmental
10 tobacco smoke to a level that will prevent anything other than
11 insignificantly harmful effects to exposed employees, and also to
12 eliminate the confusion and hardship that can result from enactment
13 or enforcement of disparate local workplace smoking restrictions.
14 Notwithstanding any other provision of this section, it is the intent
15 of the Legislature that any area not defined as a “place of
16 employment” pursuant to subdivision (d) or in which the smoking
17 of tobacco products or use of electronic cigarettes is not regulated
18 pursuant to subdivision (e) shall be subject to local regulation of
19 smoking of tobacco products or use of electronic cigarettes.

20 (b) No employer shall knowingly or intentionally permit, and
21 no person shall engage in, the smoking of tobacco products or
22 using an electronic cigarette in an enclosed space at a place of
23 employment. “Enclosed space” includes lobbies, lounges, waiting
24 areas, elevators, stairwells, and restrooms that are a structural part
25 of the building and not specifically defined in subdivision (d).

26 (c) For purposes of this section, an employer who permits any
27 nonemployee access to his or her place of employment on a regular
28 basis has not acted knowingly or intentionally in violation of this
29 section if he or she has taken the following reasonable steps to
30 prevent smoking by a nonemployee:

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

32 (A) Where smoking or using an electronic cigarette is prohibited
33 throughout the building or structure, a sign that states both “no
34 smoking” and “no using electronic cigarettes” shall be posted at
35 each entrance to the building or structure.

36 (B) Where smoking or using an electronic cigarette is permitted
37 in designated areas of the building or structure, a sign stating
38 “Smoking or using an electronic cigarette, is prohibited except in
39 designated areas” shall be posted at each entrance to the building
40 or structure.

1 (2) Has requested, when appropriate, that a nonemployee who
2 is smoking or using an electronic cigarette refrain from smoking
3 or using an electronic cigarette in the enclosed workplace.

4 For purposes of this subdivision, “reasonable steps” does not
5 include (A) the physical ejection of a nonemployee from the place
6 of employment or (B) any requirement for making a request to a
7 nonemployee to refrain from smoking or using an electronic
8 cigarette, under circumstances involving a risk of physical harm
9 to the employer or any employee.

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

12 (1) Sixty-five percent of the guestroom accommodations in a
13 hotel, motel, or similar transient lodging establishment.

14 (2) Areas of the lobby in a hotel, motel, or other similar transient
15 lodging establishment designated for smoking or using an
16 electronic cigarette by the establishment. An establishment may
17 permit smoking or using an electronic cigarette in a designated
18 lobby area that does not exceed 25 percent of the total floor area
19 of the lobby or, if the total area of the lobby is 2,000 square feet
20 or less, that does not exceed 50 percent of the total floor area of
21 the lobby. For purposes of this paragraph, “lobby” means the
22 common public area of an establishment in which registration and
23 other similar or related transactions, or both, are conducted and in
24 which the establishment’s guests and members of the public
25 typically congregate.

26 (3) Meeting and banquet rooms in a hotel, motel, other transient
27 lodging establishment similar to a hotel or motel, restaurant, or
28 public convention center, except while food or beverage functions
29 are taking place, including setup, service, and cleanup activities,
30 or when the room is being used for exhibit purposes. At times
31 when smoking or using an electronic cigarette is not permitted in
32 a meeting or banquet room pursuant to this paragraph, the
33 establishment may permit smoking or using an electronic cigarette
34 in corridors and prefunction areas adjacent to and serving the
35 meeting or banquet room if no employee is stationed in that
36 corridor or area on other than a passing basis.

37 (4) Retail or wholesale tobacco shops, retail or wholesale
38 electronic cigarette shops, and private smokers’ lounges. For
39 purposes of this paragraph:

1 (A) “Private smokers’ lounge” means any enclosed area in or
2 attached to a retail or wholesale tobacco shop that is dedicated to
3 the use of tobacco products, including, but not limited to, cigars
4 and pipes.

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

9 (C) “Retail or wholesale electronic cigarette shop” means any
10 business establishment the main purpose of which is the sale of
11 electronic cigarettes.

12 (5) Cabs of motortrucks, as defined in Section 410 of the Vehicle
13 Code, or truck tractors, as defined in Section 655 of the Vehicle
14 Code, if no nonsmoking employees, or employees who do not use
15 electronic cigarettes, are present.

16 (6) Warehouse facilities. For purposes of this paragraph,
17 “warehouse facility” means a warehouse facility with more than
18 100,000 square feet of total floorspace, and 20 or fewer full-time
19 employees working at the facility, but does not include any area
20 within a facility that is utilized as office space.

21 (7) Gaming clubs, in which smoking or using an electronic
22 cigarette is permitted by subdivision (f). For purposes of this
23 paragraph, “gaming club” means any gaming club, as defined in
24 Section 19802 of the Business and Professions Code, or bingo
25 facility, as defined in Section 326.5 of the Penal Code, that restricts
26 access to minors under 18 years of age.

27 (8) Bars and taverns, in which smoking or using an electronic
28 cigarette is permitted by subdivision (f). For purposes of this
29 paragraph, “bar” or “tavern” means a facility primarily devoted to
30 the serving of alcoholic beverages for consumption by guests on
31 the premises, in which the serving of food is incidental. “Bar or
32 tavern” includes those facilities located within a hotel, motel, or
33 other similar transient occupancy establishment. However, when
34 located within a building in conjunction with another use, including
35 a restaurant, “bar” or “tavern” includes only those areas used
36 primarily for the sale and service of alcoholic beverages. “Bar” or
37 “tavern” does not include the dining areas of a restaurant, regardless
38 of whether alcoholic beverages are served therein.

39 (9) Theatrical production sites, if smoking or using an electronic
40 cigarette is an integral part of the story in the theatrical production.

1 (10) Medical research or treatment sites, if smoking or using
2 an electronic cigarette is integral to the research and treatment
3 being conducted.

4 (11) Private residences, except for private residences licensed
5 as family day care homes, where smoking or using an electronic
6 cigarette is prohibited pursuant to Section 1596.795 of the Health
7 and Safety Code.

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

10 (13) Breakrooms designated by employers for smoking or using
11 an electronic cigarette, provided that all of the following conditions
12 are met:

13 (A) Air from the room shall be exhausted directly to the outside
14 by an exhaust fan. Air from the room shall not be recirculated to
15 other parts of the building.

16 (B) The employer shall comply with any ventilation standard
17 or other standard utilizing appropriate technology, including, but
18 not limited to, mechanical, electronic, and biotechnical systems,
19 adopted by the Occupational Safety and Health Standards Board
20 or the federal Environmental Protection Agency. If both adopt
21 inconsistent standards, the ventilation standards of the Occupational
22 Safety and Health Standards Board shall be no less stringent than
23 the standards adopted by the federal Environmental Protection
24 Agency.

25 (C) The room shall be located in a nonwork area where no one,
26 as part of his or her work responsibilities, is required to enter. For
27 purposes of this subparagraph, “work responsibilities” does not
28 include any custodial or maintenance work carried out in the
29 breakroom when it is unoccupied.

30 (D) There are sufficient nonsmoking breakrooms to
31 accommodate nonsmokers and individuals who do not use
32 electronic cigarettes.

33 (14) Employers with a total of five or fewer employees, either
34 full time or part time, may permit smoking or using an electronic
35 cigarette where all of the following conditions are met:

36 (A) The area is not accessible to minors.

37 (B) All employees who enter the area consent to permit smoking
38 or using an electronic cigarette. No one, as part of his or her work
39 responsibilities, shall be required to work in an area where smoking
40 or using an electronic cigarette is permitted. An employer who is

1 determined by the division to have used coercion to obtain consent
2 or who has required an employee to work in the area shall be
3 subject to the penalty provisions of Section 6427.

4 (C) Air from the area shall be exhausted directly to the outside
5 by an exhaust fan. Air from the area shall not be recirculated to
6 other parts of the building.

7 (D) The employer shall comply with any ventilation standard
8 or other standard utilizing appropriate technology, including, but
9 not limited to, mechanical, electronic, and biotechnical systems,
10 adopted by the Occupational Safety and Health Standards Board
11 or the federal Environmental Protection Agency. If both adopt
12 inconsistent standards, the ventilation standards of the Occupational
13 Safety and Health Standards Board shall be no less stringent than
14 the standards adopted by the federal Environmental Protection
15 Agency.

16 This paragraph shall not be construed to (i) supersede or render
17 inapplicable any condition or limitation on areas made applicable
18 to specific types of business establishments by any other paragraph
19 of this subdivision or (ii) apply in lieu of any otherwise applicable
20 paragraph of this subdivision that has become inoperative.

21 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
22 construed to require employers to provide reasonable
23 accommodation to smokers or individuals who use electronic
24 cigarettes, or to provide breakrooms for smokers or nonsmokers.

25 (f) (1) Except as otherwise provided in this subdivision,
26 smoking or using an electronic cigarette may be permitted in
27 gaming clubs, as defined in paragraph (7) of subdivision (d), and
28 in bars and taverns, as defined in paragraph (8) of subdivision (d),
29 until the earlier of the following:

30 (A) January 1, 1998.

31 (B) The date of adoption of a regulation (i) by the Occupational
32 Safety and Health Standards Board reducing the permissible
33 employee exposure level to environmental tobacco smoke or
34 electronic cigarette vapor to a level that will prevent anything other
35 than insignificantly harmful effects to exposed employees or (ii)
36 by the federal Environmental Protection Agency establishing a
37 standard for reduction of permissible exposure to environmental
38 tobacco smoke or electronic cigarette vapor to an exposure level
39 that will prevent anything other than insignificantly harmful effects
40 to exposed persons.

1 (2) If a regulation specified in subparagraph (B) of paragraph
2 (1) is adopted on or before January 1, 1998, smoking or using an
3 electronic cigarette may thereafter be permitted in gaming clubs
4 and in bars and taverns, subject to full compliance with, or
5 conformity to, the standard in the regulation within two years
6 following the date of adoption of the regulation. An employer
7 failing to achieve compliance with, or conformity to, the regulation
8 within this two-year period shall prohibit smoking or using an
9 electronic cigarette in the gaming club, bar, or tavern until
10 compliance or conformity is achieved. If the Occupational Safety
11 and Health Standards Board and the federal Environmental
12 Protection Agency both adopt regulations specified in subparagraph
13 (B) of paragraph (1) that are inconsistent, the regulations of the
14 Occupational Safety and Health Standards Board shall be no less
15 stringent than the regulations of the federal Environmental
16 Protection Agency.

17 (3) If a regulation specified in subparagraph (B) of paragraph
18 (1) is not adopted on or before January 1, 1998, the exemptions
19 specified in paragraphs (7) and (8) of subdivision (d) shall become
20 inoperative on and after January 1, 1998, until a regulation is
21 adopted. Upon adoption of such a regulation on or after January
22 1, 1998, smoking or using an electronic cigarette may thereafter
23 be permitted in gaming clubs and in bars and taverns, subject to
24 full compliance with, or conformity to, the standard in the
25 regulation within two years following the date of adoption of the
26 regulation. An employer failing to achieve compliance with, or
27 conformity to, the regulation within this two-year period shall
28 prohibit smoking or using an electronic cigarette in the gaming
29 club, bar, or tavern until compliance or conformity is achieved. If
30 the Occupational Safety and Health Standards Board and the federal
31 Environmental Protection Agency both adopt regulations specified
32 in subparagraph (B) of paragraph (1) that are inconsistent, the
33 regulations of the Occupational Safety and Health Standards Board
34 shall be no less stringent than the regulations of the federal
35 Environmental Protection Agency.

36 (4) From January 1, 1997, to December 31, 1997, inclusive,
37 smoking may be permitted in gaming clubs, as defined in paragraph
38 (7) of subdivision (d), and in bars and taverns, as defined in
39 paragraph (8) of subdivision (d), subject to both of the following
40 conditions:

1 (A) If practicable, the gaming club or bar or tavern shall
2 establish a designated nonsmoking area.

3 (B) If feasible, no employee shall be required, in the
4 performance of ordinary work responsibilities, to enter any area
5 in which smoking is permitted.

6 (g) The smoking and electronic cigarette prohibition set forth
7 in this section shall constitute a uniform statewide standard for
8 regulating the smoking of tobacco products, or using an electronic
9 cigarette, in enclosed places of employment and shall supersede
10 and render unnecessary the local enactment or enforcement of
11 local ordinances regulating the smoking of tobacco products, or
12 using an electronic cigarette, in enclosed places of employment.
13 Insofar as the smoking and electronic cigarette prohibition set forth
14 in this section is applicable to all ~~(100-percent)~~ (100 percent) places
15 of employment within this state and, therefore, provides the
16 maximum degree of coverage, the practical effect of this section
17 is to eliminate the need of local governments to enact enclosed
18 workplace smoking restrictions or electronic cigarette restrictions
19 within their respective jurisdictions.

20 (h) Nothing in this section shall prohibit an employer from
21 prohibiting smoking or using an electronic cigarette in an enclosed
22 place of employment for any reason.

23 (i) The enactment of local regulation of smoking of tobacco
24 products, or using an electronic cigarette, in enclosed places of
25 employment by local governments shall be suspended only for as
26 long as, and to the extent that, the ~~(100-percent)~~ (100 percent)
27 smoking and electronic cigarette prohibition provided for in this
28 section remains in effect. In the event this section is repealed or
29 modified by subsequent legislative or judicial action so that the
30 ~~(100-percent)~~ (100 percent) smoking and electronic cigarette
31 prohibition is no longer applicable to all enclosed places of
32 employment in California, local governments shall have the full
33 right and authority to enforce previously enacted, and to enact and
34 enforce new, restrictions on the smoking of tobacco products, or
35 using an electronic cigarette, in enclosed places of employment
36 within their jurisdictions, including a complete prohibition of
37 smoking or using an electronic cigarette. Notwithstanding any
38 other provision of this section, any area not defined as a “place of
39 employment” or in which smoking or using an electronic cigarette
40 is not regulated pursuant to subdivision (d) or (e), shall be subject

1 to local regulation of smoking of tobacco products or using an
2 electronic cigarette.

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

11 (k) Notwithstanding Section 6309, the division shall not be
12 required to respond to any complaint regarding the smoking of
13 tobacco products, or using an electronic cigarette, in an enclosed
14 space at a place of employment, unless the employer has been
15 found guilty pursuant to subdivision (j) of a third violation of
16 subdivision (b) within the previous year.

17 (l) If any provision of this act or the application thereof to any
18 person or circumstances is held invalid, that invalidity shall not
19 affect other provisions or applications of the act that can be given
20 effect without the invalid provision or application, and to this end
21 the provisions of this act are severable.

22 ~~SEC. 42.~~

23 *SEC. 43.* Section 308 of the Penal Code is amended to read:

24 308. (a) (1) Every person, firm, or corporation that knowingly
25 or under circumstances in which it has knowledge, or should
26 otherwise have grounds for knowledge, sells, gives, or in any way
27 furnishes to another person who is under ~~the age of 18 years~~ *21*
28 *years of age* any tobacco, cigarette, electronic cigarette, or cigarette
29 papers, or blunts wraps, or any other preparation of tobacco, or
30 any other instrument or paraphernalia that is designed for the
31 smoking or ingestion of tobacco, products prepared from tobacco,
32 or any controlled substance, is subject to either a criminal action
33 for a misdemeanor or to a civil action brought by a city attorney,
34 a county counsel, or a district attorney, punishable by a fine of two
35 hundred dollars (\$200) for the first offense, five hundred dollars
36 (\$500) for the second offense, and one thousand dollars (\$1,000)
37 for the third offense.

38 Notwithstanding Section 1464 or any other law, 25 percent of
39 each civil and criminal penalty collected pursuant to this
40 subdivision shall be paid to the office of the city attorney, county

1 counsel, or district attorney, whoever is responsible for bringing
2 the successful action, and 25 percent of each civil and criminal
3 penalty collected pursuant to this subdivision shall be paid to the
4 city or county for the administration and cost of the community
5 service work component provided in subdivision (b).

6 Proof that a defendant, or his or her employee or agent,
7 demanded, was shown, and reasonably relied upon evidence of
8 majority shall be defense to any action brought pursuant to this
9 subdivision. Evidence of majority of a person is a facsimile of or
10 a reasonable likeness of a document issued by a federal, state,
11 county, or municipal government, or subdivision or agency thereof,
12 including, but not limited to, a motor vehicle operator's license, a
13 registration certificate issued under the federal Selective Service
14 Act, or an identification card issued to a member of the Armed
15 Forces.

16 For purposes of this section, the person liable for selling or
17 furnishing tobacco products to ~~minors~~ *persons under 21 years of*
18 *age* by a tobacco vending machine shall be the person authorizing
19 the installation or placement of the tobacco vending machine upon
20 premises he or she manages or otherwise controls and under
21 circumstances in which he or she has knowledge, or should
22 otherwise have grounds for knowledge, that the tobacco vending
23 machine will be utilized by ~~minors~~ *persons under 21 years of age*.

24 (2) For purposes of this section, "blunt wraps" means cigar
25 papers or cigar wrappers of all types that are designed for smoking
26 or ingestion of tobacco products and contain less than 50 percent
27 tobacco.

28 (b) Every person ~~under the age of 18~~ *21 years of age* who
29 purchases, receives, or possesses any tobacco, cigarette, electronic
30 cigarette, or cigarette papers, or any other preparation of tobacco,
31 or any other instrument or paraphernalia that is designed for the
32 smoking of tobacco, products prepared from tobacco, or any
33 controlled substance shall, upon conviction, be punished by a fine
34 of seventy-five dollars (\$75) or 30 hours of community service
35 work.

36 (c) Every person, firm, or corporation that sells, or deals in
37 tobacco or any preparation thereof, and, on and after July 1, 2016,
38 every person, firm, or corporation that sells or deals in electronic
39 cigarettes, shall post conspicuously and keep so posted in his, her,
40 or their place of business at each point of purchase the notice

1 required pursuant to subdivision (b) of Section 22952 of the
2 Business and Professions Code, and any person failing to do so
3 shall, upon conviction, be punished by a fine of fifty dollars (\$50)
4 for the first offense, one hundred dollars (\$100) for the second
5 offense, two hundred fifty dollars (\$250) for the third offense, and
6 five hundred dollars (\$500) for the fourth offense and each
7 subsequent violation of this provision, or by imprisonment in a
8 county jail not exceeding 30 days.

9 (d) For purposes of determining the liability of persons, firms,
10 or corporations controlling franchises or business operations in
11 multiple locations for the second and subsequent violations of this
12 section, each individual franchise or business location shall be
13 deemed a separate entity.

14 (e) Notwithstanding subdivision (b), any person under 18 21
15 years of age who purchases, receives, or possesses any tobacco,
16 cigarette, electronic cigarette, or cigarette papers, or any other
17 preparation of tobacco, any other instrument or paraphernalia that
18 is designed for the smoking of tobacco, or products prepared from
19 tobacco is immune from prosecution for that purchase, receipt, or
20 possession while participating in either of the following:

21 (1) An enforcement activity that complies with the guidelines
22 adopted pursuant to subdivisions (c) and (d) of Section 22952 of
23 the Business and Professions Code.

24 (2) An activity conducted by the State Department of Public
25 Health, a local health department, or a law enforcement agency
26 for the purpose of determining or evaluating youth tobacco
27 purchase rates.

28 (f) It is the Legislature's intent to regulate the subject matter of
29 this section. As a result, a city, county, or city and county shall not
30 adopt any ordinance or regulation inconsistent with this section.

31 ~~SEC. 43.~~

32 *SEC. 44.* Section 640 of the Penal Code is amended to read:

33 640. (a) (1) Any of the acts described in paragraphs (1) to (6),
34 inclusive, of subdivision (b) is an infraction punishable by a fine
35 not to exceed two hundred fifty dollars (\$250) and by community
36 service for a total time not to exceed 48 hours over a period not to
37 exceed 30 days, during a time other than during the violator's hours
38 of school attendance or employment. Any of the acts described in
39 paragraphs (1) to (3), inclusive, of subdivision (c), upon a first or
40 second violation, is an infraction punishable by a fine not to exceed

1 two hundred fifty dollars (\$250) and by community service for a
2 total time not to exceed 48 hours over a period not to exceed 30
3 days, during a time other than during the violator's hours of school
4 attendance or employment. A third or subsequent violation of any
5 of the acts described in paragraphs (1) to (3), inclusive, of
6 subdivision (c) is a misdemeanor punishable by a fine of not more
7 than four hundred dollars (\$400) or by imprisonment in a county
8 jail for a period of not more than 90 days, or by both that fine and
9 imprisonment. Any of the acts described in subdivision (d) shall
10 be punishable by a fine of not more than four hundred dollars
11 (\$400), by imprisonment in a county jail for a period of not more
12 than 90 days, or by both that fine and imprisonment.

13 (2) This section shall apply only to acts committed on or in a
14 facility or vehicle of a public transportation system.

15 (b) (1) Eating or drinking in or on a system facility or vehicle
16 in areas where those activities are prohibited by that system.

17 (2) Disturbing another person by loud or unreasonable noise.

18 (3) Smoking, or using an electronic cigarette as defined in
19 subdivision (c) of Section 22950.5 of the Business and Professions
20 Code, in or on a system facility or vehicle in areas where those
21 activities are prohibited by that system.

22 (4) Expectorating upon a system facility or vehicle.

23 (5) Skateboarding, roller skating, bicycle riding, roller blading,
24 or operating a motorized scooter or similar device, as defined in
25 Section 407.5 of the Vehicle Code in a system facility, vehicle, or
26 parking structure. This paragraph does not apply to an activity that
27 is necessary for utilization of the transit facility by a bicyclist,
28 including, but not limited to, an activity that is necessary for
29 parking a bicycle or transporting a bicycle aboard a transit vehicle,
30 if that activity is conducted with the permission of the transit
31 agency in a manner that does not interfere with the safety of the
32 bicyclist or other patrons of the transit facility.

33 (6) Sale or peddling of any goods, merchandise, property, or
34 services of any kind whatsoever on the facilities, vehicles, or
35 property of the public transportation system, if the public
36 transportation system has prohibited those acts and neither the
37 public transportation system nor its duly authorized representatives
38 have granted written consent to engage in those acts.

39 (c) (1) Evasion of the payment of a fare of the system. For
40 purposes of this section, fare evasion includes entering an enclosed

1 area of a public transit facility beyond posted signs prohibiting
2 entrance without obtaining valid fare, in addition to entering a
3 transit vehicle without valid fare.

4 (2) Misuse of a transfer, pass, ticket, or token with the intent to
5 evade the payment of a fare.

6 (3) (A) Unauthorized use of a discount ticket or failure to
7 present, upon request from a transit system representative,
8 acceptable proof of eligibility to use a discount ticket, in
9 accordance with Section 99155 of the Public Utilities Code and
10 posted system identification policies when entering or exiting a
11 transit station or vehicle. Acceptable proof of eligibility must be
12 clearly defined in the posting.

13 (B) In the event that an eligible discount ticket user is not in
14 possession of acceptable proof at the time of request, any citation
15 issued shall be held for a period of 72 hours to allow the user to
16 produce acceptable proof. If the proof is provided, the citation
17 shall be voided. If the proof is not produced within that time period,
18 the citation shall be processed.

19 (d) (1) Willfully disturbing others on or in a system facility or
20 vehicle by engaging in boisterous or unruly behavior.

21 (2) Carrying an explosive, acid, or flammable liquid in a public
22 transit facility or vehicle.

23 (3) Urinating or defecating in a system facility or vehicle, except
24 in a lavatory. However, this paragraph shall not apply to a person
25 who cannot comply with this paragraph as a result of a disability,
26 age, or a medical condition.

27 (4) Willfully blocking the free movement of another person in
28 a system facility or vehicle. This paragraph shall not be interpreted
29 to affect any lawful activities permitted or First Amendment rights
30 protected under the laws of this state or applicable federal law,
31 including, but not limited to, laws related to collective bargaining,
32 labor relations, or labor disputes.

33 (5) Willfully tampering with, removing, displacing, injuring,
34 or destroying any part of any facility or vehicle of a public
35 transportation system.

36 (e) Notwithstanding subdivision (a), a public transportation
37 agency, as defined in paragraph (4) of subdivision (c) of Section
38 99580 of the Public Utilities Code, may enact and enforce an
39 ordinance providing that a person who is the subject of a citation
40 for any of the acts described in subdivision (b) of Section 99580

1 of the Public Utilities Code on or in a facility or vehicle described
2 in subdivision (a) for which the public transportation agency has
3 jurisdiction shall, under the circumstances set forth by the
4 ordinance, be afforded an opportunity to complete an administrative
5 process that imposes only an administrative penalty enforced in a
6 civil proceeding. The ordinance for imposing and enforcing the
7 administrative penalty shall be governed by Chapter 8
8 (commencing with Section 99580) of Part 11 of Division 10 of
9 the Public Utilities Code and shall not apply to minors.

10 (f) For purposes of this section, a “facility or vehicle of a public
11 transportation system” means any of the following:

12 (1) A facility or vehicle of a public transportation system as
13 defined by Section 99211 of the Public Utilities Code.

14 (2) A facility of, or vehicle operated by any entity subsidized
15 by, the Department of Transportation.

16 (3) A facility or vehicle of the Southern California Regional
17 Rail Authority, whether owned or leased.

18 (4) A leased or rented facility or vehicle for which any of the
19 entities described in paragraph (1), (2), or (3) incurs costs of
20 cleanup, repair, or replacement as a result of any of those acts.

21 ~~SEC. 44.~~

22 *SEC. 45.* Section 561 of the Public Utilities Code is amended
23 to read:

24 561. (a) Every railroad corporation, passenger stage
25 corporation, passenger air carrier, and street railroad corporation
26 providing departures originating in this state shall prohibit the
27 smoking of any tobacco product, and using an electronic cigarette
28 as defined in subdivision (c) of Section 22950.5 of the Business
29 and Professions Code, in the passenger seating area of every
30 passenger car, passenger stage, aircraft, or other vehicle.

31 (b) Every such corporation and carrier shall display in the
32 passenger seating area of every passenger car, passenger stage,
33 aircraft, or other vehicle, notices sufficient in number, posted in
34 such locations as to be readily seen by boarding passengers,
35 advising passengers of the no smoking requirements and no using
36 electronic cigarette requirements pursuant to subdivision (a). Words
37 on such notices which state both “no smoking” and “no using
38 electronic cigarettes” or an equivalent phrase shall be at least
39 three-quarters of one inch high, and any other explanatory words
40 on the notices shall be at least one-quarter of an inch high.

1 (c) No person shall smoke any tobacco product, or use an
2 electronic cigarette, in a space known by him or her to be
3 designated for nonsmoking passengers. A violation of this
4 subdivision is not a crime.

5 (d) As used in this section, “passenger air carrier” shall have
6 the same meaning as provided in Sections 2741 and 2743.

7 ~~SEC. 45.~~

8 *SEC. 46.* Section 99580 of the Public Utilities Code is amended
9 to read:

10 99580. (a) Pursuant to subdivision (e) of Section 640 of the
11 Penal Code, a public transportation agency may enact and enforce
12 an ordinance to impose and enforce an administrative penalty for
13 any of the acts described in subdivision (b). The ordinance shall
14 include the provisions of this chapter and shall not apply to minors.

15 (b) (1) Evasion of the payment of a fare of the system.

16 (2) Misuse of a transfer, pass, ticket, or token with the intent to
17 evade the payment of a fare.

18 (3) Playing sound equipment on or in a system facility or
19 vehicle.

20 (4) Smoking, using an electronic cigarette as defined in
21 subdivision (c) of Section 22950.5 of the Business and Professions
22 Code, eating, or drinking in or on a system facility or vehicle in
23 those areas where those activities are prohibited by that system.

24 (5) Expectorating upon a system facility or vehicle.

25 (6) Willfully disturbing others on or in a system facility or
26 vehicle by engaging in boisterous or unruly behavior.

27 (7) Carrying an explosive or acid, flammable liquid, or toxic or
28 hazardous material in a system facility or vehicle.

29 (8) Urinating or defecating in a system facility or vehicle, except
30 in a lavatory. However, this paragraph shall not apply to a person
31 who cannot comply with this paragraph as a result of a disability,
32 age, or a medical condition.

33 (9) (A) Willfully blocking the free movement of another person
34 in a system facility or vehicle.

35 (B) This paragraph shall not be interpreted to affect any lawful
36 activities permitted or ~~first amendment~~ *First Amendment* rights
37 protected under the laws of this state or applicable federal law,
38 including, but not limited to, laws related to collective bargaining,
39 labor relations, or labor disputes.

1 (10) Skateboarding, roller skating, bicycle riding, or roller
2 blading in a system facility, including a parking structure, or in a
3 system vehicle. This paragraph does not apply to an activity that
4 is necessary for utilization of a system facility by a bicyclist,
5 including, but not limited to, an activity that is necessary for
6 parking a bicycle or transporting a bicycle aboard a system vehicle,
7 if that activity is conducted with the permission of the agency of
8 the system in a manner that does not interfere with the safety of
9 the bicyclist or other patrons of the system facility.

10 (11) (A) Unauthorized use of a discount ticket or failure to
11 present, upon request from a system representative, acceptable
12 proof of eligibility to use a discount ticket, in accordance with
13 Section 99155, and posted system identification policies when
14 entering or exiting a system station or vehicle. Acceptable proof
15 of eligibility must be clearly defined in the posting.

16 (B) In the event that an eligible discount ticket user is not in
17 possession of acceptable proof at the time of request, an issued
18 notice of fare evasion or passenger conduct violation shall be held
19 for a period of 72 hours to allow the user to produce acceptable
20 proof. If the proof is provided, that notice shall be voided. If the
21 proof is not produced within that time period, that notice shall be
22 processed.

23 (12) Sale or peddling of any goods, merchandise, property, or
24 services of any kind whatsoever on the facilities, vehicles, or
25 property of the public transportation system without the express
26 written consent of the public transportation system or its duly
27 authorized representatives.

28 (c) (1) The public transportation agency may contract with a
29 private vendor or governmental agency for the processing of notices
30 of fare evasion or passenger conduct violation, and notices of
31 delinquent fare evasion or passenger conduct violation pursuant
32 to Section 99581.

33 (2) For the purpose of this chapter, “processing agency” means
34 either of the following:

35 (A) The agency issuing the notice of fare evasion or passenger
36 conduct violation and the notice of delinquent fare evasion or
37 passenger conduct violation.

38 (B) The party responsible for processing the notice of fare
39 evasion or passenger conduct violation and the notice of delinquent
40 violation, if a contract is entered into pursuant to paragraph (1).

1 (3) For the purpose of this chapter, “fare evasion or passenger
2 conduct violation penalty” includes, but is not limited to, a late
3 payment penalty, administrative fee, fine, assessment, and costs
4 of collection as provided for in the ordinance.

5 (4) For the purpose of this chapter, “public transportation
6 agency” shall mean a public agency that provides public
7 transportation as defined in paragraph (1) of subdivision (f) of
8 Section 1 of Article XIX A of the California Constitution.

9 (5) All fare evasion and passenger conduct violation penalties
10 collected pursuant to this chapter shall be deposited in the general
11 fund of the county in which the citation is administered.

12 (d) (1) If a fare evasion or passenger conduct violation is
13 observed by a person authorized to enforce the ordinance, a notice
14 of fare evasion or passenger conduct violation shall be issued. The
15 notice shall set forth the violation, including reference to the
16 ordinance setting forth the administrative penalty, the date of the
17 violation, the approximate time, and the location where the
18 violation occurred. The notice shall include a printed statement
19 indicating the date payment is required to be made, and the
20 procedure for contesting the notice. The notice shall be served by
21 personal service upon the violator. The notice, or copy of the
22 notice, shall be considered a record kept in the ordinary course of
23 business of the issuing agency and the processing agency, and
24 shall be prima facie evidence of the facts contained in the notice
25 establishing a rebuttable presumption affecting the burden of
26 producing evidence.

27 (2) When a notice of fare evasion or passenger conduct violation
28 has been served, the person issuing the notice shall file the notice
29 with the processing agency.

30 (3) If, after a notice of fare evasion or passenger conduct
31 violation is issued pursuant to this section, the issuing officer
32 determines that there is incorrect data on the notice, including, but
33 not limited to, the date or time, the issuing officer may indicate in
34 writing on a form attached to the original notice the necessary
35 correction to allow for the timely entry of the corrected notice on
36 the processing agency’s data system. A copy of the correction shall
37 be mailed to the address provided by the person cited at the time
38 the original notice of fare evasion or passenger conduct violation
39 was served.

1 (4) If a person contests a notice of fare evasion or passenger
2 conduct violation, the issuing agency shall proceed in accordance
3 with Section 99581.

4 (e) In setting the amounts of administrative penalties for the
5 violations listed in subdivision (b), the public transportation agency
6 shall not establish penalty amounts that exceed the maximum fine
7 amount set forth in Section 640 of the Penal Code.

8 (f) A person who receives a notice of fare evasion or passenger
9 conduct violation pursuant to this section shall not be subject to
10 citation for a violation of Section 640 of the Penal Code.

11 (g) If an entity enacts an ordinance pursuant to this section it
12 shall, both two years and five years after enactment of the
13 ordinance, report all of the following information to the Senate
14 Committee on Transportation and Housing and the Assembly
15 Committee on Transportation:

16 (1) A description of the ordinance, including the circumstances
17 under which an alleged violator is afforded the opportunity to
18 complete the administrative process.

19 (2) The amount of the administrative penalties.

20 (3) The number and types of citations administered pursuant to
21 the ordinance.

22 (4) To the extent available, a comparison of the number and
23 types of citations administered pursuant to the ordinance with the
24 number and types of citations issued for similar offenses and
25 administered through the courts both in the two years prior to the
26 ordinance and, if any, since enactment of the ordinance.

27 (5) A discussion of the effect of the ordinance on passenger
28 behavior.

29 (6) A discussion of the effect of the ordinance on revenues to
30 the entity described in subdivision (a) and, in consultation with
31 the superior courts, the cost savings to the county courts. The
32 superior courts are encouraged to collaborate on and provide data
33 for this report.

34 ~~SEC. 46.~~

35 *SEC. 47.* Section 12523 of the Vehicle Code is amended to
36 read:

37 12523. (a) A person shall not operate a youth bus without
38 having in possession a valid driver's license of the appropriate
39 class, endorsed for passenger transportation and a certificate issued
40 by the department to permit the operation of a youth bus.

1 (b) Applicants for a certificate to drive a youth bus shall present
2 evidence that they have successfully completed a driver training
3 course administered by or at the direction of their employer
4 consisting of a minimum of 10 hours of classroom instruction
5 covering applicable laws and regulations and defensive driving
6 practices and a minimum of 10 hours of behind-the-wheel training
7 in a vehicle to be used as a youth bus. Applicants seeking to renew
8 a certificate to drive a youth bus shall present evidence that they
9 have received two hours of refresher training during each 12
10 months of driver certificate validity.

11 (c) The driver certificate shall be issued only to applicants
12 qualified by examinations prescribed by the Department of Motor
13 Vehicles and the Department of the California Highway Patrol,
14 and upon payment of a fee of twenty-five dollars (\$25) for an
15 original certificate and twelve dollars (\$12) for the renewal of that
16 certificate to the Department of the California Highway Patrol.
17 The examinations shall be conducted by the Department of the
18 California Highway Patrol. The Department of Motor Vehicles
19 may deny, suspend, or revoke a certificate valid for driving a youth
20 bus for the causes specified in this code or in regulations adopted
21 pursuant to this code.

22 (d) An operator of a youth bus shall, at all times when operating
23 a youth bus, do all of the following:

24 (1) Use seat belts.

25 (2) Refrain from smoking, or using an electronic cigarette as
26 defined in subdivision (c) of Section 22950.5 of the Business and
27 Professions Code.

28 (3) Report any accidents reportable under Section 16000 to the
29 Department of the California Highway Patrol.

30 (e) A person holding a valid certificate to permit the operation
31 of a youth bus, issued prior to January 1, 1991, shall not be required
32 to reapply for a certificate to satisfy any additional requirements
33 imposed by the act adding this subdivision until the certificate he
34 or she holds expires or is canceled or revoked.

35 ~~SEC. 47.~~

36 *SEC. 48.* Section 12523.5 of the Vehicle Code is amended to
37 read:

38 12523.5. (a) A person shall not operate a general public
39 paratransit vehicle unless he or she has in his or her possession a
40 valid driver's license of the appropriate class endorsed for

1 passenger transportation when operating a vehicle designed, used,
2 or maintained for carrying more than 10 persons including the
3 driver and either (1) a certificate issued by the department to permit
4 the operation of a general public paratransit vehicle, or (2) a
5 certificate issued by the department to drive a schoolbus or school
6 pupil activity bus pursuant to Section 12517.

7 (b) Applicants for a certificate to drive a general public
8 paratransit vehicle shall pay a fee to the Department of the
9 California Highway Patrol of twenty-five dollars (\$25) for an
10 original certificate and twelve dollars (\$12) for a renewal
11 certificate. Applicants for an original certificate shall present
12 evidence that they have successfully completed a driver training
13 course consisting of a minimum of 40 hours of instruction within
14 the previous two years. The instruction shall have covered
15 applicable laws and regulations and defensive driving practices,
16 a minimum of 8 hours of certified defensive driving, and a
17 minimum of 20 hours of behind-the-wheel training in a vehicle to
18 be used as a general public paratransit vehicle. Applicants seeking
19 to renew a certificate valid for driving a general public paratransit
20 vehicle shall present evidence that they have received two hours
21 of refresher training during each 12 months of driver certificate
22 validity.

23 (c) The driver certificate shall be issued only to applicants
24 qualified by examinations prescribed by the Department of Motor
25 Vehicles and the Department of the California Highway Patrol.
26 The examinations shall be conducted by the Department of the
27 California Highway Patrol. The Department of Motor Vehicles
28 may deny, suspend, or revoke a certificate valid for driving a
29 general public paratransit vehicle for the causes specified in this
30 code or the Education Code or in regulations adopted pursuant to
31 this code or the Education Code.

32 (d) An operator of a general public paratransit vehicle shall do
33 all of the following:

34 (1) Use seatbelts.

35 (2) Refrain from smoking, or using an electronic cigarette as
36 defined in subdivision (c) of Section 22950.5 of the Business and
37 Professions Code.

38 (3) Report any accident reportable under Section 16000 to the
39 Department of the California Highway Patrol.

1 (e) A person holding a valid certificate to permit the operation
2 of a general public paratransit vehicle, issued prior to January 1,
3 1991, shall not be required to reapply for a certificate to satisfy
4 any additional requirements imposed by the act adding this
5 subdivision until the certificate he or she holds expires or is
6 canceled or revoked.

7 ~~SEC. 48.~~

8 *SEC. 49.* No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.



IN BRIEF

SB 24 protects California's youth from addiction to electronic cigarettes (e-cigarettes), by including them under California's youth tobacco prevention laws. The bill will also protect kids from e-cigarette liquid poisoning by requiring that e-cigarette liquids be equipped with child-proof packaging.

THE PROBLEM

E-cigarettes are battery-operated products that turn liquid nicotine into vapor, which is inhaled by the user. Under current California law, it is illegal to sell e-cigarettes to anyone under the age of 18. However, California's premier law to prevent youth access to cigarettes and other tobacco products – the Stop Tobacco Access to Kids Enforcement (STAKE) Act – does not extend to e-cigarettes and e-cigarette retailers do not have to be licensed by the state.

More and more youth are using e-cigarettes, which deliver highly addictive nicotine. According to a UC San Francisco study published in 2014, youth use of e-cigarettes has more than doubled, rising from 3.1% in 2011 to 6.5% in 2012.¹ In addition, a December 2014 National Institute on Drug Abuse study found that youth use of e-cigarettes is now higher than youth use of traditional cigarettes.² For example, 17.1% of 12th graders reported using an e-cigarette in the past month, while only 13.6% reported smoking a traditional cigarette in the past month.

Additionally, even though an increasing number of children in California are being poisoned by e-cigarette liquids, nothing in current law requires that e-cigarette liquids be equipped with child proof packaging. Children can easily open and ingest the often fruit flavored e-cigarette liquids. Nicotine liquids can be toxic even if ingested in small amounts – just 1 teaspoon of liquid nicotine can be deadly.³

In 2012 there were 28 calls to the California Poison Control System for liquid nicotine poisoning, in 2013 there were 106 calls, and in 2014 there were 243 calls. At least 60% of calls were for children 5 years old or younger.⁴

The Centers for Disease Control Prevention (CDC) has found a similar trend nationally. In 2010 there was only 1 call per month to poison centers about liquid nicotine poisoning and now there is an average of 215 calls per month.⁵ More than half of the calls are for kids under five years of age.

BACKGROUND

The Synar Amendment, a federal law passed in 1992, requires states to enact laws to reduce tobacco sales to minors. In response, California enacted the STAKE Act in 1994. The California Department of Public Health (CDPH) enforces the law by implementing sting operations to catch stores selling tobacco to minors. Under the STAKE ACT, retailers caught selling to minors can be penalized monetarily and can also have their tobacco license suspended or revoked.

The STAKE Act has been effective. According to the California Department of Public Health, California has seen a dramatic decrease in illegal tobacco sales to minors, with the rate declining from 37 percent in 1995 to 8.7 percent in 2012.⁶ Despite its effectiveness, the STAKE Act does not apply to e-cigarettes.

It's well known that addiction to nicotine products starts early. For example, the Surgeon General in 2012 reported that "nearly all tobacco use begins during youth and young adulthood."⁷ The CDC says that more "than 80% of adult smokers begin smoking by 18 years of age with 99% of first use by 26 years of age."⁸ Just like traditional cigarettes, e-cigarettes deliver highly addictive nicotine and early users of e-cigarettes have the potential to become lifelong users.

THE SOLUTION

SB 24 will protect California's youth from e-cigarette addiction by extending the state's youth tobacco laws to e-cigarettes. Specifically, the bill:

- Includes e-cigarettes under the STAKE Act so CDPH can conduct stings on e-cigarette retailers using youth decoys at random, based on public complaints, or if a retailer has previous violations.
- Retailers who sell e-cigarettes to minors will be subject to STAKE Act penalties, including

monetary fines and action against the retailer's license.

- The bill extends all other portion of the STAKE ACT to e-cigarettes, which includes:

- A retailer must to post signs with the "1-800-5 ASK-4-ID" phone number at each cash register or point of purchase.
- A retailer cannot distribute free or low-cost e-cigarette products and e-cigarettes cannot be sold in self-service displays.
- A retailer cannot advertise e-cigarette products within 1,000 feet of a school and e-cigarettes cannot be sold in vending machines, unless the vending machine is located in a licensed retailer shop and at least 15 feet from the entrance.

- The bill requires e-cigarette retailers to obtain a retail license from the Board of Equalization (BOE). There is a one-time fee of \$100 and a license is good for 12 months. A fee is not required for renewal.

- The bill makes e-cigarettes subject to California's Smoke Free Act, making it illegal to use e-cigarettes at places of work, schools, daycares, restaurants, bars, hospitals and on public transportation.
- The bill increases the legal age of purchase for e-cigarettes from 18 to 21.
- The bill requires that e-cigarette liquids be equipped with child proof packaging.
- The bill does not preempt local ordinances pertaining to e-cigarettes.

SUPPORT

California Poison Control System
Junior Leagues of California
California College and University Police Chiefs
Consumer Federation of California

(Updated 4-24-15)

FOR MORE INFORMATION

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¹ Fernandez, Elizabeth. "E-Cigarettes: Gateway to Nicotine Addiction for U.S. Teens, Says UCSF Study." *University of California San Francisco*. <http://www.ucsf.edu/news/2014/03/112316/e-cigarettes-gateway-nicotine-addiction-us-teens-says-ucsf-study>.

² National Institute on Drug Abuse. "Teen prescription opioid abuse, cigarette, and alcohol use trends down." Retrieved from <http://www.drugabuse.gov/news-events/news-releases/2014/12/teen-prescription-opioid-abuse-cigarette-alcohol-use-trends-down> on December 16, 2014

³ Bassett, Robert A., et. al. "Nicotine Poisoning in an Infant." *The New England Journal of Medicine*. June 5, 2014. <http://www.nejm.org/doi/full/10.1056/NEJMc1403843>.

⁴ Woodrow, Melanie. "2 Investigates: Child Poisonings from e-cigarette Liquid Spikes." *KTCU 2 News*. 2014. <http://wn.ktvu.com/story/27358545/2-investigates-poisonings-from-e-cigarette-liquid>.

⁵ "New CDC Study Finds Dramatic Increase in E-cigarette-related Calls to Poison Centers." *Centers for Disease Control and Prevention*. April 3, 2014. <http://www.cdc.gov/media/releases/2014/p0403-e-cigarette-poison.html>.

⁶ "State Health Officer's Report on Tobacco Use and Promotion in California." *California Department of Public Health*. December 2012. <http://www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf>, 7.

⁷ "Preventing Tobacco Use Among Youth and Young Adults." *A Report of the Surgeon General, Executive Summary*. 2012. <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/exec-summary.pdf>, 1.

⁸ CDC Director Thomas R. Frieden, M.D., M.P.H. in *A Report of the Surgeon General, Executive Summary*, i.

AMENDED IN SENATE APRIL 13, 2015

AMENDED IN SENATE MARCH 10, 2015

SENATE BILL

No. 140

Introduced by Senator Leno
(Principal coauthor: Senator Pan)
(Principal coauthor: Assembly Member Ting)
(Coauthors: Senators Hernandez, McGuire, and Stone)
(Coauthor: Assembly Member Chiu)

January 26, 2015

An act to amend Sections 22950.5, 22958, 22962, and 22971 of the Business and Professions Code, to amend Section 1947.5 of the Civil Code, to amend Section 48901 of the Education Code, to amend Section 7597 of the Government Code, to amend Sections 1234, 1286, 1530.7, 1596.795, 104495, ~~113978~~, 114332.3, 114371, 118910, 118925, ~~118930~~, ~~118935~~, and 118948 of, and to repeal Section 119405 of, the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Section 308 of the Penal Code, to amend Sections 561 and 99580 of the Public Utilities Code, and to amend Section 12523 of the Vehicle Code, relating to electronic cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

SB 140, as amended, Leno. Electronic cigarettes.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, prohibits a person from selling or otherwise furnishing tobacco products to minors. Existing law permits enforcing agencies to assess various civil penalties for violations of the STAKE Act. Existing law makes it a crime to furnish tobacco products to minors. Existing law also prohibits a person from selling or otherwise furnishing an electronic cigarette to minors, and makes a violation punishable as an infraction.

This bill would define the term “smoking” for purposes of the STAKE Act. The bill would also change the STAKE Act’s definition of tobacco products to include electronic devices, such as electronic cigarettes, that deliver nicotine or other substances, vaporized liquids, and make furnishing such a tobacco product to a minor a misdemeanor.

Existing law, the Cigarette and Tobacco Products Licensing Act of 2003, requires the State Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products. Under existing law, a violation of this act is a misdemeanor.

This bill would change the ~~that~~ act’s definition of tobacco products to reflect the STAKE Act’s new definition of tobacco products.

Existing law prohibits the smoking of cigarettes and other tobacco products in a variety of specified areas. Under existing law, a violation of some of these prohibitions is punishable as an infraction.

This bill would change the location restrictions for smoking cigarettes and other tobacco products to reflect the STAKE Act’s ~~new definition~~ definitions of smoking and of tobacco products. The bill would make the use of electronic cigarettes in some of these restricted locations a violation punishable as an infraction.

Existing law prohibits the smoking of medical marijuana in any place where smoking is prohibited by law.

This bill would declare that its provisions do not affect any law or regulation regarding medical marijuana.

By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 22950.5 of the Business and Professions
- 2 Code is amended to read:
- 3 22950.5. For purposes of this division, the following terms
- 4 have the following meanings:

1 (a) “Department” means the State Department of Public Health.

2 (b) “Enforcing agency” means the State Department of Public
3 Health, another state agency, including, but not limited to, the
4 office of the Attorney General, or a local law enforcement agency,
5 including, but not limited to, a city attorney, district attorney, or
6 county counsel.

7 (c) “Smoking” means inhaling, exhaling, burning, or carrying
8 any lighted or heated cigar, cigarette, or pipe, or any other lighted
9 or heated tobacco or plant product intended for inhalation, whether
10 natural or synthetic, in any manner or in any form. “Smoking”
11 includes the use of an electronic smoking device that creates an
12 aerosol or vapor, in any manner or in any form, or the use of any
13 oral smoking device for the purpose of circumventing the
14 prohibition of smoking.

15 (e)

16 (d) (1) “Tobacco product” means any of the following:

17 (A) A product containing, made, or derived from tobacco or
18 nicotine that is intended for human consumption, whether smoked,
19 heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or
20 ingested by any other means, including, but not limited to,
21 cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or
22 snuff.

23 (B) An electronic device that delivers nicotine or other
24 ~~substances~~ *vaporized liquids* to the person inhaling from the device,
25 including, but not limited to, an electronic cigarette, cigar, pipe,
26 or hookah.

27 (C) Any component, part, or accessory of a tobacco product,
28 whether or not sold separately.

29 (2) “Tobacco product” does not include a product that has been
30 approved by the United States Food and Drug Administration for
31 sale as a tobacco cessation product or for other therapeutic purposes
32 where the product is marketed and sold solely for such an approved
33 purpose.

34 SEC. 2. Section 22958 of the Business and Professions Code
35 is amended to read:

36 22958. (a) An enforcing agency may assess civil penalties
37 against any person, firm, or corporation that sells, gives, or in any
38 way furnishes to another person who is under 18 years of age, any
39 tobacco, cigarette, cigarette papers, any other instrument or
40 paraphernalia that is designed for the smoking or ingestion of

1 tobacco, tobacco products, or any controlled substance, according
2 to the following schedule: (1) a civil penalty of four hundred dollars
3 (\$400) to six hundred dollars (\$600) for the first violation, (2) a
4 civil penalty of nine hundred dollars (\$900) to one thousand dollars
5 (\$1,000) for the second violation within a five-year period, (3) a
6 civil penalty of one thousand two hundred dollars (\$1,200) to one
7 thousand eight hundred dollars (\$1,800) for a third violation within
8 a five-year period, (4) a civil penalty of three thousand dollars
9 (\$3,000) to four thousand dollars (\$4,000) for a fourth violation
10 within a five-year period, or (5) a civil penalty of five thousand
11 dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth violation
12 within a five-year period.

13 (b) (1) In addition to the civil penalties described in subdivision
14 (a), upon the assessment of a civil penalty for the third, fourth, or
15 fifth violation, the department, within 60 days of the date of service
16 of the final administrative adjudication on the parties or payment
17 of the civil penalty for an uncontested violation, shall notify the
18 State Board of Equalization of the violation. The State Board of
19 Equalization shall then assess a civil penalty of two hundred fifty
20 dollars (\$250) and suspend or revoke a license issued pursuant to
21 Chapter 2 (commencing with Section 22972) of Division 8.6 in
22 accordance with the following schedule:

23 (A) A 45-day suspension of the license for a third violation at
24 the same location within a five-year period.

25 (B) A 90-day suspension of the license for a fourth violation at
26 the same location within a five-year period.

27 (C) Revocation of the license for a fifth violation at the same
28 location within a five-year period.

29 (2) The provisions of Chapter 4 (commencing with Section
30 55121) of Part 30 of Division 2 of the Revenue and Taxation Code
31 apply with respect to the collection of the penalty imposed by the
32 State Board of Equalization pursuant to paragraph (1).

33 (c) (1) For each suspension or revocation pursuant to
34 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)
35 assessed pursuant to that subdivision, notwithstanding Section
36 22953, shall be deposited into the Cigarette and Tobacco Products
37 Compliance Fund established pursuant to Section 22990. Moneys
38 from that civil penalty deposited into this fund shall be made
39 available to the State Board of Equalization, upon appropriation

1 by the Legislature, for the purposes of meeting its duties under
2 subdivision (b).

3 (2) The department shall, upon request, provide to the State
4 Board of Equalization information concerning any person, firm,
5 or corporation that has been assessed a civil penalty for violation
6 of the STAKE Act pursuant to this section when the department
7 has notified the State Board of Equalization of the violation.

8 (d) The enforcing agency shall assess penalties pursuant to the
9 schedule set forth in subdivision (a) against a person, firm, or
10 corporation that sells, offers for sale, or distributes tobacco products
11 from a cigarette or tobacco products vending machine, or a person,
12 firm, or corporation that leases, furnishes, or services these
13 machines in violation of Section 22960.

14 (e) An enforcing agency may assess civil penalties against a
15 person, firm, or corporation that sells or deals in tobacco or any
16 preparation thereof, and fails to post conspicuously and keep posted
17 in the place of business at each point of purchase the notice
18 required pursuant to subdivision (b) of Section 22952. The civil
19 penalty shall be in the amount of two hundred dollars (\$200) for
20 the first offense and five hundred dollars (\$500) for each additional
21 violation.

22 (f) An enforcing agency shall assess penalties in accordance
23 with the schedule set forth in subdivision (a) against a person, firm,
24 or corporation that advertises or causes to be advertised a tobacco
25 product on an outdoor billboard in violation of Section 22961.

26 (g) If a civil penalty has been assessed pursuant to this section
27 against a person, firm, or corporation for a single, specific violation
28 of this division, the person, firm, or corporation shall not be
29 prosecuted under Section 308 of the Penal Code for a violation
30 based on the same facts or specific incident for which the civil
31 penalty was assessed. If a person, firm, or corporation has been
32 prosecuted for a single, specific violation of Section 308 of the
33 Penal Code, the person, firm, or corporation shall not be assessed
34 a civil penalty under this section based on the same facts or specific
35 incident upon which the prosecution under Section 308 of the Penal
36 Code was based.

37 (h) (1) In the case of a corporation or business with more than
38 one retail location, to determine the number of accumulated
39 violations for purposes of the penalty schedule set forth in
40 subdivision (a), violations of this division by one retail location

1 shall not be accumulated against other retail locations of that same
2 corporation or business.

3 (2) In the case of a retail location that operates pursuant to a
4 franchise as defined in Section 20001, violations of this division
5 accumulated and assessed against a prior owner of a single
6 franchise location shall not be accumulated against a new owner
7 of the same single franchise location for purposes of the penalty
8 schedule set forth in subdivision (a).

9 (i) Proceedings under this section shall be conducted pursuant
10 to Section 131071 of the Health and Safety Code, except in cases
11 where a civil penalty is assessed by an enforcing agency other than
12 the department, in which case proceedings shall be conducted
13 pursuant to the procedures of that agency that are consistent with
14 Section 131071 of the Health and Safety Code.

15 SEC. 3. Section 22962 of the Business and Professions Code
16 is amended to read:

17 22962. (a) For purposes of this section, the following terms
18 have the following meanings:

19 (1) “Self-service display” means the open display of tobacco
20 products or tobacco paraphernalia in a manner that is accessible
21 to the general public without the assistance of the retailer or
22 employee of the retailer.

23 (2) “Tobacco paraphernalia” means cigarette papers or wrappers,
24 blunt wraps as defined in Section 308 of the Penal Code, pipes,
25 holders of smoking materials of all types, cigarette rolling
26 machines, or other instruments or things designed for the smoking
27 or ingestion of tobacco products.

28 (3) “Tobacco product” means a product or device as defined in
29 subdivision—(e) (d) of Section 22950.5 of the Business and
30 Professions Code.

31 (4) “Tobacco store” means a retail business that meets all of the
32 following requirements:

33 (A) Primarily sells tobacco products.

34 (B) Generates more than 60 percent of its gross revenues
35 annually from the sale of tobacco products and tobacco
36 paraphernalia.

37 (C) Does not permit any person under 18 years of age to be
38 present or enter the premises at any time, unless accompanied by
39 the person’s parent or legal guardian, as defined in Section 6903
40 of the Family Code.

1 (D) Does not sell alcoholic beverages or food for consumption
2 on the premises.

3 (b) (1) (A) Except as permitted in subdivision (b) of Section
4 22960, it is unlawful for a person engaged in the retail sale of
5 tobacco products to sell, offer for sale, or display for sale any
6 tobacco product or tobacco paraphernalia by self-service display.
7 A person who violates this section is subject to those civil penalties
8 specified in the schedule in subdivision (a) of Section 22958.

9 (B) A person who violates this section is subject to those civil
10 penalties specified in the schedule in subdivision (a) of Section
11 22958.

12 (2) It is unlawful for a person engaged in the retail sale of blunt
13 wraps to place or maintain, or to cause to be placed or maintained,
14 any blunt wraps advertising display within two feet of candy,
15 snack, or nonalcoholic beverage displayed inside any store or
16 business.

17 (3) It is unlawful for any person or business to place or maintain,
18 or cause to be placed or maintained, any blunt wrap advertising
19 display that is less than four feet above the floor.

20 (c) Subdivision (b) shall not apply to the display in a tobacco
21 store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping
22 tobacco, provided that in the case of cigars they are generally not
23 sold or offered for sale in a sealed package of the manufacturer or
24 importer containing less than six cigars. In any enforcement action
25 brought pursuant to this division, the retail business that displays
26 any of the items described in this subdivision in a self-service
27 display shall have the burden of proving that it qualifies for the
28 exemption established in this subdivision.

29 (d) The Attorney General, a city attorney, a county counsel, or
30 a district attorney may bring a civil action to enforce this section.

31 (e) This section does not preempt or otherwise prohibit the
32 adoption of a local standard that imposes greater restrictions on
33 the access to tobacco products than the restrictions imposed by
34 this section. To the extent that there is an inconsistency between
35 this section and a local standard that imposes greater restrictions
36 on the access to tobacco products, the greater restriction on the
37 access to tobacco products in the local standard shall prevail.

38 SEC. 4. Section 22971 of the Business and Professions Code
39 is amended to read:

1 22971. For purposes of this division, the following terms shall
2 have the following meanings:

3 (a) “Board” means the State Board of Equalization.

4 (b) “Brand family” has the same meaning as that term is defined
5 in paragraph (2) of subdivision (a) of Section 30165.1 of the
6 Revenue and Taxation Code.

7 (c) “Cigarette” means a cigarette as defined in Section 30003
8 of the Revenue and Taxation Code.

9 (d) (1) “Control” or “controlling” means possession, direct or
10 indirect, of the power:

11 (A) To vote 25 percent or more of any class of the voting
12 securities issued by a person.

13 (B) To direct or cause the direction of the management and
14 policies of a person, whether through the ownership of voting
15 securities, by contract, other than a commercial contract for goods
16 or nonmanagement services, or as otherwise provided; however,
17 no individual shall be deemed to control a person solely on account
18 of being a director, officer, or employee of that person.

19 (2) For purposes of subparagraph (B) of paragraph (1), a person
20 who, directly or indirectly, owns, controls, holds, with the power
21 to vote, or holds proxies representing 10 percent or more of the
22 then outstanding voting securities issued by another person, is
23 presumed to control that other person.

24 (3) For purposes of this division, the board may determine
25 whether a person in fact controls another person.

26 (e) “Display for sale” means the placement of cigarettes or
27 tobacco products in a vending machine or in retail stock for the
28 purpose of selling or gifting the cigarettes or tobacco products.
29 For purposes of this definition, the clear and easily visible display
30 of cigarettes or tobacco products shall create a rebuttable
31 presumption that either were displayed for sale.

32 (f) “Distributor” means a distributor as defined in Section 30011
33 of the Revenue and Taxation Code.

34 (g) “Gifting” means any transfer of title or possession without
35 consideration, exchange, or barter, in any manner or by any means,
36 of cigarettes or tobacco products that have been purchased for
37 resale under a license issued pursuant to this division if the transfer
38 occurs while the license is suspended or after the effective date of
39 its revocation.

- 1 (h) “Importer” means an importer as defined in Section 30019
2 of the Revenue and Taxation Code.
- 3 (i) “Law enforcement agency” means a sheriff, a police
4 department, or a city, county, or city and county agency or
5 department designated by the governing body of that agency to
6 enforce this chapter or to enforce local smoking and tobacco
7 ordinances and regulations.
- 8 (j) “License” means a license issued by the board pursuant to
9 this division.
- 10 (k) “Licensee” means any person holding a license issued by
11 the board pursuant to this division.
- 12 (l) “Manufacturer” means a manufacturer of cigarettes or
13 tobacco products sold in this state.
- 14 (m) “Notice” or “notification” means, unless as otherwise
15 provided, the written notice or notification provided to a licensee
16 by the board by either actual delivery to the licensee or by
17 first-class mail addressed to the licensee at the address on the
18 license.
- 19 (n) “Package of cigarettes” means a package as defined in
20 Section 30015 of the Revenue and Taxation Code.
- 21 (o) “Person” means a person as defined in Section 30010 of the
22 Revenue and Taxation Code.
- 23 (p) “Retailer” means a person who engages in this state in the
24 sale of cigarettes or tobacco products directly to the public from
25 a retail location. Retailer includes a person who operates vending
26 machines from which cigarettes or tobacco products are sold in
27 this state.
- 28 (q) “Retail location” means both of the following:
- 29 (1) Any building from which cigarettes or tobacco products are
30 sold at retail.
- 31 (2) A vending machine.
- 32 (r) “Sale” or “sold” means a sale as defined in Section 30006
33 of the Revenue and Taxation Code.
- 34 (s) “Tobacco products” means a product or device as defined
35 in subdivision-(e) (d) of Section 22950.5.
- 36 (t) “Unstamped package of cigarettes” means a package of
37 cigarettes that does not bear a tax stamp as required under Part 13
38 (commencing with Section 30001) of Division 2 of the Revenue
39 and Taxation Code, including a package of cigarettes that bears a
40 tax stamp of another state or taxing jurisdiction, a package of

1 cigarettes that bears a counterfeit tax stamp, or a stamped or
2 unstamped package of cigarettes that is marked “Not for sale in
3 the United States.”

4 (u) “Wholesaler” means a wholesaler as defined in Section
5 30016 of the Revenue and Taxation Code.

6 SEC. 5. Section 1947.5 of the Civil Code is amended to read:

7 1947.5. (a) A landlord of a residential dwelling unit, as defined
8 in Section 1940, or his or her agent, may prohibit the smoking of
9 a cigarette, as defined in Section 104556 of the Health and Safety
10 Code, or other tobacco product on the property or in any building
11 or portion of the building, including any dwelling unit, other
12 interior or exterior area, or the premises on which it is located, in
13 accordance with this article.

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

21 (2) For a lease or rental agreement entered into before January
22 1, 2012, a prohibition against the smoking of cigarettes or other
23 tobacco products in any portion of the property in which smoking
24 was previously permitted shall constitute a change of the terms of
25 tenancy, requiring adequate notice in writing, to be provided in
26 the manner prescribed in Section 827.

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

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

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

1 establish or enforce any other lawful term or condition of the
2 tenancy.

3 *(f) For purposes of this section, “smoking” has the meaning of*
4 *the definition in subdivision (c) of Section 22950.5 of the Business*
5 *and Professions Code.*

6 ~~(f)~~

7 *(g) For purposes of this section, “tobacco product” means a*
8 *product or device as defined in subdivision—(e) (d) of Section*
9 *22950.5 of the Business and Professions Code.*

10 SEC. 6. Section 48901 of the Education Code is amended to
11 read:

12 48901. (a) No school shall permit the smoking or use of a
13 tobacco product by pupils of the school while the pupils are on
14 campus, or while attending school-sponsored activities or while
15 under the supervision and control of school district employees.

16 (b) The governing board of any school district maintaining a
17 high school shall take all steps it deems practical to discourage
18 high school students from smoking.

19 *(c) For purposes of this section, “smoking” has the meaning of*
20 *the definition in subdivision (c) of Section 22950.5 of the Business*
21 *and Professions Code.*

22 ~~(e)~~

23 *(d) For purposes of this section, “tobacco product” means a*
24 *product or device as defined in subdivision—(e) (d) of Section*
25 *22950.5 of the Business and Professions Code.*

26 SEC. 7. Section 7597 of the Government Code is amended to
27 read:

28 7597. (a) No public employee or member of the public shall
29 smoke a tobacco product inside a public building, or in an outdoor
30 area within 20 feet of a main exit, entrance, or operable window
31 of a public building, or in a passenger vehicle, as defined by
32 Section 465 of the Vehicle Code, owned by the state.

33 (b) This section shall not preempt the authority of any county,
34 city, city and county, California Community College campus,
35 campus of the California State University, or campus of the
36 University of California to adopt and enforce additional smoking
37 and tobacco control ordinances, regulations, or policies that are
38 more restrictive than the applicable standards required by this
39 chapter.

1 (c) For purposes of this section, “smoke” and “smoking” have
2 the meaning of the definition in subdivision (c) of Section 22950.5
3 of the Business and Professions Code.

4 ~~(e)~~

5 (d) For purposes of this section, “tobacco product” means a
6 product or device as defined in subdivision ~~(e)~~ (d) of Section
7 22950.5 of the Business and Professions Code.

8 SEC. 8. Section 1234 of the Health and Safety Code is amended
9 to read:

10 1234. (a) Smoking a tobacco product shall not be permitted
11 in patient areas of a clinic except those rooms designated for
12 occupancy exclusively by smokers.

13 (b) Clearly legible signs shall either:

14 (1) State that smoking is unlawful and be conspicuously posted
15 by, or on behalf of, the owner or manager of such clinic, in all
16 areas of a clinic where smoking is unlawful.

17 (2) Identify “smoking permitted” areas, and be posted by, or
18 on behalf of, the owner or manager of such clinic, only in areas of
19 a clinic where smoking is lawfully permitted.

20 If “smoking permitted” signs are posted, there shall also be
21 conspicuously posted, near all major entrances, clearly legible
22 signs stating that smoking is unlawful except in areas designated
23 “smoking permitted.”

24 (c) This section shall not apply to skilled nursing facilities,
25 intermediate care facilities, and intermediate care facilities for the
26 developmentally disabled.

27 (d) For purposes of this section, “smoking” has the meaning
28 of the definition in subdivision (c) of Section 22950.5 of the
29 Business and Professions Code.

30 ~~(e)~~

31 (e) For purposes of this section, “tobacco product” means a
32 product or device as defined in subdivision ~~(e)~~ (d) of Section
33 22950.5 of the Business and Professions Code.

34 SEC. 9. Section 1286 of the Health and Safety Code is amended
35 to read:

36 1286. (a) Smoking a tobacco product shall be prohibited in
37 patient care areas, waiting rooms, and visiting rooms of a health
38 facility, except those areas specifically designated as smoking
39 areas, and in patient rooms as specified in subdivision (b).

1 (b) Smoking a tobacco product shall not be permitted in a
2 patient room unless all persons assigned to the room have requested
3 a room where smoking is permitted. In the event that the health
4 facility occupancy has reached capacity, the health facility shall
5 have reasonable time to reassign patients to appropriate rooms.

6 (c) Clearly legible signs shall either:

7 (1) State that smoking is unlawful and be conspicuously posted
8 by, or on behalf of, the owner or manager of the health facility, in
9 all areas of a health facility where smoking is unlawful, or

10 (2) Identify “smoking permitted” areas, and be posted by, or
11 on behalf of, the owner or manager of the health facility, only in
12 areas of the health facility where smoking is lawfully permitted.

13 If “smoking permitted” signs are posted, there shall also be
14 conspicuously posted, near all major entrances, clearly legible
15 signs stating that smoking is unlawful except in areas designated
16 “smoking permitted.”

17 (d) No signs pertaining to smoking are required to be posted
18 in patient rooms.

19 (e) This section shall not apply to skilled nursing facilities,
20 intermediate care facilities, and intermediate care facilities for the
21 developmentally disabled.

22 (f) *For purposes of this section, “smoking” has the meaning of*
23 *the definition in subdivision (c) of Section 22950.5 of the Business*
24 *and Professions Code.*

25 (f)

26 (g) For purposes of this section, “tobacco product” means a
27 product or device as defined in subdivision ~~(e)~~ (d) of Section
28 22950.5 of the Business and Professions Code.

29 SEC. 10. Section 1530.7 of the Health and Safety Code is
30 amended to read:

31 1530.7. (a) Group homes, foster family agencies, small family
32 homes, transitional housing placement providers, and crisis
33 nurseries licensed pursuant to this chapter shall maintain a
34 smoke-free environment in the facility.

35 (b) A person who is licensed or certified pursuant to this chapter
36 to provide residential care in a foster family home or certified
37 family home shall not smoke a tobacco product or permit any other
38 person to smoke a tobacco product inside the facility, and, when
39 the child is present, on the outdoor grounds of the facility.

1 (c) A person who is licensed or certified pursuant to this chapter
2 to provide residential foster care shall not smoke a tobacco product
3 in any motor vehicle that is regularly used to transport the child.

4 (d) *For purposes of this section, “smoke” has the meaning of*
5 *the definition in subdivision (c) of Section 22950.5 of the Business*
6 *and Professions Code.*

7 ~~(d)~~

8 (e) For purposes of this section, “tobacco product” means a
9 product or device as defined in subdivision ~~(e)~~ (d) of Section
10 22950.5 of the Business and Professions Code.

11 SEC. 11. Section 1596.795 of the Health and Safety Code is
12 amended to read:

13 1596.795. (a) The smoking of a tobacco product in a private
14 residence that is licensed as a family day care home shall be
15 prohibited in the home and in those areas of the family day care
16 home where children are present. Nothing in this section shall
17 prohibit a city or county from enacting or enforcing an ordinance
18 relating to smoking in a family day care home if the ordinance is
19 more stringent than this section.

20 (b) The smoking of a tobacco product on the premises of a
21 licensed day care center shall be prohibited.

22 (c) *For purposes of this section, “smoking” has the meaning of*
23 *the definition in subdivision (c) of Section 22950.5 of the Business*
24 *and Professions Code.*

25 ~~(e)~~

26 (d) For purposes of this section, “tobacco product” means a
27 product or device as defined in subdivision ~~(e)~~ (d) of Section
28 22950.5 of the Business and Professions Code.

29 SEC. 12. Section 104495 of the Health and Safety Code is
30 amended to read:

31 104495. (a) For the purposes of this section, the following
32 definitions shall govern:

33 (1) “Playground” means any park or recreational area
34 specifically designed to be used by children that has play equipment
35 installed, or any similar facility located on public or private school
36 grounds, or on city, county, or state park grounds.

37 (2) “Tot lot sandbox area” means a designated play area within
38 a public park for the use by children under five years of age. Where
39 the area is not contained by a fence, the boundary of a tot lot
40 sandbox area shall be defined by the edge of the resilient surface

1 of safety material, such as concrete or wood, or any other material
2 surrounding the tot lot sandbox area.

3 (3) “Public park” includes a park operated by a public agency.

4 (4) “Smoke” and “smoking” have the meaning of the definition
5 in subdivision (c) of Section 22950.5 of the Business and
6 Professions Code.

7 ~~(4) “Smoke or smoking” means the carrying of a lighted pipe,
8 lighted cigar, or lighted cigarette of any kind, or the lighting of a
9 pipe, cigar, or cigarette of any kind, including, but not limited to,
10 tobacco, or any other weed or plant.~~

11 (5) “Cigarette” means the same as defined in Section 104556.

12 (6) “Cigar” means the same as defined in Section 104550.

13 (7) “Tobacco product” means a product or device as defined in
14 subdivision ~~(e)~~ (d) of Section 22950.5 of the Business and
15 Professions Code.

16 (b) No person shall smoke a cigarette, cigar, or other tobacco
17 product within 25 feet of any playground or tot lot sandbox area.

18 (c) No person shall dispose of cigarette butts, cigar butts, or
19 any other tobacco-related waste within 25 feet of a playground or
20 a tot lot sandbox area.

21 (d) No person shall intimidate, threaten any reprisal, or effect
22 any reprisal, for the purpose of retaliating against another person
23 who seeks to attain compliance with this section.

24 (e) Any person who violates this section is guilty of an
25 infraction and shall be punished by a fine of two hundred fifty
26 dollars (\$250) for each violation of this section. Punishment under
27 this section shall not preclude punishment pursuant to Section
28 13002, Section 374.4 of the Penal Code, or any other provision of
29 law proscribing the act of littering.

30 (f) The prohibitions contained in subdivisions (b), (c), and (d)
31 shall not apply to private property.

32 (g) The prohibitions contained in subdivisions (b) and (c) shall
33 not apply to a public sidewalk located within 25 feet of a
34 playground or a tot lot sandbox area.

35 (h) This section shall not preempt the authority of any county,
36 city, or city and county to regulate smoking around playgrounds
37 or tot lot sandbox areas. Any county, city, or city and county may
38 enforce any ordinance adopted prior to January 1, 2002, or may
39 adopt and enforce new regulations that are more restrictive than
40 this section, on and after January 1, 2002.

1 ~~SEC. 13. Section 113978 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~113978. (a) Food facilities shall have a “no smoking tobacco~~
4 ~~products” sign posted in the food preparation, food storage, and~~
5 ~~warewashing areas.~~

6 ~~(b) For purposes of this section, “tobacco product” means a~~
7 ~~product or device as defined in subdivision (c) of Section 22950.5~~
8 ~~of the Business and Professions Code.~~

9 ~~SEC. 14.~~

10 ~~SEC. 13.~~ Section 114332.3 of the Health and Safety Code is
11 ~~amended to read:~~

12 ~~114332.3. (a) No potentially hazardous food or beverage stored~~
13 ~~or prepared in a private home may be offered for sale, sold, or~~
14 ~~given away from a nonprofit charitable temporary food facility.~~
15 ~~Potentially hazardous food shall be prepared in a food~~
16 ~~establishment or on the premises of a nonprofit charitable~~
17 ~~temporary food facility.~~

18 ~~(b) All food and beverages shall be protected at all times from~~
19 ~~unnecessary handling and shall be stored, displayed, and served~~
20 ~~so as to be protected from contamination.~~

21 ~~(c) Potentially hazardous food and beverages shall be maintained~~
22 ~~at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or~~
23 ~~above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times.~~

24 ~~(d) Ice used in beverages shall be protected from contamination~~
25 ~~and shall be maintained separate from ice used for refrigeration~~
26 ~~purposes.~~

27 ~~(e) All food and food containers shall be stored off the floor on~~
28 ~~shelving or pallets located within the facility.~~

29 ~~(f) Smoking a tobacco product is prohibited in nonprofit~~
30 ~~charitable temporary food facilities.~~

31 ~~(g) (1) Except as provided in paragraph (2), live animals, birds,~~
32 ~~or fowl shall not be kept or allowed in nonprofit charitable~~
33 ~~temporary food facilities.~~

34 ~~(2) Paragraph (1) does not prohibit the presence, in any room~~
35 ~~where food is served to the public, guests, or patrons, of a guide~~
36 ~~dog, signal dog, or service dog, as defined by Section 54.1 of the~~
37 ~~Civil Code, accompanied by a totally or partially blind person,~~
38 ~~deaf person, person whose hearing is impaired, or handicapped~~
39 ~~person, or dogs accompanied by persons licensed to train guide~~

1 dogs for the blind pursuant to Chapter 9.5 (commencing with
2 Section 7200) of Division 3 of the Business and Professions Code.

3 (3) Paragraph (1) does not apply to dogs under the control of
4 uniformed law enforcement officers or of uniformed employees
5 of private patrol operators and operators of a private patrol service
6 who are licensed pursuant to Chapter 11.5 (commencing with
7 Section 7580) of Division 3 of the Business and Professions Code,
8 while these employees are acting within the course and scope of
9 their employment as private patrol persons.

10 (4) The persons and operators described in paragraphs (2) and
11 (3) are liable for any damage done to the premises or facilities by
12 the dog.

13 (5) The dogs described in paragraphs (2) and (3) shall be
14 excluded from food preparation and utensil wash areas. Aquariums
15 and aviaries shall be allowed if enclosed so as not to create a public
16 health problem.

17 (h) All garbage shall be disposed of in a sanitary manner.

18 (i) Employees preparing or handling food shall wear clean
19 clothing and shall keep their hands clean at all times.

20 (j) *For purposes of this section, “smoking” has the meaning of*
21 *the definition in subdivision (c) of Section 22950.5 of the Business*
22 *and Professions Code.*

23 (j)

24 (k) For purposes of this section, “tobacco product” means a
25 product or device as defined in subdivision ~~(e)~~ (d) of Section
26 22950.5 of the Business and Professions Code.

27 ~~SEC. 15.~~

28 *SEC. 14.* Section 114371 of the Health and Safety Code is
29 amended to read:

30 114371. Certified farmers’ markets shall meet all of the
31 following requirements:

32 (a) All food shall be stored at least six inches off the floor or
33 ground or under any other conditions that are approved. Tents,
34 canopies, or other overhead coverings are not required for fresh
35 whole produce sales displays or storage, except when specifically
36 required pursuant to this chapter. Flavored nuts and dried fruits
37 that are being sold on a bulk or nonprepackaged basis shall be
38 displayed and dispensed by the producer from covered containers.
39 All processed food products being sold shall be in compliance with

1 Section 113735 and the applicable provisions of Section 110460,
2 114365, or 114365.2.

3 (b) Food preparation is prohibited at certified farmers' markets
4 with the exception of food samples. Trimming whole produce for
5 sale shall not be considered food preparation. Distribution of food
6 samples may occur provided that the following sanitary conditions
7 exist:

8 (1) Samples shall be kept in clean, nonabsorbent, and covered
9 containers intended by the manufacturer for use with foods. Any
10 cutting or distribution of samples shall only occur under a tent,
11 canopy, or other overhead covering.

12 (2) All food samples shall be distributed by the producer in a
13 manner that is sanitary and in which each sample is distributed
14 without the possibility of a consumer touching the remaining
15 samples.

16 (3) Clean, disposable plastic gloves shall be used when cutting
17 food samples.

18 (4) Fresh, whole produce intended for sampling shall be washed
19 or cleaned in another manner of any soil or other material by
20 potable water in order that it is wholesome and safe for
21 consumption.

22 (5) Notwithstanding Section 114205, available potable water
23 may be required for handwashing and sanitizing; the need
24 determined and manner approved by the enforcement agency.

25 (6) Potentially hazardous food samples shall be maintained at
26 or below 45 degrees Fahrenheit and shall be disposed of within
27 two hours after cutting. A certified farmers' market or an
28 enforcement officer may cause immediate removal and disposal,
29 or confiscate and destroy, any potentially hazardous food samples
30 found not in compliance with this paragraph.

31 (7) Wastewater shall be disposed of in a facility connected to
32 the public sewer system or in a manner approved by the
33 enforcement agency.

34 (8) Utensils and cutting surfaces shall be smooth, nonabsorbent,
35 and easily cleanable, or single-use articles shall be utilized. If the
36 producer uses only single-use articles or maintains an adequate
37 supply of clean replacement articles readily available at the site at
38 the time of use, warewashing facilities shall not be required.

1 (c) Approved toilet and handwashing facilities shall be available
2 within 200 feet travel distance of the premises of the certified
3 farmers' market or as approved by the enforcement officer.

4 (d) No live animals, birds, or fowl shall be kept or allowed, and
5 no individual shall bring a live animal, bird, or fowl, within 20
6 feet of any area where food is stored or held for sale within a
7 certified farmers' market. This subdivision does not apply to guide
8 dogs, signal dogs, or service dogs when used in accordance with
9 the federal Americans with Disabilities Act of 1990 (42 U.S.C.
10 Sec. 12101 et seq.), and as provided in Section 36.104 of Title 28
11 of the Code of Federal Regulations. All guide dogs, signal dogs,
12 and service dogs shall be used and properly identified in accordance
13 with Section 54.1 and subdivision (b) of Section 54.2 of the Civil
14 Code, and Sections 30850, 30851, and 30852 of the Food and
15 Agricultural Code.

16 (e) All garbage and refuse shall be stored and disposed of in a
17 manner approved by the enforcement officer.

18 (f) Smoking of cigarettes, cigars, pipe tobacco, and other tobacco
19 products shall not be permitted within 25 feet of the common
20 commerce area comprised of sales personnel and shopping
21 customers of the certified farmers' market.

22 (g) Notwithstanding Chapter 10 (commencing with Section
23 114294) vendors selling food adjacent to, and under the jurisdiction
24 and management of, a certified farmers' market may store, display,
25 and sell from a table or display fixture apart from the mobile
26 facility in a manner approved by the enforcement agency.

27 (h) Temporary food facilities may be operated at a separate
28 community event adjacent to, and in conjunction with, certified
29 farmers' markets. The organization in control of the community
30 event at which these temporary food facilities operate shall comply
31 with Section 114381.1.

32 (i) All harvested, cut, wrapped, or otherwise processed meat,
33 poultry, and fish products shall be from approved sources as set
34 forth in Section 113735, and shall be properly labeled or have
35 documentation present at the point of sale that demonstrates
36 compliance with this requirement. All harvested, cut, wrapped, or
37 otherwise processed meat, poultry, and fish products offered for
38 sale shall be transported, stored, displayed, and maintained at a
39 temperature of 41 degrees Fahrenheit or colder. The temperature
40 holding capabilities of the storage containers used shall be

1 sufficient to maintain safe product temperatures. Storage containers
 2 for meat, poultry, and fish products shall be insulated and have
 3 interior surfaces that are smooth, nonabsorbent, and easily
 4 cleanable. All meat, poultry, and fish products shall be stored in
 5 a manner that reduces the risk of cross-contamination.

6 *(j) For purposes of this section, “smoking” has the meaning of*
 7 *the definition in subdivision (c) of Section 22950.5 of the Business*
 8 *and Professions Code.*

9 ~~(j)~~

10 *(k) For purposes of this section, “tobacco product” means a*
 11 *product or device as defined in subdivision—(e) (d) of Section*
 12 *22950.5 of the Business and Professions Code.*

13 ~~SEC. 16.~~

14 *SEC. 15.* Section 118910 of the Health and Safety Code is
 15 amended to read:

16 118910. (a) The Legislature declares its intent not to preempt
 17 the field of regulation of the smoking of tobacco products. A local
 18 governing body may ban completely the smoking of tobacco
 19 products, or may regulate smoking of tobacco products in any
 20 manner not inconsistent with this article and Article 3 (commencing
 21 with Section 118920) or any other provision of state law.

22 *(b) For purposes of this section, “smoking” has the meaning*
 23 *of the definition in subdivision (c) of Section 22950.5 of the*
 24 *Business and Professions Code.*

25 ~~(b)~~

26 *(c) For purposes of this section, “tobacco product” means a*
 27 *product or device as defined in subdivision—(e) (d) of Section*
 28 *22950.5 of the Business and Professions Code.*

29 ~~SEC. 17.~~

30 *SEC. 16.* Section 118925 of the Health and Safety Code is
 31 amended to read:

32 118925. (a) *(1)* It is unlawful for any person to smoke a
 33 tobacco product ~~or any other plant product~~ in any vehicle of a
 34 passenger stage corporation, the National Railroad Passenger
 35 Corporation (Amtrak) except to the extent permitted by federal
 36 law, in any aircraft except to the extent permitted by federal law,
 37 on a public transportation system, as defined by Section 99211 of
 38 the Public Utilities Code, or in any vehicle of an entity receiving
 39 any transit assistance from the state.

1 (2) (A) For purposes of this subdivision, “smoke” has the
2 meaning of the definition in subdivision (c) of Section 22950.5 of
3 the Business and Professions Code.

4 (b)

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

8 (b) It is unlawful for any person to smoke any plant product
9 other than a tobacco product in any vehicle of a passenger stage
10 corporation, the National Railroad Passenger Corporation
11 (Amtrak) except to the extent permitted by federal law, in any
12 aircraft except to the extent permitted by federal law, on a public
13 transportation system, as defined by Section 99211 of the Public
14 Utilities Code, or in any vehicle of an entity receiving any transit
15 assistance from the state.

16 SEC. 18. Section 118930 of the Health and Safety Code is
17 amended to read:

18 118930. (a) A notice prohibiting smoking tobacco products,
19 displayed as a symbol and in English, shall be posted in each
20 vehicle or aircraft subject to this article.

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

24 SEC. 19. Section 118935 of the Health and Safety Code is
25 amended to read:

26 118935. (a) Every person and public agency providing
27 transportation services for compensation, including, but not limited
28 to, the National Railroad Passenger Corporation (Amtrak) to the
29 extent permitted by federal law, passenger stage corporations, and
30 local agencies that own or operate airports, shall designate and
31 post, by signs of sufficient number and posted in locations that
32 may be readily seen by persons within the area, a contiguous area
33 of not less than 75 percent of any area made available by the person
34 or public agency as a waiting room for these passengers where the
35 smoking of tobacco products is prohibited. Not more than 25
36 percent of any given area may be set aside for smokers of tobacco
37 products.

38 (b) Every person or public agency subject to subdivision (a)
39 shall also post, by sign of sufficient number and posted in locations
40 as to be readily seen by persons within the area of any building

1 where tickets, tokens, or other evidences that a fare has been paid
2 for transportation services that are provided by the person or public
3 agency, a notice that the smoking of tobacco products by persons
4 waiting in line to purchase the tickets, tokens, or other evidences
5 that a fare has been paid is prohibited.

6 ~~(e) It is unlawful for any person to smoke tobacco products in
7 an area posted pursuant to this section.~~

8 ~~(d)~~

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

12 ~~SEC. 20.~~

13 *SEC. 17.* Section 118948 of the Health and Safety Code is
14 amended to read:

15 118948. (a) It is unlawful for a person to smoke a tobacco
16 product in a motor vehicle, whether in motion or at rest, in which
17 there is a minor.

18 (b) *For purposes of this section, “smoke” has the meaning of
19 the definition in subdivision (c) of Section 22950.5 of the Business
20 and Professions Code.*

21 ~~(b) For purposes of this section, “to smoke” means to have in
22 one’s immediate possession a lighted pipe, cigar, or cigarette
23 containing tobacco or any other plant.~~

24 (c) For purposes of this section, “tobacco product” means a
25 product or device as defined in subdivision ~~(e)~~ (d) of Section
26 22950.5 of the Business and Professions Code.

27 (d) A violation of this section is an infraction punishable by a
28 fine not exceeding one hundred dollars (\$100) for each violation.

29 ~~SEC. 21.~~

30 *SEC. 18.* Section 119405 of the Health and Safety Code is
31 repealed.

32 ~~SEC. 22.~~

33 *SEC. 19.* Section 6404.5 of the Labor Code is amended to read:

34 6404.5. (a) The Legislature finds and declares that regulation
35 of smoking in the workplace is a matter of statewide interest and
36 concern. It is the intent of the Legislature in enacting this section
37 to prohibit the smoking of tobacco products in all (100 percent of)
38 enclosed places of employment in this state, as covered by this
39 section, thereby eliminating the need of local governments to enact
40 workplace smoking restrictions within their respective jurisdictions.

1 It is further the intent of the Legislature to create a uniform
2 statewide standard to restrict and prohibit the smoking of tobacco
3 products in enclosed places of employment, as specified in this
4 section, in order to reduce employee exposure to environmental
5 tobacco smoke to a level that will prevent anything other than
6 insignificantly harmful effects to exposed employees, and also to
7 eliminate the confusion and hardship that can result from enactment
8 or enforcement of disparate local workplace smoking restrictions.
9 Notwithstanding any other provision of this section, it is the intent
10 of the Legislature that any area not defined as a “place of
11 employment” pursuant to subdivision (d) or in which the smoking
12 of tobacco products is not regulated pursuant to subdivision (e)
13 shall be subject to local regulation of smoking of tobacco products.

14 (b) No employer shall knowingly or intentionally permit, and
15 no person shall engage in, the smoking of tobacco products in an
16 enclosed space at a place of employment. “Enclosed space”
17 includes lobbies, lounges, waiting areas, elevators, stairwells, and
18 restrooms that are a structural part of the building and not
19 specifically defined in subdivision (d).

20 (c) For purposes of this section, an employer who permits any
21 nonemployee access to his or her place of employment on a regular
22 basis has not acted knowingly or intentionally in violation of this
23 section if he or she has taken the following reasonable steps to
24 prevent smoking by a nonemployee:

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

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

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

33 (2) Has requested, when appropriate, that a nonemployee who
34 is smoking refrain from smoking in the enclosed workplace.

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

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

3 (1) Sixty-five percent of the guestroom accommodations in a
4 hotel, motel, or similar transient lodging establishment.

5 (2) Areas of the lobby in a hotel, motel, or other similar transient
6 lodging establishment designated for smoking by the establishment.
7 An establishment may permit smoking in a designated lobby area
8 that does not exceed 25 percent of the total floor area of the lobby
9 or, if the total area of the lobby is 2,000 square feet or less, that
10 does not exceed 50 percent of the total floor area of the lobby. For
11 purposes of this paragraph, “lobby” means the common public
12 area of an establishment in which registration and other similar or
13 related transactions, or both, are conducted and in which the
14 establishment’s guests and members of the public typically
15 congregate.

16 (3) Meeting and banquet rooms in a hotel, motel, other transient
17 lodging establishment similar to a hotel or motel, restaurant, or
18 public convention center, except while food or beverage functions
19 are taking place, including setup, service, and cleanup activities,
20 or when the room is being used for exhibit purposes. At times
21 when smoking is not permitted in a meeting or banquet room
22 pursuant to this paragraph, the establishment may permit smoking
23 in corridors and prefunction areas adjacent to and serving the
24 meeting or banquet room if no employee is stationed in that
25 corridor or area on other than a passing basis.

26 (4) Retail or wholesale tobacco shops and private smokers’
27 lounges. For purposes of this paragraph:

28 (A) “Private smokers’ lounge” means any enclosed area in or
29 attached to a retail or wholesale tobacco shop that is dedicated to
30 the use of tobacco products, including, but not limited to, cigars
31 and pipes.

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

36 (5) Cabs of motortrucks, as defined in Section 410 of the Vehicle
37 Code, or truck tractors, as defined in Section 655 of the Vehicle
38 Code, if no nonsmoking employees are present.

39 (6) Warehouse facilities. For purposes of this paragraph,
40 “warehouse facility” means a warehouse facility with more than

1 100,000 square feet of total floorspace, and 20 or fewer full-time
2 employees working at the facility, but does not include any area
3 within a facility that is utilized as office space.

4 (7) Gaming clubs, in which smoking is permitted by subdivision
5 (f). For purposes of this paragraph, “gaming club” means any
6 gaming club, as defined in Section 19802 of the Business and
7 Professions Code, or bingo facility, as defined in Section 326.5 of
8 the Penal Code, that restricts access to minors under 18 years of
9 age.

10 (8) Bars and taverns, in which smoking is permitted by
11 subdivision (f). For purposes of this paragraph, “bar” or “tavern”
12 means a facility primarily devoted to the serving of alcoholic
13 beverages for consumption by guests on the premises, in which
14 the serving of food is incidental. “Bar or tavern” includes those
15 facilities located within a hotel, motel, or other similar transient
16 occupancy establishment. However, when located within a building
17 in conjunction with another use, including a restaurant, “bar” or
18 “tavern” includes only those areas used primarily for the sale and
19 service of alcoholic beverages. “Bar” or “tavern” does not include
20 the dining areas of a restaurant, regardless of whether alcoholic
21 beverages are served therein.

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

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

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

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

31 (13) Breakrooms designated by employers for smoking, provided
32 that all of the following conditions are met:

33 (A) Air from the smoking room shall be exhausted directly to
34 the outside by an exhaust fan. Air from the smoking room shall
35 not be recirculated to other parts of the building.

36 (B) The employer shall comply with any ventilation standard
37 or other standard utilizing appropriate technology, including, but
38 not limited to, mechanical, electronic, and biotechnical systems,
39 adopted by the Occupational Safety and Health Standards Board
40 or the federal Environmental Protection Agency. If both adopt

1 inconsistent standards, the ventilation standards of the Occupational
2 Safety and Health Standards Board shall be no less stringent than
3 the standards adopted by the federal Environmental Protection
4 Agency.

5 (C) The smoking room shall be located in a nonwork area where
6 no one, as part of his or her work responsibilities, is required to
7 enter. For purposes of this subparagraph, “work responsibilities”
8 does not include any custodial or maintenance work carried out in
9 the breakroom when it is unoccupied.

10 (D) There are sufficient nonsmoking breakrooms to
11 accommodate nonsmokers.

12 (14) Employers with a total of five or fewer employees, either
13 full time or part time, may permit smoking where all of the
14 following conditions are met:

15 (A) The smoking area is not accessible to minors.

16 (B) All employees who enter the smoking area consent to permit
17 smoking. No one, as part of his or her work responsibilities, shall
18 be required to work in an area where smoking is permitted. An
19 employer who is determined by the division to have used coercion
20 to obtain consent or who has required an employee to work in the
21 smoking area shall be subject to the penalty provisions of Section
22 6427.

23 (C) Air from the smoking area shall be exhausted directly to
24 the outside by an exhaust fan. Air from the smoking area shall not
25 be recirculated to other parts of the building.

26 (D) The employer shall comply with any ventilation standard
27 or other standard utilizing appropriate technology, including, but
28 not limited to, mechanical, electronic, and biotechnical systems,
29 adopted by the Occupational Safety and Health Standards Board
30 or the federal Environmental Protection Agency. If both adopt
31 inconsistent standards, the ventilation standards of the Occupational
32 Safety and Health Standards Board shall be no less stringent than
33 the standards adopted by the federal Environmental Protection
34 Agency.

35 This paragraph shall not be construed to (i) supersede or render
36 inapplicable any condition or limitation on smoking areas made
37 applicable to specific types of business establishments by any other
38 paragraph of this subdivision or (ii) apply in lieu of any otherwise
39 applicable paragraph of this subdivision that has become
40 inoperative.

1 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
2 construed to require employers to provide reasonable
3 accommodation to smokers, or to provide breakrooms for smokers
4 or nonsmokers.

5 (f) (1) Except as otherwise provided in this subdivision,
6 smoking may be permitted in gaming clubs, as defined in paragraph
7 (7) of subdivision (d), and in bars and taverns, as defined in
8 paragraph (8) of subdivision (d), until the earlier of the following:

9 (A) January 1, 1998.

10 (B) The date of adoption of a regulation (i) by the Occupational
11 Safety and Health Standards Board reducing the permissible
12 employee exposure level to environmental tobacco smoke to a
13 level that will prevent anything other than insignificantly harmful
14 effects to exposed employees or (ii) by the federal Environmental
15 Protection Agency establishing a standard for reduction of
16 permissible exposure to environmental tobacco smoke to an
17 exposure level that will prevent anything other than insignificantly
18 harmful effects to exposed persons.

19 (2) If a regulation specified in subparagraph (B) of paragraph
20 (1) is adopted on or before January 1, 1998, smoking may thereafter
21 be permitted in gaming clubs and in bars and taverns, subject to
22 full compliance with, or conformity to, the standard in the
23 regulation within two years following the date of adoption of the
24 regulation. An employer failing to achieve compliance with, or
25 conformity to, the regulation within this two-year period shall
26 prohibit smoking in the gaming club, bar, or tavern until
27 compliance or conformity is achieved. If the Occupational Safety
28 and Health Standards Board and the federal Environmental
29 Protection Agency both adopt regulations specified in subparagraph
30 (B) of paragraph (1) that are inconsistent, the regulations of the
31 Occupational Safety and Health Standards Board shall be no less
32 stringent than the regulations of the federal Environmental
33 Protection Agency.

34 (3) If a regulation specified in subparagraph (B) of paragraph
35 (1) is not adopted on or before January 1, 1998, the exemptions
36 specified in paragraphs (7) and (8) of subdivision (d) shall become
37 inoperative on and after January 1, 1998, until a regulation is
38 adopted. Upon adoption of such a regulation on or after January
39 1, 1998, smoking may thereafter be permitted in gaming clubs and
40 in bars and taverns, subject to full compliance with, or conformity

1 to, the standard in the regulation within two years following the
2 date of adoption of the regulation. An employer failing to achieve
3 compliance with, or conformity to, the regulation within this
4 two-year period shall prohibit smoking in the gaming club, bar,
5 or tavern until compliance or conformity is achieved. If the
6 Occupational Safety and Health Standards Board and the federal
7 Environmental Protection Agency both adopt regulations specified
8 in subparagraph (B) of paragraph (1) that are inconsistent, the
9 regulations of the Occupational Safety and Health Standards Board
10 shall be no less stringent than the regulations of the federal
11 Environmental Protection Agency.

12 (4) From January 1, 1997, to December 31, 1997, inclusive,
13 smoking may be permitted in gaming clubs, as defined in paragraph
14 (7) of subdivision (d), and in bars and taverns, as defined in
15 paragraph (8) of subdivision (d), subject to both of the following
16 conditions:

17 (A) If practicable, the gaming club or bar or tavern shall
18 establish a designated nonsmoking area.

19 (B) If feasible, no employee shall be required, in the
20 performance of ordinary work responsibilities, to enter any area
21 in which smoking is permitted.

22 (g) The smoking prohibition set forth in this section shall
23 constitute a uniform statewide standard for regulating the smoking
24 of tobacco products in enclosed places of employment and shall
25 supersede and render unnecessary the local enactment or
26 enforcement of local ordinances regulating the smoking of tobacco
27 products in enclosed places of employment. Insofar as the smoking
28 prohibition set forth in this section is applicable to all (100-percent)
29 places of employment within this state and, therefore, provides
30 the maximum degree of coverage, the practical effect of this section
31 is to eliminate the need of local governments to enact enclosed
32 workplace smoking restrictions within their respective jurisdictions.

33 (h) Nothing in this section shall prohibit an employer from
34 prohibiting smoking of tobacco products in an enclosed place of
35 employment for any reason.

36 (i) The enactment of local regulation of smoking of tobacco
37 products in enclosed places of employment by local governments
38 shall be suspended only for as long as, and to the extent that, the
39 (100-percent) smoking prohibition provided for in this section
40 remains in effect. In the event this section is repealed or modified

1 by subsequent legislative or judicial action so that the (100-percent)
2 smoking prohibition is no longer applicable to all enclosed places
3 of employment in California, local governments shall have the full
4 right and authority to enforce previously enacted, and to enact and
5 enforce new, restrictions on the smoking of tobacco products in
6 enclosed places of employment within their jurisdictions, including
7 a complete prohibition of smoking. Notwithstanding any other
8 provision of this section, any area not defined as a “place of
9 employment” or in which smoking is not regulated pursuant to
10 subdivision (d) or (e), shall be subject to local regulation of
11 smoking of tobacco products.

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

20 (k) Notwithstanding Section 6309, the division shall not be
21 required to respond to any complaint regarding the smoking of
22 tobacco products in an enclosed space at a place of employment,
23 unless the employer has been found guilty pursuant to subdivision
24 (j) of a third violation of subdivision (b) within the previous year.

25 (l) If any provision of this act or the application thereof to any
26 person or circumstances is held invalid, that invalidity shall not
27 affect other provisions or applications of the act that can be given
28 effect without the invalid provision or application, and to this end
29 the provisions of this act are severable.

30 (m) *For purposes of this section, “smoking” has the meaning*
31 *of the definition in subdivision (c) of Section 22950.5 of the*
32 *Business and Professions Code.*

33 ~~(m)~~

34 (n) For purposes of this section, “tobacco product” means a
35 product or device as defined in subdivision ~~(e)~~ (d) of Section
36 22950.5 of the Business and Professions Code.

37 ~~SEC. 23.~~

38 *SEC. 20.* Section 308 of the Penal Code is amended to read:

39 308. (a) (1) Every person, firm, or corporation that knowingly
40 or under circumstances in which it has knowledge, or should

1 otherwise have grounds for knowledge, sells, gives, or in any way
2 furnishes to another person who is under 18 years of age any
3 tobacco, cigarette, or cigarette papers, or blunts wraps, or any other
4 preparation of tobacco, or any other instrument or paraphernalia
5 that is designed for the smoking or ingestion of tobacco, tobacco
6 products, or any controlled substance, is subject to either a criminal
7 action for a misdemeanor or to a civil action brought by a city
8 attorney, a county counsel, or a district attorney, punishable by a
9 fine of two hundred dollars (\$200) for the first offense, five
10 hundred dollars (\$500) for the second offense, and one thousand
11 dollars (\$1,000) for the third offense.

12 Notwithstanding Section 1464 or any other law, 25 percent of
13 each civil and criminal penalty collected pursuant to this
14 subdivision shall be paid to the office of the city attorney, county
15 counsel, or district attorney, whoever is responsible for bringing
16 the successful action, and 25 percent of each civil and criminal
17 penalty collected pursuant to this subdivision shall be paid to the
18 city or county for the administration and cost of the community
19 service work component provided in subdivision (b).

20 Proof that a defendant, or his or her employee or agent,
21 demanded, was shown, and reasonably relied upon evidence of
22 majority shall be defense to any action brought pursuant to this
23 subdivision. Evidence of majority of a person is a facsimile of or
24 a reasonable likeness of a document issued by a federal, state,
25 county, or municipal government, or subdivision or agency thereof,
26 including, but not limited to, a motor vehicle operator's license, a
27 registration certificate issued under the federal Selective Service
28 Act, or an identification card issued to a member of the Armed
29 Forces.

30 For purposes of this section, the person liable for selling or
31 furnishing tobacco products to minors by a tobacco vending
32 machine shall be the person authorizing the installation or
33 placement of the tobacco vending machine upon premises he or
34 she manages or otherwise controls and under circumstances in
35 which he or she has knowledge, or should otherwise have grounds
36 for knowledge, that the tobacco vending machine will be utilized
37 by minors.

38 (2) For purposes of this section, "blunt wraps" means cigar
39 papers or cigar wrappers of all types that are designed for smoking

1 or ingestion of tobacco products and contain less than 50 percent
2 tobacco.

3 (b) Every person under 18 years of age who purchases, receives,
4 or possesses any tobacco, cigarette, or cigarette papers, or any
5 other preparation of tobacco, or any other instrument or
6 paraphernalia that is designed for the smoking of tobacco, tobacco
7 products, or any controlled substance shall, upon conviction, be
8 punished by a fine of seventy-five dollars (\$75) or 30 hours of
9 community service work.

10 (c) Every person, firm, or corporation that sells, or deals in
11 tobacco or any preparation thereof, shall post conspicuously and
12 keep so posted in his, her, or their place of business at each point
13 of purchase the notice required pursuant to subdivision (b) of
14 Section 22952 of the Business and Professions Code, and any
15 person failing to do so shall, upon conviction, be punished by a
16 fine of fifty dollars (\$50) for the first offense, one hundred dollars
17 (\$100) for the second offense, two hundred fifty dollars (\$250) for
18 the third offense, and five hundred dollars (\$500) for the fourth
19 offense and each subsequent violation of this provision, or by
20 imprisonment in a county jail not exceeding 30 days.

21 (d) For purposes of determining the liability of persons, firms,
22 or corporations controlling franchises or business operations in
23 multiple locations for the second and subsequent violations of this
24 section, each individual franchise or business location shall be
25 deemed a separate entity.

26 (e) Notwithstanding subdivision (b), any person under 18 years
27 of age who purchases, receives, or possesses any tobacco, cigarette,
28 or cigarette papers, or any other preparation of tobacco, any other
29 instrument or paraphernalia that is designed for the smoking of
30 tobacco, or tobacco products is immune from prosecution for that
31 purchase, receipt, or possession while participating in either of the
32 following:

33 (1) An enforcement activity that complies with the guidelines
34 adopted pursuant to subdivisions (c) and (d) of Section 22952 of
35 the Business and Professions Code.

36 (2) An activity conducted by the State Department of Public
37 Health, a local health department, or a law enforcement agency
38 for the purpose of determining or evaluating youth tobacco
39 purchase rates.

1 (f) It is the Legislature’s intent to regulate the subject matter of
 2 this section. As a result, a city, county, or city and county shall not
 3 adopt any ordinance or regulation inconsistent with this section.

4 (g) *For purposes of this section, “smoking” has the meaning*
 5 *of the definition in subdivision (c) of Section 22950.5 of the*
 6 *Business and Professions Code.*

7 ~~(g)~~

8 (h) For purposes of this section, “tobacco product” means a
 9 product or device as defined in subdivision ~~(e)~~ (d) of Section
 10 22950.5 of the Business and Professions Code.

11 ~~SEC. 24.~~

12 *SEC. 21.* Section 561 of the Public Utilities Code is amended
 13 to read:

14 561. (a) Every railroad corporation, passenger stage
 15 corporation, passenger air carrier, and street railroad corporation
 16 providing departures originating in this state shall prohibit the
 17 smoking of a tobacco product in the passenger seating area of
 18 every passenger car, passenger stage, aircraft, or other vehicle.

19 (b) Every such corporation and carrier shall display in the
 20 passenger seating area of every passenger car, passenger stage,
 21 aircraft, or other vehicle, notices sufficient in number, posted in
 22 such locations as to be readily seen by boarding passengers,
 23 advising passengers of the no smoking requirements pursuant to
 24 subdivision (a). Words on such notices which state “No Smoking”
 25 or an equivalent phrase shall be at least three-quarters of one inch
 26 high, and any other explanatory words on the notices shall be at
 27 least one-quarter of one inch high.

28 (c) No person shall smoke a tobacco product in a space known
 29 by him or her to be designated for nonsmoking passengers. A
 30 violation of this subdivision is not a crime.

31 (d) As used in this section, “passenger air carrier” shall have
 32 the same meaning as provided in Sections 2741 and 2743.

33 (e) *For purposes of this section, “smoke” and “smoking” have*
 34 *the meaning of the definition in subdivision (c) of Section 22950.5*
 35 *of the Business and Professions Code.*

36 ~~(e)~~

37 (f) For purposes of this section, “tobacco product” means a
 38 product or device as defined in subdivision ~~(e)~~ (d) of Section
 39 22950.5 of the Business and Professions Code.

1 ~~SEC. 25.~~

2 SEC. 22. Section 99580 of the Public Utilities Code is amended
3 to read:

4 99580. (a) Pursuant to subdivision (e) of Section 640 of the
5 Penal Code, a public transportation agency may enact and enforce
6 an ordinance to impose and enforce an administrative penalty for
7 any of the acts described in subdivision (b). The ordinance shall
8 include the provisions of this chapter and shall not apply to minors.

9 (b) (1) Evasion of the payment of a fare of the system.

10 (2) Misuse of a transfer, pass, ticket, or token with the intent to
11 evade the payment of a fare.

12 (3) Playing sound equipment on or in a system facility or
13 vehicle.

14 (4) Smoking a tobacco product, eating, or drinking in or on a
15 system facility or vehicle in those areas where those activities are
16 prohibited by that system.

17 (5) Expectorating upon a system facility or vehicle.

18 (6) Willfully disturbing others on or in a system facility or
19 vehicle by engaging in boisterous or unruly behavior.

20 (7) Carrying an explosive or acid, flammable liquid, or toxic or
21 hazardous material in a system facility or vehicle.

22 (8) Urinating or defecating in a system facility or vehicle, except
23 in a lavatory. However, this paragraph shall not apply to a person
24 who cannot comply with this paragraph as a result of a disability,
25 age, or a medical condition.

26 (9) (A) Willfully blocking the free movement of another person
27 in a system facility or vehicle.

28 (B) This paragraph shall not be interpreted to affect any lawful
29 activities permitted or first amendment rights protected under the
30 laws of this state or applicable federal law, including, but not
31 limited to, laws related to collective bargaining, labor relations,
32 or labor disputes.

33 (10) Skateboarding, roller skating, bicycle riding, or roller
34 blading in a system facility, including a parking structure, or in a
35 system vehicle. This paragraph does not apply to an activity that
36 is necessary for utilization of a system facility by a bicyclist,
37 including, but not limited to, an activity that is necessary for
38 parking a bicycle or transporting a bicycle aboard a system vehicle,
39 if that activity is conducted with the permission of the agency of

1 the system in a manner that does not interfere with the safety of
2 the bicyclist or other patrons of the system facility.

3 (11) (A) Unauthorized use of a discount ticket or failure to
4 present, upon request from a system representative, acceptable
5 proof of eligibility to use a discount ticket, in accordance with
6 Section 99155, and posted system identification policies when
7 entering or exiting a system station or vehicle. Acceptable proof
8 of eligibility must be clearly defined in the posting.

9 (B) In the event that an eligible discount ticket user is not in
10 possession of acceptable proof at the time of request, an issued
11 notice of fare evasion or passenger conduct violation shall be held
12 for a period of 72 hours to allow the user to produce acceptable
13 proof. If the proof is provided, that notice shall be voided. If the
14 proof is not produced within that time period, that notice shall be
15 processed.

16 (12) Sale or peddling of any goods, merchandise, property, or
17 services of any kind whatsoever on the facilities, vehicles, or
18 property of the public transportation system without the express
19 written consent of the public transportation system or its duly
20 authorized representatives.

21 (c) (1) The public transportation agency may contract with a
22 private vendor or governmental agency for the processing of notices
23 of fare evasion or passenger conduct violation, and notices of
24 delinquent fare evasion or passenger conduct violation pursuant
25 to Section 99581.

26 (2) For the purpose of this chapter, “processing agency” means
27 either of the following:

28 (A) The agency issuing the notice of fare evasion or passenger
29 conduct violation and the notice of delinquent fare evasion or
30 passenger conduct violation.

31 (B) The party responsible for processing the notice of fare
32 evasion or passenger conduct violation and the notice of delinquent
33 violation, if a contract is entered into pursuant to paragraph (1).

34 (3) For the purpose of this chapter, “fare evasion or passenger
35 conduct violation penalty” includes, but is not limited to, a late
36 payment penalty, administrative fee, fine, assessment, and costs
37 of collection as provided for in the ordinance.

38 (4) For the purpose of this chapter, “public transportation
39 agency” shall mean a public agency that provides public

1 transportation as defined in paragraph (1) of subdivision (f) of
2 Section 1 of Article XIX A of the California Constitution.

3 (5) All fare evasion and passenger conduct violation penalties
4 collected pursuant to this chapter shall be deposited in the general
5 fund of the county in which the citation is administered.

6 (d) (1) If a fare evasion or passenger conduct violation is
7 observed by a person authorized to enforce the ordinance, a notice
8 of fare evasion or passenger conduct violation shall be issued. The
9 notice shall set forth the violation, including reference to the
10 ordinance setting forth the administrative penalty, the date of the
11 violation, the approximate time, and the location where the
12 violation occurred. The notice shall include a printed statement
13 indicating the date payment is required to be made, and the
14 procedure for contesting the notice. The notice shall be served by
15 personal service upon the violator. The notice, or copy of the
16 notice, shall be considered a record kept in the ordinary course of
17 business of the issuing agency and the processing agency, and
18 shall be prima facie evidence of the facts contained in the notice
19 establishing a rebuttable presumption affecting the burden of
20 producing evidence.

21 (2) When a notice of fare evasion or passenger conduct violation
22 has been served, the person issuing the notice shall file the notice
23 with the processing agency.

24 (3) If, after a notice of fare evasion or passenger conduct
25 violation is issued pursuant to this section, the issuing officer
26 determines that there is incorrect data on the notice, including, but
27 not limited to, the date or time, the issuing officer may indicate in
28 writing on a form attached to the original notice the necessary
29 correction to allow for the timely entry of the corrected notice on
30 the processing agency's data system. A copy of the correction shall
31 be mailed to the address provided by the person cited at the time
32 the original notice of fare evasion or passenger conduct violation
33 was served.

34 (4) If a person contests a notice of fare evasion or passenger
35 conduct violation, the issuing agency shall proceed in accordance
36 with Section 99581.

37 (e) In setting the amounts of administrative penalties for the
38 violations listed in subdivision (b), the public transportation agency
39 shall not establish penalty amounts that exceed the maximum fine
40 amount set forth in Section 640 of the Penal Code.

1 (f) A person who receives a notice of fare evasion or passenger
2 conduct violation pursuant to this section shall not be subject to
3 citation for a violation of Section 640 of the Penal Code.

4 (g) If an entity enacts an ordinance pursuant to this section it
5 shall, both two years and five years after enactment of the
6 ordinance, report all of the following information to the Senate
7 Committee on Transportation and Housing and the Assembly
8 Committee on Transportation:

9 (1) A description of the ordinance, including the circumstances
10 under which an alleged violator is afforded the opportunity to
11 complete the administrative process.

12 (2) The amount of the administrative penalties.

13 (3) The number and types of citations administered pursuant to
14 the ordinance.

15 (4) To the extent available, a comparison of the number and
16 types of citations administered pursuant to the ordinance with the
17 number and types of citations issued for similar offenses and
18 administered through the courts both in the two years prior to the
19 ordinance and, if any, since enactment of the ordinance.

20 (5) A discussion of the effect of the ordinance on passenger
21 behavior.

22 (6) A discussion of the effect of the ordinance on revenues to
23 the entity described in subdivision (a) and, in consultation with
24 the superior courts, the cost savings to the county courts. The
25 superior courts are encouraged to collaborate on and provide data
26 for this report.

27 (h) *For purposes of this section, “smoking” has the meaning*
28 *of the definition in subdivision (c) of Section 22950.5 of the*
29 *Business and Professions Code.*

30 ~~(h)~~

31 (i) For purposes of this section, “tobacco product” means a
32 product or device as defined in subdivision ~~(e)~~ (d) of Section
33 22950.5 of the Business and Professions Code.

34 ~~SEC. 26.~~

35 *SEC. 23.* Section 12523 of the Vehicle Code is amended to
36 read:

37 12523. (a) No person shall operate a youth bus without having
38 in possession a valid driver’s license of the appropriate class,
39 endorsed for passenger transportation and a certificate issued by
40 the department to permit the operation of a youth bus.

1 (b) Applicants for a certificate to drive a youth bus shall present
2 evidence that they have successfully completed a driver training
3 course administered by or at the direction of their employer
4 consisting of a minimum of 10 hours of classroom instruction
5 covering applicable laws and regulations and defensive driving
6 practices and a minimum of 10 hours of behind-the-wheel training
7 in a vehicle to be used as a youth bus. Applicants seeking to renew
8 a certificate to drive a youth bus shall present evidence that they
9 have received two hours of refresher training during each 12
10 months of driver certificate validity.

11 (c) The driver certificate shall be issued only to applicants
12 qualified by examinations prescribed by the Department of Motor
13 Vehicles and the Department of the California Highway Patrol,
14 and upon payment of a fee of twenty-five dollars (\$25) for an
15 original certificate and twelve dollars (\$12) for the renewal of that
16 certificate to the Department of the California Highway Patrol.
17 The examinations shall be conducted by the Department of the
18 California Highway Patrol. The Department of Motor Vehicles
19 may deny, suspend, or revoke a certificate valid for driving a youth
20 bus for the causes specified in this code or in regulations adopted
21 pursuant to this code.

22 (d) An operator of a youth bus shall, at all times when operating
23 a youth bus, do all of the following:

24 (1) Use seat belts.

25 (2) Refrain from smoking tobacco products.

26 (3) Report any accidents reportable under Section 16000 to the
27 Department of the California Highway Patrol.

28 (e) A person holding a valid certificate to permit the operation
29 of a youth bus, issued prior to January 1, 1991, shall not be required
30 to reapply for a certificate to satisfy any additional requirements
31 imposed by the act adding this subdivision until the certificate he
32 or she holds expires or is canceled or revoked.

33 (f) *For purposes of this section, “smoking” has the meaning of*
34 *the definition in subdivision (c) of Section 22950.5 of the Business*
35 *and Professions Code.*

36 (f)

37 (g) For purposes of this section, “tobacco product” means a
38 product or device as defined in subdivision ~~(e)~~ (d) of Section
39 22950.5 of the Business and Professions Code.

1 ~~SEC. 27.~~

2 *SEC. 24.* This act does not affect any laws or regulations
3 regarding medical cannabis.

4 ~~SEC. 28.~~

5 *SEC. 25.* No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

SB 140 (Leno)

Principal Co-Authors: Senator Pan & Assemblymember Ting

Co-Authors: Senators Hernandez, McGuire & Stone;

Assemblymembers Chiu & Thurmond

As Introduced January 26, 2015

Applying Public Health Protections to Electronic Cigarettes

FACT SHEET

SUMMARY

SB 140 (Leno) addresses growing public health concerns about the unregulated use of electronic cigarettes (e-cigarettes) in California by adding e-cigarettes to the Smoke Free Act and the Stop Tobacco Access to Kids Enforcement (STAKE) Act.

BACKGROUND

E-Cigarettes Contain Nicotine, Tobacco & Other Harmful Chemicals

According to the Food and Drug Administration (FDA), e-cigarettes are battery-operated products designed to deliver nicotine, flavor and other chemicals to the user. They turn chemicals, including highly addictive nicotine, into an aerosol that is inhaled by the consumer. The nicotine contained in e-cigarettes is derived from tobacco and is highly addictive. In fact, many e-cigarettes (like those manufactured by Philip Morris International) offer users the same level of nicotine as cigarettes by heating, rather than burning, tobacco.

Some e-cigarettes offer users greater levels of nicotine than traditional cigarettes. For example, users can purchase liquid nicotine

solutions of 100 mg/mL for e-cigarette cartridge refills on the Internet. As a point of context, one regular cigarette contains only \approx 10 to 15 mg of nicotine. FDA lab tests have also found that cartridges labeled as nicotine-free have traceable levels of nicotine.

Given this nicotine and tobacco nexus, it is not surprising that tobacco companies have become heavily invested in the e-cigarette industry. The three major tobacco corporations have been purchasing independent e-cigarette companies and are estimated to share 75% of the profit pool in 10 years.

In addition to nicotine, FDA testing of several leading e-cigarette brands has revealed that e-cigarettes contain known carcinogens and toxic chemicals, including an ingredient used in antifreeze.

Health Effects of E-Cigarettes

Because e-cigarettes have only recently entered the market, they have not been fully studied to the same extent as other tobacco products. However, recent studies show that e-cigarettes offer potentially serious health consequences.

According to the California Department of Public Health's (CDPH) 2015 report on e-

cigarettes, mainstream *and* secondhand e-cigarette aerosol contains at least ten chemicals that are on California's Proposition 65 list of chemicals known to cause cancer, birth defects or other reproductive harm. As a result, CDPH recommends that "[e]xisting laws that currently protect minors and the general public from traditional tobacco products should be extended to cover e-cigarettes."

The Center for Tobacco Control Research and Education at the University of California San Francisco reports that e-cigarettes deliver high levels of nanoparticles, which can trigger inflammation and have been linked to asthma, stroke, heart disease and diabetes.

The federal Centers for Disease Control and Prevention (CDC) has found that nicotine's adverse effects on adolescent brain development can result in lasting deficits in cognitive function.

Industry Claims about E-Cigarettes

Despite widespread claims by tobacco companies that e-cigarettes do not present secondhand smoke concerns, there is no evidence showing that the aerosol emitted by e-cigarettes is safe for non-users to inhale. In fact, two initial studies have found formaldehyde, benzene and tobacco-specific nitrosamines (a carcinogen) coming from the secondhand emissions of e-cigarettes.

Tobacco companies also claim that e-cigarettes are proven cessation devices for those trying to quit smoking traditional cigarettes. Current studies indicate that while many e-cigarette users plan to use the devices to quit or reduce smoking, they are usually using them in a dual-use capacity, especially in places where smoking is restricted. The FDA has not approved any e-cigarette product as a safe or effective method to help smokers quit. A

2014 peer-reviewed study found that among cancer patients enrolled in a smoking cessation program, e-cigarette users were as likely as individuals who did not use e-cigarettes to still be smoking.

Lack of Regulation

E-cigarettes are wholly unregulated in the state of California, beyond a restriction on the sale of the devices to minors. E-cigarettes are not currently included within the Smoke Free Act, the STAKE Act, and the CA Cigarette and Tobacco Licensing Act.

The Smoke Free Act prohibits smoking at places of work, schools, daycares, restaurants, bars, hospitals and on public transportation. These laws protect nonusers from exposure to secondhand smoke and reduce the acceptability of smoking. In turn, the Act helps reduce the number of people, especially youth, who start smoking and increases quit attempts by smokers. These increased protections have led to reduced smoking rates and lowered rates of heart attacks and cancers among Californians.

The STAKE Act prohibits a person from selling tobacco products to minors. The Act requires retailers to post warning signs, which include a toll-free number for the public to report violations; assures clerks check the identification of youthful-appearing persons prior to a sale; and authorizes law enforcement to conduct sting operations using 15- and 16-year-olds. Prior to the STAKE Act's implementation in 1994, the CA Department of Health found the illegal sales rate to minors was 52.1%. Since the Act's implementation, rates have steadily declined to 5.6% in 2011.

The CA Cigarette and Tobacco Licensing Act created licensing requirements on all retailers, wholesalers, and distributors of

cigarettes and tobacco products and all manufacturers and importers of cigarettes. The Act requires retailers of tobacco products to pay a one-time \$100 fee.

E-Cigarettes & Public Health Laws

The use of e-cigarettes in workplaces, restaurants and bars can undermine the public health benefits that have been, and continue to be, achieved by the Smoke Free Act. Because many e-cigarettes are designed to look like cigarettes and cigars, the unacceptability of smoking in these places could be compromised. This could lead to new users or a reduction in current users who quit. Additionally, from a practical standpoint, business owners can face difficulty when enforcing smoke-free laws because e-cigarettes so closely resemble banned products like cigarettes.

E-Cigarette Use by Youth

Two recent studies reported that 25% of high school students in Connecticut and 29% of teens in Hawaii have used e-cigarettes. Authors of the Hawaii study noted that e-cigarette use has grown exponentially among youth, doubling every year since 2009. The CDC found that more than a quarter of a million youth who had never smoked a cigarette used electronic cigarettes in 2013—this number shows use by youth has tripled from the CDC’s 2011 numbers. E-cigarettes come in colorful and enticing flavors such as chocolate, bubble gum and mango. Researchers found that these flavors are an important reason why young people like e-cigarettes.

In 2014, 11 members of Congress issued a report accusing e-cigarette companies of using candy-flavored products and social media advertising to hook young users. The report looked at seven e-cigarette companies and found that they sponsored or provided free samples at more than 300 events, many of which attracted youth, such as rock concerts.

While California currently bans the sale of e-cigarettes to minors under the age of 18, many youth are still able to access e-cigarettes. This is because the enforcement and oversight provisions of the STAKE Act do not currently apply to e-cigarettes.

FEDERAL ACTION

In 2014, the FDA issued proposed regulations that would expand the definition of “tobacco products” to include the following: e-cigarettes, cigars, pipe tobacco, waterpipe (hookah) tobacco and novel products like nicotine gels and dissolvables not already under the FDA’s authority. The FDA’s proposed rule also would include tobacco product components or parts that are used in the consumption of a tobacco product, like e-cigarette cartridges.

As a result, e-cigarette companies will be required to register with the FDA and report product and ingredient listings. Companies will be able to market new products only after FDA review and make claims of reduced risk only after the FDA confirms that scientific evidence supports the claim and that marketing the product will benefit public health as a whole.

Companies will no longer be able to sell their products to minors, market e-cigarettes in vending machines, or distribute free samples. E-cigarette companies will also need to include appropriate health warnings on labels.

The FDA’s regulations are expected to be finalized this year.

SOLUTION

SB 140 would ensure that users and nonusers of e-cigarettes are better

protected from the potential health risks associated with these products. The bill aligns state law with the FDA's proposed ruling by defining e-cigarettes as "tobacco products" falling under the restrictions of the CA Smoke Free Act and STAKE Act. Additionally, the bill includes e-cigarettes within the Cigarette and Tobacco Products Licensing Act.

STATUS

Senate Health

SUPPORT

- American Heart Association (co-sponsor)
- American Lung Association (co-sponsor)
- American Cancer Society-Cancer Action Network (co-sponsor)
- California Society of Addiction Medicine (CSAM) (co-sponsor)
- Medical Oncology Association of Southern California (MOASC)
- Association of Northern California Oncologists (ANCO)
- Kaiser Permanente
- California Medical Association
- City of Oakland
- City and County of San Francisco
- Los Angeles City Attorney Mike Feuer
- City of Walnut Creek
- County of Santa Clara
- County of San Diego
- County of Alameda
- Health Officers Association of California (HOAC)
- California Chapter of the American College of Cardiology
- California Chapter of the American College of Emergency Physicians
- San Francisco Medical Society
- California Pharmacists Association
- SEIU
- SEIU-UHW
- California Academy of Family Physicians
- Health Access California
- Alameda County Tobacco Control Coalition
- Tobacco Free Coalition of Santa Clara County
- Yuba County Tobacco Coalition
- California School Employees Union (CSEA)
- First 5 Association of California
- Coalition Engaged in A Smoke-free Effort (CEASE)
- California Police Chiefs Association
- California Peace Officers' Association (CPOA)
- California Narcotic Officers Association
- California College and University Police Chiefs Association
- Community Health Involvement Partners (CHIP)
- Community Action Partnership of Madera County (CAPMC)
- Tobacco Education Network
- Breathe California
- Solano County Tobacco Education Coalition
- San Mateo County Tobacco Education Coalition
- San Luis Obispo County Tobacco Control Coalition
- Campaign for Tobacco-Free Kids
- California Alliance for Retired Americans
- Coalition for a Tobacco-Free Sonoma County
- Yolo County Tobacco Control Coalition
- Orange County Tobacco Education Coalition
- Monterey County Collaborates

Contact: Danielle Lenth, 916-651-4011

Version: April 8, 2015

Introduced by Senator Hernandez
(Principal coauthor: Assembly Member Wood)
(Coauthor: Senator Leno)

January 29, 2015

An act to amend Sections 17537.3, 22951, 22952, 22956, 22958, and 22963 of, and to add Section 22964 to, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 151, as introduced, Hernandez. Tobacco products: minimum legal age.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, establishes various requirements for distributors and retailers relating to tobacco sales to minors. Existing law prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, a person under 18 years of age. Under existing law, a person is prohibited from making various promotional or advertising offers of smokeless tobacco products without taking actions to ensure that the product is not available to persons under 18 years of age. Existing law also requires the State Department of Public Health to conduct random, onsite sting inspections of tobacco product retailers with the assistance of persons under 18 years of age.

This bill would extend the applicability of those provisions to persons under 21 years of age. The bill would authorize the State Department of Public Health to conduct random, onsite sting inspections of tobacco product retailers with the assistance of persons under 21 years of age.

The bill would also provide that the STAKE Act does not invalidate existing local government ordinances or prohibit the adoption of local

government ordinances requiring a more restrictive legal age to purchase or possess tobacco products.

By expanding the scope of existing crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 17537.3 of the Business and Professions
2 Code is amended to read:

3 17537.3. The following acts are prohibited:

4 (a) For any person to offer as part of an advertising plan or
5 program, promotional offers of smokeless tobacco products which
6 require proof of purchase of a smokeless tobacco product unless
7 it carries a designation that the offer is not available to ~~minors~~
8 *persons under 21 years of age*. Each promotional offer shall include
9 in any mail-in coupon a statement requesting purchasers to verify
10 that the purchaser is ~~18~~ 21 years of age or older.

11 (b) For any person to honor mail-in and telephone requests for
12 promotional offers of smokeless tobacco products unless
13 appropriate efforts are made to ascertain that a purchaser is over
14 ~~18~~ 21 years of age. For purposes of this subdivision, appropriate
15 efforts to ascertain the age of a purchaser includes, but is not
16 limited to, requests for a purchaser's birth date.

17 (c) For any person by any means, as part of an advertising plan
18 or program, to distribute free samples of smokeless tobacco
19 products within a two block radius of any premises or facilities
20 whose primary purpose is directed toward persons under the age
21 of ~~18~~ 21 years including, but not limited to, schools, clubhouses,
22 and youth centers, when those premises are being used for their
23 primary purposes.

24 (d) For any person to distribute, as part of any advertising plan
25 or program, unsolicited samples of smokeless tobacco products
26 through a mail campaign.

1 SEC. 2. Section 22951 of the Business and Professions Code
2 is amended to read:

3 22951. The Legislature finds and declares that reducing and
4 eventually eliminating the illegal purchase and consumption of
5 tobacco products by ~~minors~~ *any person under 21 years of age* is
6 critical to ensuring the long-term health of our state’s citizens.
7 Accordingly, California must fully comply with federal regulations,
8 particularly the “Synar Amendment,” that restrict tobacco sales to
9 minors and require states to vigorously enforce their laws
10 prohibiting the sale and distribution of tobacco products to persons
11 under 18 years of age. Full compliance and vigorous enforcement
12 of the “Synar Amendment” requires the collaboration of multiple
13 state and local agencies that license, inspect, or otherwise conduct
14 business with retailers, distributors, or wholesalers that sell tobacco.

15 SEC. 3. Section 22952 of the Business and Professions Code
16 is amended to read:

17 22952. ~~On or before July 1, 1995, the~~ *The* State Department
18 of Public Health shall do all of the following:

19 (a) Establish and develop a program to reduce the availability
20 of tobacco products to persons under ~~18~~ *21* years of age through
21 the enforcement activities authorized by this division.

22 (b) Establish requirements that retailers of tobacco products
23 post conspicuously, at each point of purchase, a notice stating that
24 selling tobacco products to anyone under ~~18~~ *21* years of age is
25 illegal and subject to penalties. The notice shall also state that the
26 law requires that all persons selling tobacco products check the
27 identification of a purchaser of tobacco products who reasonably
28 appears to be under ~~18~~ *21* years of age. The warning signs shall
29 include a toll-free telephone number to the department for persons
30 to report unlawful sales of tobacco products to ~~minors~~ *any person*
31 *under 21 years of age.*

32 (c) Provide that primary responsibility for enforcement of this
33 division shall be with the department. In carrying out its
34 enforcement responsibilities, the department shall conduct random,
35 onsite sting inspections at retail sites and shall enlist the assistance
36 of persons that are ~~15 and 16~~ *under 21* years of age in conducting
37 these enforcement activities. The department may conduct onsite
38 sting inspections in response to public complaints or at retail sites
39 where violations have previously occurred, and investigate illegal
40 sales of tobacco products to ~~minors~~ *any person under 21 years of*

1 *age* by telephone, mail, or the Internet. Participation in these
2 enforcement activities by a person under ~~18~~ 21 years of age does
3 not constitute a violation of subdivision (b) of Section 308 of the
4 Penal Code for the person under ~~18~~ 21 years of age, and the person
5 under ~~18~~ 21 years of age is immune from prosecution thereunder,
6 or under any other provision of law prohibiting the purchase of
7 these products by a person under ~~18~~ 21 years of age.

8 (d) In accordance with Chapter 3.5 (commencing with Section
9 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
10 the department shall adopt and publish guidelines for the use of
11 persons under ~~18~~ 21 years of age in inspections conducted pursuant
12 to subdivision (c) that shall include, but not be limited to, all of
13 the following:

14 (1) An enforcing agency may use persons under ~~18~~ years of age
15 ~~who are 15 or 16~~ 21 years of age in random inspections to
16 determine if sales of cigarettes or other tobacco products are being
17 made to persons under ~~18~~ 21 years of age.

18 (2) A photograph or video recording of the person under ~~18~~ 21
19 years of age shall be taken prior to each inspection or shift of
20 inspections and retained by the enforcing agency for purposes of
21 verifying appearances.

22 (3) An enforcing agency may use video recording equipment
23 when conducting the inspections to record and document illegal
24 sales or attempted sales.

25 (4) The person under ~~18~~ 21 years of age, if questioned about
26 his or her age, need not state his or her actual age but shall present
27 a true and correct identification if verbally asked to present it. Any
28 failure on the part of the person under ~~18~~ 21 years of age to provide
29 true and correct identification, if verbally asked for it, shall be a
30 defense to an action pursuant to this section.

31 (5) The person under ~~18~~ 21 years of age shall be under the
32 supervision of a regularly employed peace officer during the
33 inspection.

34 (6) All persons under ~~18~~ 21 years of age used in this manner by
35 an enforcing agency shall display the appearance of a person under
36 ~~18~~ 21 years of age. It shall be a defense to an action under this
37 division that the person's appearance was not that which could be
38 generally expected of a person under ~~18~~ 21 years of age, under the
39 actual circumstances presented to the seller of the cigarettes or
40 other tobacco products at the time of the alleged offense.

1 (7) Following the completion of the sale, the peace officer
2 accompanying the person under ~~18~~ 21 years of age shall reenter
3 the retail establishment and shall inform the seller of the random
4 inspection. Following an attempted sale, the enforcing agency shall
5 notify the retail establishment of the inspection.

6 (8) Failure to comply with the procedures set forth in this
7 subdivision shall be a defense to an action brought pursuant to this
8 section.

9 (e) Be responsible for ensuring and reporting the state's
10 compliance with Section 1926 of Title XIX of the federal Public
11 Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing
12 regulations adopted in relation thereto by the United States
13 Department of Health and Human Services. A copy of this report
14 shall be made available to the Governor and the Legislature.

15 (f) Provide that any civil penalties imposed pursuant to Section
16 22958 shall be enforced against the owner or owners of the retail
17 business and not the employees of the business.

18 SEC. 4. Section 22956 of the Business and Professions Code
19 is amended to read:

20 22956. All persons engaging in the retail sale of tobacco
21 products shall check the identification of tobacco purchasers, to
22 establish the age of the purchaser, if the purchaser reasonably
23 appears to be under ~~18~~ 21 years of age.

24 SEC. 5. Section 22958 of the Business and Professions Code
25 is amended to read:

26 22958. (a) An enforcing agency may assess civil penalties
27 against any person, firm, or corporation that sells, gives, or in any
28 way furnishes to another person who is under the age of ~~18~~ 21
29 years, any tobacco, cigarette, cigarette papers, any other instrument
30 or paraphernalia that is designed for the smoking or ingestion of
31 tobacco, products prepared from tobacco, or any controlled
32 substance, according to the following schedule: (1) a civil penalty
33 of from four hundred dollars (\$400) to six hundred dollars (\$600)
34 for the first violation, (2) a civil penalty of from nine hundred
35 dollars (\$900) to one thousand dollars (\$1,000) for the second
36 violation within a five-year period, (3) a civil penalty of from one
37 thousand two hundred dollars (\$1,200) to one thousand eight
38 hundred dollars (\$1,800) for a third violation within a five-year
39 period, (4) a civil penalty of from three thousand dollars (\$3,000)
40 to four thousand dollars (\$4,000) for a fourth violation within a

1 five-year period, or (5) a civil penalty of from five thousand dollars
2 (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within
3 a five-year period.

4 (b) (1) In addition to the civil penalties described in subdivision
5 (a), upon the assessment of a civil penalty for the third, fourth, or
6 fifth violation, the department, within 60 days of the date of service
7 of the final administrative adjudication on the parties or payment
8 of the civil penalty for an uncontested violation, shall notify the
9 State Board of Equalization of the violation. The State Board of
10 Equalization shall then assess a civil penalty of two hundred fifty
11 dollars (\$250) and suspend or revoke a license issued pursuant to
12 Chapter 2 (commencing with Section 22972) of Division 8.6 in
13 accordance with the following schedule:

14 (A) A 45-day suspension of the license for a third violation at
15 the same location within a five-year period.

16 (B) A 90-day suspension of the license for a fourth violation at
17 the same location within a five-year period.

18 (C) Revocation of the license for a fifth violation at the same
19 location within a five-year period.

20 (2) The provisions of Chapter 4 (commencing with Section
21 55121) of Part 30 of Division 2 of the Revenue and Taxation Code
22 apply with respect to the collection of the penalty imposed by the
23 State Board of Equalization pursuant to paragraph (1).

24 (c) (1) For each suspension or revocation pursuant to
25 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)
26 assessed pursuant to that subdivision, notwithstanding Section
27 22953, shall be deposited into the Cigarette and Tobacco Products
28 Compliance Fund established pursuant to Section 22990. Moneys
29 from that civil penalty deposited into this fund shall be made
30 available to the State Board of Equalization, upon appropriation
31 by the Legislature, for the purposes of meeting its duties under
32 subdivision (b).

33 (2) The department shall, upon request, provide to the State
34 Board of Equalization information concerning any person, firm,
35 or corporation that has been assessed a civil penalty for violation
36 of the STAKE Act pursuant to this section when the department
37 has notified the State Board of Equalization of the violation.

38 (d) The enforcing agency shall assess penalties pursuant to the
39 schedule set forth in subdivision (a) against a person, firm, or
40 corporation that sells, offers for sale, or distributes tobacco products

1 from a cigarette or tobacco products vending machine, or a person,
2 firm, or corporation that leases, furnishes, or services these
3 machines in violation of Section 22960.

4 (e) An enforcing agency may assess civil penalties against a
5 person, firm, or corporation that sells or deals in tobacco or any
6 preparation thereof, and fails to post conspicuously and keep posted
7 in the place of business at each point of purchase the notice
8 required pursuant to subdivision (b) of Section 22952. The civil
9 penalty shall be in the amount of two hundred dollars (\$200) for
10 the first offense and five hundred dollars (\$500) for each additional
11 violation.

12 (f) An enforcing agency shall assess penalties in accordance
13 with the schedule set forth in subdivision (a) against a person, firm,
14 or corporation that advertises or causes to be advertised a tobacco
15 product on an outdoor billboard in violation of Section 22961.

16 (g) If a civil penalty has been assessed pursuant to this section
17 against a person, firm, or corporation for a single, specific violation
18 of this division, the person, firm, or corporation shall not be
19 prosecuted under Section 308 of the Penal Code for a violation
20 based on the same facts or specific incident for which the civil
21 penalty was assessed. If a person, firm, or corporation has been
22 prosecuted for a single, specific violation of Section 308 of the
23 Penal Code, the person, firm, or corporation shall not be assessed
24 a civil penalty under this section based on the same facts or specific
25 incident upon which the prosecution under Section 308 of the Penal
26 Code was based.

27 (h) (1) In the case of a corporation or business with more than
28 one retail location, to determine the number of accumulated
29 violations for purposes of the penalty schedule set forth in
30 subdivision (a), violations of this division by one retail location
31 shall not be accumulated against other retail locations of that same
32 corporation or business.

33 (2) In the case of a retail location that operates pursuant to a
34 franchise as defined in Section 20001, violations of this division
35 accumulated and assessed against a prior owner of a single
36 franchise location shall not be accumulated against a new owner
37 of the same single franchise location for purposes of the penalty
38 schedule set forth in subdivision (a).

39 (i) Proceedings under this section shall be conducted pursuant
40 to Section 131071 of the Health and Safety Code, except in cases

1 where a civil penalty is assessed by an enforcing agency other than
2 the department, in which case proceedings shall be conducted
3 pursuant to the procedures of that agency that are consistent with
4 Section 131071 of the Health and Safety Code.

5 SEC. 6. Section 22963 of the Business and Professions Code
6 is amended to read:

7 22963. (a) The sale, distribution, or nonsale distribution of
8 tobacco products directly or indirectly to any person under the age
9 of ~~18~~ 21 years through the United States Postal Service or through
10 any other public or private postal or package delivery service at
11 locations, including, but not limited to, public mailboxes and
12 mailbox stores, is prohibited.

13 (b) Any person selling or distributing, or engaging in the nonsale
14 distribution of, tobacco products directly to a consumer in the state
15 through the United States Postal Service or by any other public or
16 private postal or package delivery service, including orders placed
17 by mail, telephone, facsimile transmission, or the Internet, shall
18 comply with the following provisions:

19 (1) (A) Before enrolling a person as a customer, or distributing
20 or selling, or engaging in the nonsale distribution of, the tobacco
21 product through any of these means, the distributor or seller shall
22 verify that the purchaser or recipient of the product is ~~18~~ 21 years
23 of age or older. The distributor or seller shall attempt to match the
24 name, address, and date of birth provided by the customer to
25 information contained in records in a database of individuals whose
26 age has been verified to be ~~18~~ 21 years or older by reference to an
27 appropriate database of government records kept by the distributor,
28 a direct marketing firm, or any other entity. In the case of a sale,
29 the distributor or seller shall also verify that the billing address on
30 the check or credit card offered for payment by the purchaser
31 matches the address listed in the database.

32 (B) If the seller, distributor, or nonsale distributor, is unable to
33 verify that the purchaser or recipient is ~~18~~ 21 years of age or older
34 pursuant to subparagraph (A), he or she shall require the customer
35 or recipient to submit an age-verification kit consisting of an
36 attestation signed by the customer or recipient that he or she is ~~18~~
37 21 years of age or older and a copy of a valid form of government
38 identification. For the purposes of this section, a valid form of
39 government identification includes a driver's license, state
40 identification card, passport, an official naturalization or

1 immigration document, such as an alien registration receipt card
2 (commonly known as a “green card”) or an immigrant visa, or
3 military identification. In the case of a sale, the distributor or seller
4 shall also verify that the billing address on the check or credit card
5 provided by the consumer matches the address listed in the form
6 of government identification.

7 (2) In the case of a sale, the distributor or seller shall impose a
8 two-carton minimum on each order of cigarettes, and shall require
9 payment for the purchase of any tobacco product to be made by
10 personal check of the purchaser or the purchaser’s credit card. No
11 money order or cash payment shall be received or permitted. The
12 distributor or seller shall submit to each credit card acquiring
13 company with which it has credit card sales identification
14 information in an appropriate form and format so that the words
15 “tobacco product” may be printed in the purchaser’s credit card
16 statement when a purchase of a tobacco product is made by credit
17 card payment.

18 (3) In the case of a sale, the distributor or seller shall make a
19 telephone call after 5 p.m. to the purchaser confirming the order
20 prior to shipping the tobacco products. The telephone call may be
21 a person-to-person call or a recorded message. The distributor or
22 seller is not required to speak directly with a person and may leave
23 a message on an answering machine or by voice mail.

24 (4) The nonsale distributor shall deliver the tobacco product to
25 the recipient’s verified mailing address, or in the case of a sale,
26 the seller or distributor shall deliver the tobacco product to the
27 purchaser’s verified billing address on the check or credit card
28 used for payment. No delivery described under this section shall
29 be permitted to any post office box.

30 (c) Notwithstanding subdivisions (a) and (b), if a seller,
31 distributor, or nonsale distributor, complies with all of the
32 requirements of this section and a ~~minor~~ *person under 21 years of*
33 *age* obtains a tobacco product by any of the means described in
34 subdivision (b), the seller, distributor, or nonsale distributor is not
35 in violation of this section.

36 (d) For the purposes of the enforcement of this section pursuant
37 to Section 22958, the acts of the United States Postal Service or
38 other common carrier when engaged in the business of transporting
39 and delivering packages for others, and the acts of a person,
40 whether compensated or not, who transports or delivers a package

1 for another person without any reason to know of the package's
2 contents, are not unlawful and are not subject to civil penalties.

3 (e) (1) (A) For the purposes of this section, a "distributor" is
4 any person or entity, within or outside the state, who agrees to
5 distribute tobacco products to a customer or recipient within the
6 state. The United States Postal Service or any other public or
7 private postal or package delivery service are not distributors within
8 the meaning of this section.

9 (B) A "nonsale distributor" is any person inside or outside of
10 this state who, directly or indirectly, knowingly provides tobacco
11 products to any person in this state as part of a nonsale transaction.
12 "Nonsale distributor" includes the person or entity who provides
13 the tobacco product for delivery and the person or entity who
14 delivers the product to the recipient as part of a nonsale transaction.

15 (C) "Nonsale distribution" means to give smokeless tobacco or
16 cigarettes to the general public at no cost, or at nominal cost, or
17 to give coupons, coupon offers, gift certificates, gift cards, or other
18 similar offers, or rebate offers for smokeless tobacco or cigarettes
19 to the general public at no cost or at nominal cost. Distribution of
20 tobacco products, coupons, coupon offers, gift certificates, gift
21 cards, or other similar offers, or rebate offers in connection with
22 the sale of another item, including tobacco products, cigarette
23 lighters, magazines, or newspapers shall not constitute nonsale
24 distribution.

25 (2) For the purpose of this section, a "seller" is any person or
26 entity, within or outside the state, who agrees to sell tobacco
27 products to a customer within the state. The United States Postal
28 Service or any other public or private postal or package delivery
29 service are not sellers within the meaning of this section.

30 (3) For the purpose of this section, a "carton" is a package or
31 container that contains 200 cigarettes.

32 (f) A district attorney, city attorney, or the Attorney General
33 may assess civil penalties against any person, firm, corporation,
34 or other entity that violates this section, according to the following
35 schedule:

36 (1) A civil penalty of not less than one thousand dollars (\$1,000)
37 and not more than two thousand dollars (\$2,000) for the first
38 violation.

1 (2) A civil penalty of not less than two thousand five hundred
2 dollars (\$2,500) and not more than three thousand five hundred
3 dollars (\$3,500) for the second violation.

4 (3) A civil penalty of not less than four thousand dollars (\$4,000)
5 and not more than five thousand dollars (\$5,000) for the third
6 violation within a five-year period.

7 (4) A civil penalty of not less than five thousand five hundred
8 dollars (\$5,500) and not more than six thousand five hundred
9 dollars (\$6,500) for the fourth violation within a five-year period.

10 (5) A civil penalty of ten thousand dollars (\$10,000) for a fifth
11 or subsequent violation within a five-year period.

12 SEC. 7. Section 22964 is added to the Business and Professions
13 Code, to read:

14 22964. This division sets forth minimum state restrictions with
15 respect to the legal age to purchase or possess tobacco products
16 and does not preempt or otherwise prohibit the adoption of a local
17 standard that imposes a more restrictive legal age to purchase or
18 possess tobacco products. A local standard that imposes a more
19 restrictive legal age to purchase or possess tobacco products shall
20 control in the event of any inconsistency between this division and
21 a local standard.

22 SEC. 8. Section 308 of the Penal Code is amended to read:

23 308. (a) (1) Every person, firm, or corporation that knowingly
24 or under circumstances in which it has knowledge, or should
25 otherwise have grounds for knowledge, sells, gives, or in any way
26 furnishes to another person who is under the age of ~~18~~ 21 years
27 any tobacco, cigarette, or cigarette papers, or blunts wraps, or any
28 other preparation of tobacco, or any other instrument or
29 paraphernalia that is designed for the smoking or ingestion of
30 tobacco, products prepared from tobacco, or any controlled
31 substance, is subject to either a criminal action for a misdemeanor
32 or to a civil action brought by a city attorney, a county counsel, or
33 a district attorney, punishable by a fine of two hundred dollars
34 (\$200) for the first offense, five hundred dollars (\$500) for the
35 second offense, and one thousand dollars (\$1,000) for the third
36 offense.

37 Notwithstanding Section 1464 or any other law, 25 percent of
38 each civil and criminal penalty collected pursuant to this
39 subdivision shall be paid to the office of the city attorney, county
40 counsel, or district attorney, whoever is responsible for bringing

1 the successful action, and 25 percent of each civil and criminal
2 penalty collected pursuant to this subdivision shall be paid to the
3 city or county for the administration and cost of the community
4 service work component provided in subdivision (b).

5 Proof that a defendant, or his or her employee or agent,
6 demanded, was shown, and reasonably relied upon evidence of
7 majority shall be defense to any action brought pursuant to this
8 subdivision. Evidence of majority of a person is a facsimile of or
9 a reasonable likeness of a document issued by a federal, state,
10 county, or municipal government, or subdivision or agency thereof,
11 including, but not limited to, a motor vehicle operator's license, a
12 registration certificate issued under the federal Selective Service
13 Act, or an identification card issued to a member of the Armed
14 Forces.

15 For purposes of this section, the person liable for selling or
16 furnishing tobacco products to ~~minors~~ *persons under 21 years of*
17 *age* by a tobacco vending machine shall be the person authorizing
18 the installation or placement of the tobacco vending machine upon
19 premises he or she manages or otherwise controls and under
20 circumstances in which he or she has knowledge, or should
21 otherwise have grounds for knowledge, that the tobacco vending
22 machine will be utilized by ~~minors~~ *persons under 21 years of age*.

23 (2) For purposes of this section, "blunt wraps" means cigar
24 papers or cigar wrappers of all types that are designed for smoking
25 or ingestion of tobacco products and contain less than 50 percent
26 tobacco.

27 (b) Every person under the age of ~~18~~ *21* years who purchases,
28 receives, or possesses any tobacco, cigarette, or cigarette papers,
29 or any other preparation of tobacco, or any other instrument or
30 paraphernalia that is designed for the smoking of tobacco, products
31 prepared from tobacco, or any controlled substance shall, upon
32 conviction, be punished by a fine of seventy-five dollars (\$75) or
33 30 hours of community service work.

34 (c) Every person, firm, or corporation that sells, or deals in
35 tobacco or any preparation thereof, shall post conspicuously and
36 keep so posted in his, her, or their place of business at each point
37 of purchase the notice required pursuant to subdivision (b) of
38 Section 22952 of the Business and Professions Code, and any
39 person failing to do so shall, upon conviction, be punished by a
40 fine of fifty dollars (\$50) for the first offense, one hundred dollars

1 (\$100) for the second offense, two hundred fifty dollars (\$250) for
2 the third offense, and five hundred dollars (\$500) for the fourth
3 offense and each subsequent violation of this provision, or by
4 imprisonment in a county jail not exceeding 30 days.

5 (d) For purposes of determining the liability of persons, firms,
6 or corporations controlling franchises or business operations in
7 multiple locations for the second and subsequent violations of this
8 section, each individual franchise or business location shall be
9 deemed a separate entity.

10 (e) Notwithstanding subdivision (b), any person under ~~18~~ 21
11 years of age who purchases, receives, or possesses any tobacco,
12 cigarette, or cigarette papers, or any other preparation of tobacco,
13 any other instrument or paraphernalia that is designed for the
14 smoking of tobacco, or products prepared from tobacco is immune
15 from prosecution for that purchase, receipt, or possession while
16 participating in either of the following:

17 (1) An enforcement activity that complies with the guidelines
18 adopted pursuant to subdivisions (c) and (d) of Section 22952 of
19 the Business and Professions Code.

20 (2) An activity conducted by the State Department of Public
21 Health, a local health department, or a law enforcement agency
22 for the purpose of determining or evaluating youth tobacco
23 purchase rates.

24 (f) It is the Legislature's intent to regulate the subject matter of
25 this section. As a result, a city, county, or city and county shall not
26 adopt any ordinance or regulation inconsistent with this section.

27 SEC. 9. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

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ED HERNANDEZ, O.D.

TWENTY-SECOND SENATE DISTRICT



SB 151 (Hernandez) Factsheet

Tobacco 21

Purpose

This bill seeks to decrease tobacco addiction in California by severely limiting youth access to tobacco products. In doing so, SB 151 will reduce the number of Californians who become lifetime smokers and suffer from the long terms impacts of tobacco usage.

Background

The truth, as Henry Waxman famously stated, is that cigarettes are the single most dangerous consumer product ever sold.

In 1964, the Surgeon General released a report that linked smoking to many health issues, including lung cancer and heart disease. This landmark report laid the foundation on which tobacco control was built. Since that time, smoking rates have progressively decreased, but it still remains a significant problem as roughly 18% of the American population smokes cigarettes. Tobacco remains the leading cause of preventable death in the United States with 480,000 people dying annually – 40,000 from effects of secondhand smoke. According to the CDC, tobacco use kills more people per year than alcohol, murders, illegal drugs, AIDS, and motor vehicle accidents *combined*.

Aside from the vast human toll, tobacco is a heavy burden financially. The Campaign for Tobacco Free Kids estimates, direct health care expenditures related to smoking in California amount to approximately \$13.3 billion annually – with about \$3.5 billion in Medi-Cal costs. They also estimate California experiences a \$10.3 billion loss in productivity related to tobacco usage.

It is estimated that 90% of tobacco users start before the age of 21, roughly 80% first try tobacco before age 18, and 75% of teen smokers continue into their adult years. Additionally, studies have shown that a large percentage of people who purchase cigarettes for illegal distribution are under 21 years of age. Evolving neuroscientific evidence also suggests that the adolescent brain has a heightened susceptibility to the addictive qualities of nicotine. Research by the Surgeon General indicates that adolescents can become dependent on nicotine very rapidly, at lower levels of consumption than adults.

There have been a number of cities and municipalities across the country that have implemented a similar age increase to 21 and the early results are encouraging. In Needham, MA the youth smoking rate was cut nearly in half after such a policy was implemented, which was triple that of its surrounding neighbors. In 2013, responding to the continued burden of tobacco, the FDA commissioned the Institute of Medicine to study the effectiveness of raising the MLA. They concluded that raising the MLA to 21 would cause the smoking prevalence to decline by 12 percent more than existing control policies.

In the recently released American Lung Association report, The State of Tobacco Control, California received an “F” grade in tobacco prevention. Cigarette sales to those under 21 account for approximately 2% of total sales and yet lead to 90% of total smokers. Even the tobacco industry recognizes 18-21 year olds are the key target market for its massive marketing campaigns. A Philip Morris report has been quoted as stating “Raising the legal

minimum age for cigarette purchaser to 21 could gut our key young adult market...” Formerly a leader in tobacco control programs, California needs to do more to reduce the sale of tobacco products in our communities and to protect our youth from becoming addicted to this deadly drug.

This Bill

SB 151 changes the minimum legal purchase age for all tobacco products in California from 18 to 21.

Support

American Federation of State, County and Municipal Employees, AFL-CIO

American Cancer Society Cancer Action Network

American Heart Association/American Stroke Association

American Lung Association in California

California Black Health Network

El Monte/South El Monte Chamber of Commerce

March of Dimes California Chapter

Opposition

Cigar Association of America

Contact

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AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 216

Introduced by Assembly Member Cristina Garcia

February 2, 2015

An act to add Chapter 5 (commencing with Section 24600) to Division 20 of the Health and Safety Code, relating to product sales to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 216, as amended, Cristina Garcia. Product sales to minors: vapor products.

Existing law prohibits the sale of electronic cigarettes to people under 18 years of age. Existing law defines “electronic cigarette” as a device that can provide an inhalable dose of nicotine by delivering a vaporized solution.

This bill would prohibit the sale of any device intended to deliver a nonnicotine product in a vapor state, to be directly inhaled by the user, to a person under 18 years of age. *The bill would exempt from its prohibition the sale of a drug or medical device that has been approved by the federal Food and Drug Administration.* Because this bill would create a new crime or infraction, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Chapter 5 (commencing with Section 24600) is
2 added to Division 20 of the Health and Safety Code, to read:

3

4

CHAPTER 5. PRODUCT SALES TO MINORS

5

6 24600. (a) It shall be unlawful for a person to sell or otherwise
7 furnish any device intended to deliver a nonnicotine product in a
8 vapor state, to be directly inhaled by the user, to a person under
9 18 years of age.

10 (b) *Subdivision (a) does not prohibit the sale or furnishing of*
11 *a drug or medical device that has been approved by the federal*
12 *Food and Drug Administration pursuant to the federal Food, Drug,*
13 *and Cosmetic Act (21 U.S.C. Sec. 301, et. seq).*

14 ~~(b)~~

15 (c) A violation of this section shall be an infraction punishable
16 by a fine not exceeding five hundred dollars (\$500) for the first
17 violation, by a fine not exceeding one thousand dollars (\$1,000)
18 for the second violation, or by a fine not exceeding one thousand
19 five hundred dollars (\$1,500) for a third or subsequent violation.

20 SEC. 2. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.

AB 216 – GARCIA

PRODUCT SALES TO MINORS: VAPOR PRODUCTS

BACKGROUND

The number of children using e-cigarettes or vape pens has doubled every year since 2009. Electronic cigarettes, also known as e-cigarettes and vape pens, are battery-operated products designed to deliver nicotine, flavor and other chemicals. They turn liquid chemicals, including highly addictive nicotine, into an aerosol that is inhaled by the user.

There is a range for the amount of nicotine in e-cigarettes. At this point in time, the FDA has not set comprehensive standards for what chemicals can be used in e-cigarettes and vape-pens. Recent reports show that even devices that deliver a non-nicotine product in a vapor state can contain 10 chemicals. This includes chemicals like lead, benzene, nickel and formaldehyde.

While some are using e-cigarettes and vape pens as a way to quit smoking, studies suggest that adolescents who use e-cigarettes are more likely to progress from experimenting with e-cigarettes to becoming established smokers.

PROBLEM

Currently, while it is illegal for stores to sell e-cigarettes or vape pens delivering nicotine to a person under 18 years of age, devices that deliver non-nicotine products are legal. Not only do the devices pose a risk to adolescents, but e-cigarettes and vape pens often target a younger audience. Flavors of e-cigarettes or vape pens frequently use names of popular kid's treats such as gummy bear, Skittles® and Froot Loops®. Cartoon characters such as Hello Kitty® have been used on some of the packaging.

BILL SUMMARY

AB 216 prohibits the sale of any device intended to deliver a non-nicotine product in a vapor state to people under the age of 18 years of age. A violation of this section shall be an infraction punishable by a fine not exceeding \$500 for the first violation, a fine not exceeding \$1,000 for the second violation, and a fine not exceeding \$1,500 for the third violation.

STATUS

Introduced: February 2, 2015
Assembly Committee on Governmental Organization,
May 6, 2015

SUPPORT

California School Employees Association
Breast Cancer Fund
Narcotic Officers Association

OPPOSITION

None

FOR MORE INFORMATION

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Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products



Over the past 50 years, tobacco control in the United States has led to an estimated 8 million fewer premature deaths. However, tobacco use continues to significantly affect public health, and more than 40 million Americans still smoke.

In 2009, the Family Smoking Prevention and Tobacco Control Act granted the U.S. Food and Drug Administration (FDA) broad authorities over tobacco products, though it prohibited FDA from establishing a nationwide minimum age of legal access—an MLA for tobacco products—above 18 years of age. It also directed FDA to convene a panel of experts to conduct a study on the public health implications of raising the minimum age to purchase tobacco products. At FDA's request, the Institute of Medicine (IOM) convened a committee in 2013 for this purpose.

In the resulting report, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, the committee of experts reviews existing literature on tobacco use initiation, developmental biology and psychology, and tobacco policy and predicts the likely public health outcomes of raising the MLA for tobacco products to 19 years, 21 years, and 25 years. The committee also uses mathematical modeling to quantify these predictions. Of note, the report contains only conclusions regarding raising the MLA; as requested by FDA, the committee does not offer recommendations as to whether the MLA should be raised.

...tobacco use continues to significantly affect public health, and more than 40 million Americans still smoke.

Lowering Initiation Rates

The initiation age of tobacco use is critical. Among adults who become daily smokers, approximately 90 percent report first use of cigarettes before reaching 19 years of age, and almost 100 percent report first use before age 26. As mentioned above, FDA cannot raise the MLA nationwide. However, states and localities can set a higher minimum age for their communities. Most states currently set the MLA at 18 years. Four states set it at 19 years, and several localities around the country have raised the minimum age to 21 years.

Based on its review of the literature, the committee concludes that overall, increasing the MLA for tobacco products will likely prevent or delay initiation of tobacco use by adolescents and young adults. The age group most impacted will be those age 15 to 17 years. The committee also concludes that the impact of raising the MLA to 21 will likely be substantially higher than raising it to 19. However, the added effect of raising the MLA from 21 to 25 will likely be considerably less.

The parts of the brain most responsible for

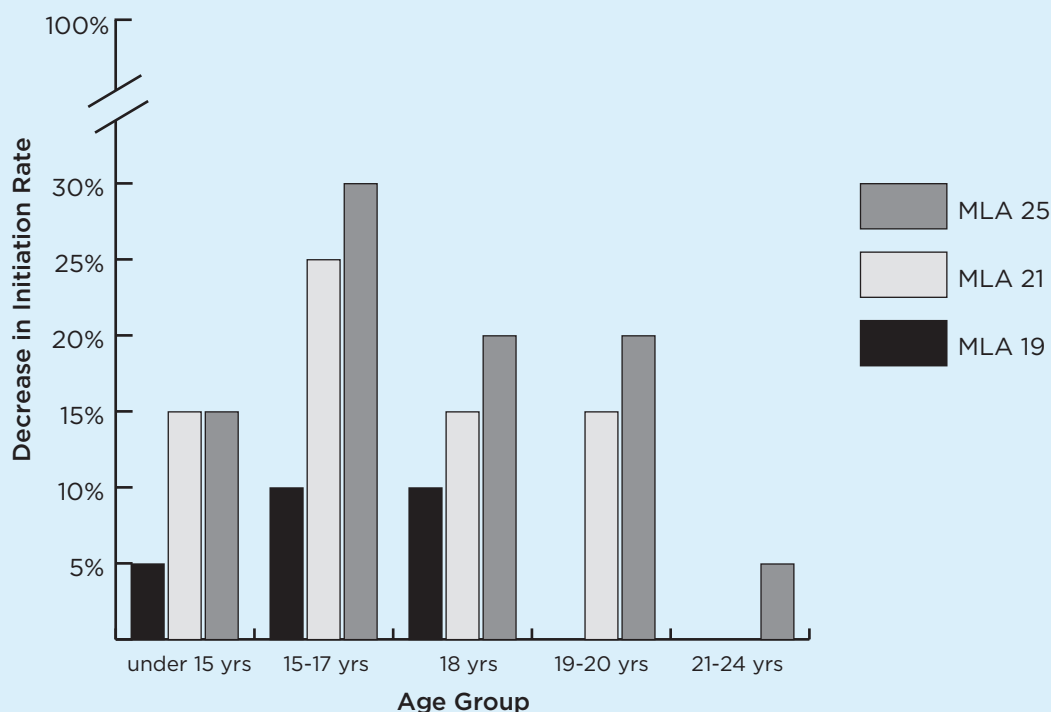
decision making, impulse control, sensation seeking, and susceptibility to peer pressure continue to develop and change through young adulthood, and adolescent brains are uniquely vulnerable to the effects of nicotine. In addition, the majority of underage users rely on social sources—like family and friends—to get tobacco.

Raising the MLA to 19 will therefore not have much of an effect on reducing the social sources of those in high school. Raising the MLA to 21 will mean that those who can legally obtain tobacco are less likely to be in the same social networks as high school students. In the same vein, increasing the MLA from 21 to 25 is not likely to achieve additional notable reductions in social sources for those under age 15.

Reducing Prevalence, Decreasing Disease

Delaying initiation rates will likely decrease the prevalence of tobacco users in the U.S. population. To quantify this decrease in both prevalence of tobacco users and in related health concerns

FIGURE: Committee Estimates Regarding Effects on Initiation Rates



NOTE: This figure was created using data from Table 7-2 in the report.

The parts of the brain most responsible for decision making, impulse control, sensation seeking, and susceptibility to peer pressure continue to develop and change through young adulthood, and adolescent brains are uniquely vulnerable to the effects of nicotine and nicotine addiction.

that could be a result of raising the MLA, the committee commissioned the use of two established and complementary tobacco simulation models, SimSmoke and the Cancer Intervention and Surveillance Modeling Network smoking population model (CISNET).

In using the models, the committee employed all available evidence and expert judgment to project outcomes. The committee also had to make assumptions with important implications. The models only address cigarette smoking, but the committee expects the MLA and relative effects on initiation to apply to all tobacco products. In addition, the models project the effects of raising the MLA on the United States as a whole and do not take into account existing variations in tobacco use—such as by race or socioeconomic status—initiation rates, and tobacco control activities. In addition, the rapidly changing landscape of tobacco products—for example, e-cigarettes—provides unknowns and could affect the future of tobacco product use in ways that the committee was unable to anticipate due to lack of evidence.

Based on the modeling and backed up by the literature review, the committee concludes that raising the minimum age of legal access to tobacco products in the United States, particularly to ages 21 and 25, will likely lead to a substantial reduction in smoking prevalence. If the MLA were raised now, the models projected that by the time today's teenagers were adults, there would be a 3 percent decrease in prevalence of tobacco use among those adults if the MLA were raised to 19, a 12 percent decrease if raised to 21, and a 16 per-

cent decrease if raised to 25.

Given a decline in the initiation rates of tobacco use by adolescents and lower prevalence in the population, it follows that tobacco-related disease would also decrease in proportion to the reduction in tobacco use. It is generally known that smoking-related diseases like cancer and heart disease develop over decades, and therefore, it could take many years to lower rates of these diseases; however, there could be immediate decreases in other tobacco-related health effects.

The committee concludes that raising the MLA will likely immediately improve the health of adolescents and young adults by reducing the number of those with adverse physiological effects such as increased inflammation and impaired immune functioning caused by smoking, as these could potentially lead to negative health consequences, including increased hospitalizations and lessened capacity to heal wounds. Adverse maternal, fetal, and infant outcomes—including preterm births, low birth weight, and sudden infant death—will also probably decrease due to reduced tobacco exposure in mothers and infants. Raising the MLA will also lessen the population's exposure to secondhand smoke and its associated health effects, both now and in the future.

Over time, the committee concludes that raising the MLA will likely lead to substantial reductions in smoking-related mortality, though results from the models suggest that these results will not be observed for at least 30 years, assuming that the MLA increase occurs now. The CISNET model



Committee on the Public Health Implications of Raising the Minimum Age for Purchasing Tobacco Products

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Study Sponsor

U.S. Food and Drug Administration

projected that if the MLA were raised now to 21 nationwide, there would be approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019.

Conclusion

The public health impact of raising the MLA for tobacco products depends on the degree to which local and state governments change their policies. These decisions will depend on each state's or locality's balance between personal interests and the privacy of young adults to make their own choices versus society's legitimate concerns about protecting public health.

The IOM committee makes conclusions about likely public health outcomes of raising the MLA for tobacco products. Overall, in the absence of transformative changes in the tobacco market, social norms and attitudes, or in the knowledge of patterns and causes of tobacco use, the committee is reasonably confident that raising the MLA will reduce tobacco use initiation, particularly among adolescents 15 to 17 years of age; improve the health of Americans across the lifespan; and save lives.



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State Health Officer's Report on E-Cigarettes

*A Community
Health Threat*



State Health Officer's Report on E-Cigarettes

A Community Health Threat

Ron Chapman, MD, MPH
CDPH Director and State Health Officer
California Department of Public Health

January 2015

Edmund G. Brown Jr., Governor
State of California

Diana S. Dooley, Secretary
California Health and Human Services Agency



Suggested Citation

California Department of Public Health, California Tobacco Control Program, *State Health Officer's Report on E-Cigarettes: A Community Health Threat*, Sacramento, CA 2015

Introduction from the State Health Officer

As the California Department of Public Health (CDPH) Director and State Health Officer, I am pleased to present CDPH's second issue of the State Health Officer's Report which focuses on electronic cigarettes (e-cigarettes). While there is still much to be learned about the individual and public health impact of e-cigarette use, this report provides factual information about e-cigarettes, the marketing of these products, and the public health concerns related to their use. It outlines a number of steps to protect children from nicotine poisoning, adolescents from nicotine addiction, and non-users from exposure to the toxic aerosol emitted from e-cigarettes.



Ron Chapman, MD, MPH
CDPH Director and State Health Officer

As the State Health Officer, of particular concern to me is the impact of e-cigarettes on the health and safety of children, teens, and young adults. The availability of e-cigarettes in a variety of candy and fruit flavors such as cotton candy, gummy bear, chocolate mint, and grape makes these products highly appealing to young children and teens. The use of marketing terms such as “e-juice” may further mislead consumers into believing that these products are harmless and safe for consumption.

Among children ages 0 to 5 years old, e-cigarette poisonings increased sharply from 7 in 2012 to 154 in 2014. By the end of 2014, e-cigarette poisonings to young children tripled in one year, making up more than 60 percent of all e-cigarette poisoning calls.

E-cigarette use is rapidly rising among teens and young adults. Nationally, the use of e-cigarettes by high school students tripled in just two years and e-cigarette use by teens now surpasses the use of traditional cigarettes. With this age group the long-term impact that nicotine has on adolescent brain development is of particular concern. In California, use among young adults ages 18 to 29 tripled in one year. While the long term health impact resulting from use of this product by this population is presently unknown – it is known that e-cigarettes emit at least 10 chemicals that are found on California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm. Comprehensive steps taken now can prevent a new generation of young people from becoming addicted to nicotine, avoid future health disparities and avert an unraveling of California's approximately \$2 billion, 25-year investment in public health efforts to prevent and reduce tobacco use in California.

This report highlights several steps to address the health and safety issues related to e-cigarette use. First and foremost, education is needed to counter the marketing of e-cigarettes which is often misleading and highly appealing to teens. Second, there is a need to treat e-cigarettes in a comprehensive manner

that is consistent with how we approach traditional cigarettes. Existing laws that currently protect minors and the general public from traditional tobacco products should be extended to cover e-cigarettes. Third, immediate action is needed to protect children and workers from the toxicity associated with unintentional exposure and handling of e-liquid and the toxic aerosol emitted from e-cigarettes.

I trust that this report provides you with new information and that you will join me in this effort to protect our communities.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Chapman". The signature is fluid and cursive, with a large initial "R" and "C".

Ron Chapman, MD, MPH
CDPH Director and State Health Officer

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Executive Summary

While there is still much to be learned about the ingredients and the long-term health impacts of e-cigarettes, this report provides Californians with information on e-cigarette use, public health concerns related to e-cigarettes, and steps that can be taken to address the growing use of these products. The following are key highlights from the report:

E-Cigarette Use

- In 2014, teen use of e-cigarettes surpassed the use of traditional cigarettes for the first time, with more than twice as many 8th and 10th graders reporting using e-cigarettes than traditional cigarettes. Among 12th graders, 17 percent reported currently using e-cigarettes vs. 14 percent using traditional cigarettes.
- In California, adults using e-cigarettes in the past 30 days doubled from 1.8 percent in 2012 to 3.5 percent in 2013. For younger adults (18 to 29 years old), e-cigarette use tripled in only one year from 2.3 percent to 7.6 percent.
- Young adults are three times more likely to use e-cigarettes than those 30 and older.
- Nearly 20 percent of young adult e-cigarette users in California have never smoked traditional cigarettes.

Health Effects of E-Cigarettes

- E-cigarettes contain nicotine, a highly addictive neurotoxin.
- Exposure to nicotine during adolescence can harm brain development and predispose youth to future tobacco use.
- E-cigarettes do not emit water vapor, but a concoction of chemicals toxic to human cells in the form of an aerosol. The chemicals in the aerosol travel through the circulatory system to the brain and all organs.
- Mainstream and secondhand e-cigarette aerosol has been found to contain at least ten chemicals that are on California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm.

Heightened Concern for Youth

- The variety of fruit and candy flavored e-cigarettes entice small children who may accidentally ingest them. Even a fraction of e-liquid may be lethal to a small child.
- E-cigarette cartridges often leak and are not equipped with child-resistant caps, creating a potential source of poisoning through ingestion and skin or eye contact.
- Calls to poison control centers in California and the rest of the U.S. have risen significantly for both adults and children accidentally exposed to e-liquids.
- In California, the number of calls to the poison control center involving e-cigarette exposures in children five and under tripled in one year.



Harm Reduction Claims and Myths

- There is no scientific evidence that e-cigarettes help smokers successfully quit traditional cigarettes.
- E-cigarette users are no more likely to quit than regular smokers, with one study finding 89 percent of e-cigarette users still using them one year later. Another study found that e-cigarette users are a third less likely to quit cigarettes.

Unrestricted Marketing

- In three years, the amount of money spent on advertising e-cigarettes increased more than 1,200 percent.
- E-cigarette advertisements (ads) are on television (TV) and radio where tobacco ads were banned more than 40 years ago. Most of the methods being used today by e-cigarette companies were used long ago by tobacco companies to market traditional cigarettes to kids.
- Many ads state that e-cigarettes are a way to get around smoking bans, which undermines smoke free social norms. Various tactics and claims are also used to imply that these products are safe.
- The fact that e-cigarettes contain nicotine, which is highly addictive, is not typically included in e-cigarette advertising.

In Conclusion

California has been a leader in tobacco use prevention and cessation for over 25 years, with one of the lowest youth smoking rates in the nation. The promotion and increasing use of e-cigarettes threaten California's progress. These data suggest that a new generation of young people will become addicted to nicotine, accidental poisonings of children will continue, and involuntary exposure to secondhand aerosol emissions will impact the public's health if e-cigarette marketing, sales and use continue without restriction. Additionally, without action, it is likely that California's more than two decades of progress to prevent and reduce traditional tobacco use will erode as e-cigarettes re-normalize smoking behavior.

The Problem: E-cigarettes

E-cigarettes are battery-operated devices, often designed to resemble cigarettes, which deliver a nicotine containing aerosol, not just water vapor. E-cigarettes have many names, especially among youth and young adults, such as e-cigs, e-hookahs, hookah pens, vapes, vape pens, vape pipes, or mods.

E-cigarettes were first introduced in the U.S. in 2007 and have skyrocketed in popularity, availability, and variety. From disposable and rechargeable e-cigarettes to “tank systems” that can hold a large volume of a liquid solution (e-liquid), customers can modify e-cigarettes in many ways.¹

A Significant Public Health Concern

Unlike traditional cigarettes where the tobacco leaf is burned and the resulting smoke inhaled, e-cigarettes heat e-liquid that generally contains nicotine, flavorings, additives, and propylene glycol. The heated e-liquid forms an aerosol, not just water vapor, that is inhaled by the user. The aerosol has been found to contain toxic chemicals like formaldehyde, lead, nickel, and acetaldehyde all of which are found on California’s Proposition 65 list of chemicals known to cause cancer, birth defects, and other reproductive harm.²⁻⁴ These chemicals travel through the circulatory system to the brain and all organs. The aerosol also contains high concentrations of ultrafine particles that are inhaled and become trapped in the lungs.⁵

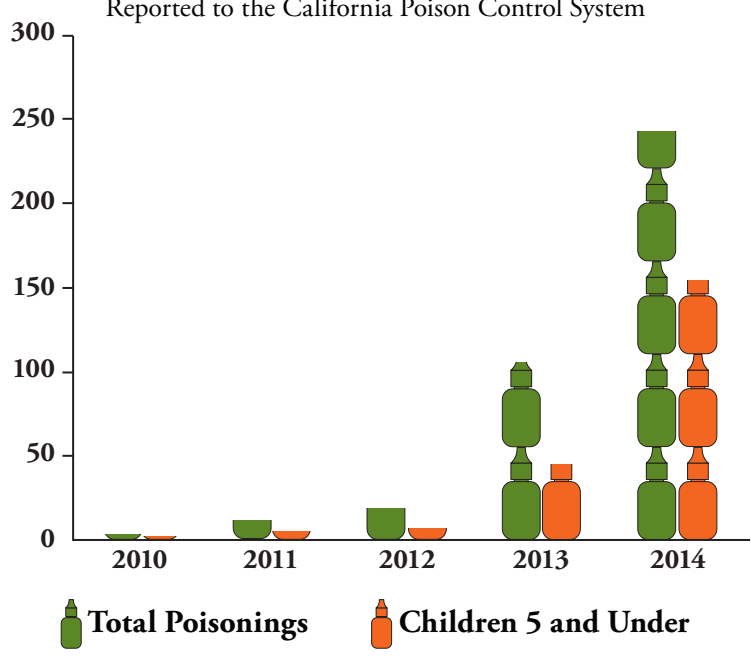
E-liquids are available in thousands of candy and fruit flavors, including bubble gum, cherry and chocolate, which are especially appealing to youth and small children who may accidentally ingest them. Even a small amount of e-liquid may be lethal to a small child.⁶ In addition, e-cigarette cartridges often leak and are not equipped with child-resistant caps, creating a potential source of poisoning through ingestion and skin or eye contact.

There has been a significant rise in the number of calls to poison control centers in California and nationally for both adults and children who were accidentally exposed to e-liquids, many of whom are children aged five and under.⁷ Nationally, the number of calls rose from one per month in September 2010 to 215 per month in February 2014.⁸ In California, from 2012 to 2013, the number of calls to the poison control center involving e-cigarette exposures in children ages five and under increased sharply from 7 to 154. By the end of 2014, e-cigarette poisonings to young children tripled in one year, making up more than 60% of all e-cigarette poisoning calls (see Figure 1). Adults have also mistakenly used e-liquid in harmful ways, such as eye drops, and have been harmed by exploding cartridges and burning batteries.

School and law enforcement officials have reported that e-cigarette devices are also used to inhale illegal substances, such as marijuana and hash oil.⁶ Because many of these devices are similar in appearance to a ball point pen, school and law enforcement personnel are not aware that inappropriate use of nicotine and illegal substances is occurring.



Figure 1
E-Cigarette Poisonings, 2010-2014
 Reported to the California Poison Control System



California Poison Control System, San Diego, CA, Jan. 2015

Despite the lack of manufacturing standards, quality control, and external oversight by a federal regulatory agency of e-cigarettes, they are heavily marketed, widely available, and a significant public health concern.

E-Cigarette Use by Youth

Aggressive marketing has led to an increase in e-cigarette use and experimentation by youth. Many are concerned that e-cigarettes are a gateway to using traditional cigarettes.⁹ Research suggests that kids who may have otherwise never smoked cigarettes are now becoming addicted to nicotine through the use of e-cigarettes and other e-products.⁹ An analysis of the 2011-2012 National Youth

Tobacco Survey (NYTS) found that adolescents who used e-cigarettes were more likely to progress from experimenting with traditional cigarettes to becoming established smokers and were less likely to quit.⁹

In 2014, for the first time ever, teen use of e-cigarettes surpassed the use of traditional cigarettes. The Monitoring the Future study, which tracks substance abuse trends among 40,000 youth nationally, found that among 8th and 10th graders, current e-cigarette use was double that of traditional cigarettes (8.7 percent vs. 4 percent for 8th graders and 16.2 percent vs. 7.2 percent for 10th graders). Among 12th graders, 17.1 percent reported current e-cigarette use vs. 13.6 percent traditional cigarette use.¹⁰ This 2014 finding that e-cigarette use exceeds traditional cigarette use among teens comes on the heels of the 2013 NYTS which found that e-cigarette use tripled among high school students, increasing from 1.5 percent in 2011 to 4.5 percent in 2013.¹¹ An analysis of the 2011- 2013 NYTS also reported that more than a quarter million youth who had never smoked a traditional cigarette used e-cigarettes in 2013, a three-fold increase since 2011, and that youth who had used e-cigarettes were nearly twice as likely to try traditional cigarettes as those who never used e-cigarettes.¹²

In California, preliminary data of more than 430,000 middle and high school students from the California Healthy Kids Survey found that in 2013, 6.3 percent of 7th graders, 12.4 percent of 9th graders, and 14.3 percent of



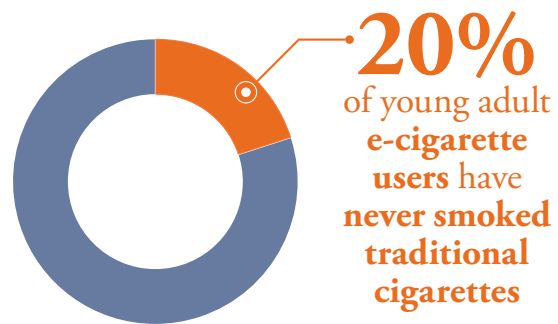


11th graders had used e-cigarettes in the past 30 days. In all instances, California teens were found to use e-cigarettes at much higher rates than traditional cigarettes. The survey data also show that 11.4 percent of 7th graders, 23.6 percent of 9th graders, and 29.3 percent of 11th graders have ever tried e-cigarettes.¹³ While the California Healthy Kids Survey is not representative of all California youth, the large sample size and consistency with the recent national data and data from other U.S. states, specifically Minnesota and Hawaii, suggest that California youth are experimenting with e-cigarettes at a rapidly increasing rate.^{14, 15}

E-Cigarette Use by Adults

Nationally, 8.1 percent of adults have tried e-cigarettes

while 1.4 percent were current users in 2012.¹⁶ New California data shows that adults using e-cigarettes in the past 30 days also doubled from 1.8 percent in 2012 to 3.5 percent in 2013. For young adults (18 to 29 year old), e-cigarette use tripled in only one year from 2.3 percent to 7.6 percent. Young adults are three times more likely to use e-cigarettes than those 30 and older. Nearly 20 percent of young adult e-cigarette users have never smoked traditional cigarettes.¹⁷



Health Effects of Nicotine

In 1990, the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency added nicotine to the Proposition 65 list of chemicals known to cause cancer, birth defects, or reproductive harm.⁴

Nicotine is a highly addictive neurotoxin, proven as addictive as heroin and cocaine.¹⁸ Nicotine affects the cardiovascular and central nervous systems, causing blood vessels to constrict, raising the pulse and blood pressure.¹⁹ Nicotine adversely affects maternal and fetal health during pregnancy, contributing to low birth weight, preterm delivery, and stillbirth.²⁰ Nicotine is also known to cross the placenta and is detectable in the breast milk of smoking mothers as well as mothers exposed to secondhand smoke.^{21, 22}



Preliminary studies have shown that using a nicotine-containing e-cigarette for just five minutes causes similar lung irritation, inflammation, and effect on blood vessels as smoking a traditional cigarette, which may increase the risk of a heart attack.^{1, 23}

Adolescents are especially sensitive to the effects of nicotine and are likely to underestimate its addictiveness. Research shows that adolescent smokers report some symptoms of dependence even at low levels of cigarette consumption.²⁵

Adolescents are still going through critical periods of brain growth and development and are especially vulnerable to the toxic effects of nicotine. Exposure to nicotine during adolescence can harm brain development and affect future tobacco use and smoking-related harms.^{20, 24, 25} Even a brief period of continuous or intermittent nicotine exposure in adolescence elicits lasting neurobehavioral damage.²⁶

Exposure to Secondhand Aerosol

While e-cigarettes pollute the air less than traditional cigarettes, contrary to popular belief, e-cigarettes do not emit a harmless water vapor, but a concoction of chemicals toxic to human cells in the form of an aerosol. Vapors are purely gases, whereas aerosols also contain particulate matter.⁵



Although several studies have found lower levels of carcinogens in e-cigarette aerosol compared to smoke emitted by traditional cigarettes, the mainstream and secondhand e-cigarette aerosol has been found to contain at least ten chemicals that are on California's list of chemicals known to cause cancer, birth defects, or other reproductive harm, including acetaldehyde, benzene, cadmium, formaldehyde, isoprene, lead, nickel, nicotine, N nitrosonornicotine, and toluene.^{1-3, 27} There is also evidence that e-cigarette aerosol

contains propylene glycol and higher levels of other toxicants including heavy metals (tin, nickel) and silicate nanoparticles than are present in traditional cigarettes.³

Overall, research confirms that e-cigarettes are not emission-free and their pollutants could be of health concern for both users and those exposed to the secondhand aerosol. Although it may not be as dangerous as secondhand smoke from cigarettes, people passively exposed to e-cigarette aerosol absorb nicotine at levels comparable to passive smokers.²⁸ They are also exposed to volatile organic compounds (VOCs) and fine/ultrafine particles.²⁷ These ultrafine particles can travel deep into the lungs and lead to tissue inflammation.²³

Harm Reduction Claims and Myths about Cessation

Despite numerous claims, the effectiveness of e-cigarettes as cessation aids has not been proven. Unlike the U.S. Food and Drug Administration (FDA)-approved nicotine replacement therapies, e-cigarettes are not FDA-approved cessation aids. There is no scientific evidence that e-cigarettes help smokers successfully quit traditional cigarettes or that they reduce their consumption.^{9, 29}

A number of recent studies have shown that e-cigarette users are no more likely to quit than regular smokers, with one study finding that 89 percent of e-cigarette users are still using them one year later.³⁰ Another study found that e-cigarette users are a third less likely to quit cigarettes, suggesting that e-cigarettes inhibit people from successfully kicking their nicotine addiction.^{31, 32}



89%
of e-cigarette
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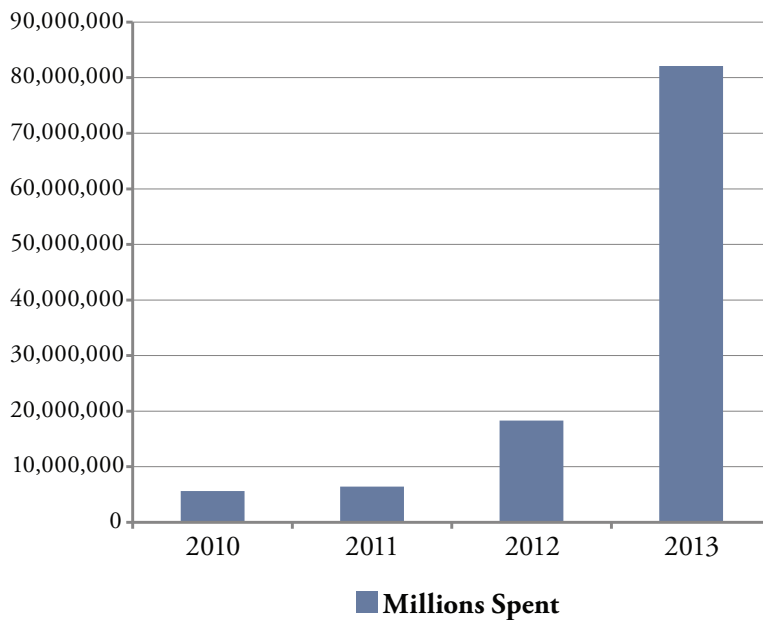
In addition, dual use of cigarettes and e-cigarettes is continuing to rise, which may diminish any potential benefits of cutting back on traditional cigarettes.³³ Continuing to smoke traditional cigarettes, while also using e-cigarettes, does not reduce cardiovascular health risks.^{1, 34, 35}

Unrestricted Marketing

In just three years, the amount of money spent on advertising e-cigarettes increased more than 1,200 percent or 12-fold (Figure 2).^{36, 37} E-cigarette ads are found in all forms of media, including TV and radio where cigarette ads were banned more than 40 years ago.

Figure 2

Estimated E-Cigarette Advertising, U.S.



Sources:

2010 and 2013 estimates from: Kantar Media Intelligence e-cigarette competitive spend data as reported in Legacy, 'Vaporized: E-Cigarettes, Advertising, and Youth', (2014).

2011 and 2012 estimates from: A. E. Kim, K. Y. Arnold, and O. Makarenko, 'E-Cigarette Advertising Expenditures in the U.S., 2011-2012', *Am J Prev Med*, 46 (2014), 409-12.

(Facebook, Instagram, YouTube and Twitter), which are heavily used by youth and young adults, and sponsoring sports, music, and cultural events in California where free samples may also be provided.³⁷

Most of the e-cigarette marketing tactics were previously used by tobacco companies to market traditional cigarettes to kids, such as featuring celebrities.³⁹ Advertising appeals include rebelliousness, sexual appeal, glamour, trendy and fun—all of which strongly resonate with youth who have a desire to be cool and fit in. Cartoon characters, which are also prohibited in traditional cigarette advertising for their youth appeal, are used by some brands and there are numerous youth oriented designs for e-cigarette products, including “Hello Kitty.”

Many TV networks with a substantial proportion of youth viewers, are airing e-cigarette TV advertising. E-cigarette ads have appeared on highly viewed broadcasts, including the 2013 and 2014 Super Bowls, which had more than 110 million viewers.^{38, 37}

In addition to TV, e-cigarette ads are on the radio, magazines, newspapers, online, and in retail stores. In Style, Us Weekly, Star, Entertainment Weekly and Rolling Stone are some of the tabloids and magazines with e-cigarette ads reaching millions of youth and young adults.^{38, 39} Manufacturers are also promoting their products on social media sites



Give the gift of change to that special smoker in your life looking to make the switch from tobacco. It's our "Elf on the Inventory Shelf" sale, brought to you by Elfis! Check out our website to order: <http://bit.ly/Qsb1sy>



Many ads state that e-cigarettes are a way to get around smoking bans, which undermines social norms and entices young people to disregard laws established for traditional cigarettes.

Another tactic used to imply the safety of these products is that the e-liquid containing nicotine is typically labeled as “e-juice” and promoted in candy and fruit flavors, such as cotton candy, gummy bear, chocolate mint, watermelon, and grape. The fact that e-cigarettes contain nicotine is downplayed in e-cigarette advertising. Younger adults and youth who are experimenting with these products may not realize that e-juice contains the highly addictive chemical nicotine, and that the products are classified as a tobacco product.



e-liquid

The leading e-cigarette brands have taken the position that their products should not be sold or marketed to youth, but advertising industry data revealed that 73 percent of 12-17 year olds were exposed to e-cigarette advertising from Blu, the most heavily advertised e-cigarette brand.³⁸



73%
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olds were
exposed to
e-cigarette
advertising

All of the major tobacco companies now own e-cigarette brands and the amount of e-cigarette advertising is expected to skyrocket. The two biggest tobacco companies, R.J. Reynolds (Camel brand) and Altria (Marlboro brand), launched their own e-cigarette brands nationally in late June and early July 2014. They join Lorillard, the third biggest tobacco company, already in the market with Blu e-cigarettes for the last few years. Other types of e-cigarette-like products can also be expected from the major tobacco companies, such as the recent news by Philip Morris International to test and launch an e-cigarette device that heats tobacco leaf instead of a liquid.⁴⁰

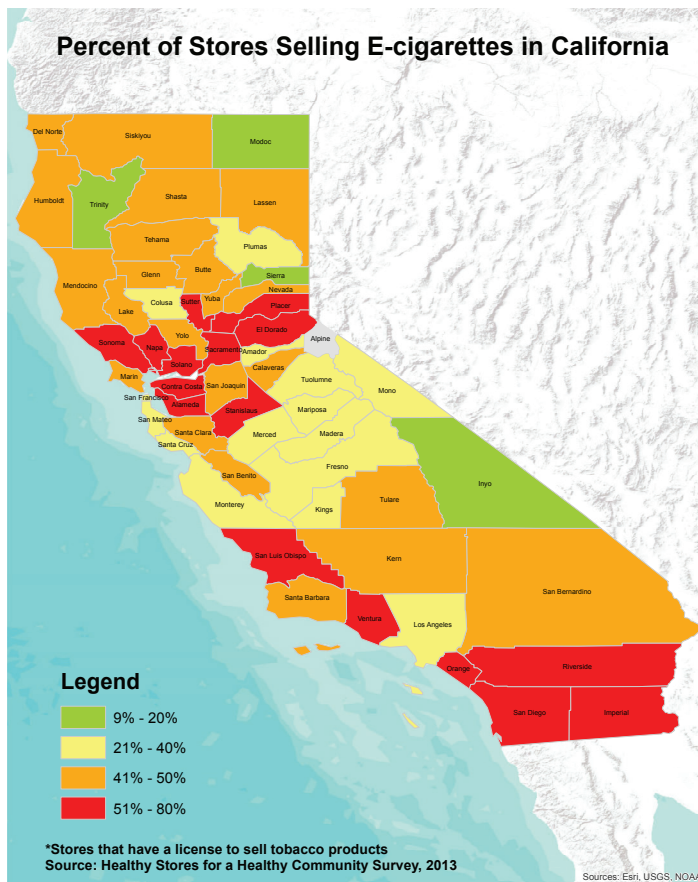
Where E-Cigarettes are Sold in California

E-cigarettes are readily available throughout California, and the number of stores selling e-cigarettes quadrupled in a two-year period, from 2011 to 2013. A survey of over 7,000 retail stores conducted in 2013 showed that 46 percent of retail stores that sold tobacco also sold e-cigarettes in California.⁴¹ In 2011, only 12 percent of stores sold e-cigarettes.⁴²

The map of where e-cigarettes are sold in California shows that counties around the Bay Area, Sacramento and San Diego have a higher percentage of stores selling e-cigarettes than the statewide average of 46 percent and many are equal to the state average (Figure 3).

Tobacco companies have historically enlisted convenience stores, the type of store most frequented by youth, as their most important partners in marketing tobacco products and opposing policies that reduce tobacco use.⁴³ More than 60 percent of convenience stores sold e-cigarettes in 2013, with almost one third selling e-cigarettes near candy, ice cream, or slushie/soda machines. Drug stores and pharmacies (other than CVS Pharmacy which will no longer sell tobacco as of October 2014), which people visit to improve their health, are also selling e-cigarettes at a rate higher than the state average (56 percent vs. 44 percent), with 88 percent of those stores placing e-cigarettes visibly in the main check-out area.⁴¹

Figure 3



Local Efforts

While the FDA has proposed a rule that would provide limited regulation of e-cigarettes, the FDA does not have the authority to regulate “where” e-cigarettes may be used. Thus, the responsibility lies with states and local governments to implement restrictions that protect youth, workers, and the public from exposure to e-cigarette aerosol emissions.

Given that much of e-cigarette marketing focuses on the users’ ability to circumvent smoke-free laws and “smoke anywhere,” local communities play a critical role in protecting nonsmokers and youth from the secondhand exposure to the e-cigarette aerosol.

Many California cities and counties are taking steps to treat e-cigarettes the same as cigarettes and other tobacco products. To date, more than one hundred cities and counties in California have passed policies regulating the use of e-cigarettes in their jurisdictions, some requiring retailers to obtain a license to sell e-cigarettes, while others prohibit the use of e-cigarettes in indoor and/or outdoor areas, including in multi-unit housing complexes.⁴⁴



NEWS > LOCAL

Los Angeles E-Cigarette Ban Takes Effect

After months of heated debate, the ban on the controversial use of e-cigarettes became official

By Irene Moore, Hetty Chang and Kate Larsen

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Angelenos who use e-cigarettes enjoyed their final puffs on the device in a public space before the city-wide ban on “vaping” in public places takes effect at midnight Saturday. Kate Larsen reports for the NBC4 News at 11 p.m. Friday, April 18, 2014.

Saturday, Apr 19, 2014 • Updated at 8:09 AM PDT



TRENDING STORIES

Terminally Ill Woman Plans to Die With Dignity Nov. 1

Routes to Avoid During President's Visit



Summary of FDA Proposed Regulation

In 2011 the U.S. Court of Appeals determined that e-cigarettes may not be regulated by the FDA as a drug or medical device, but may be regulated as a tobacco product under the Family Smoking Prevention and Tobacco Control Act of 2009.⁴⁵ As described below, on April 24, 2014, the FDA released its proposed deeming rule to regulate the sale and distribution of e-cigarettes.⁴⁶ The proposed rule is limited in scope and may take several years to be finalized and even longer to be implemented. As written now, the proposed rule would:

- Prohibit the sales of e-cigarettes to anyone under the age of 18 nationally
- Restrict vending machines to adult-only facilities
- Prohibit free samples
- Require a nicotine health warning statement on packaging and in advertisements
- Require all manufacturers to register their e-cigarette product with the FDA
- Require ingredients to be disclosed
- Allow the FDA to review any new or changed products before being sold
- Require manufacturers to show scientific evidence to support a claim that an e-cigarette product is less harmful and demonstrate the overall public health benefit



E-cigarette samples provided at an event.



 **blu cigs** shared Neon Desert Music Festival's photo.
May 23 ✨

We'll be at Neon Desert Music Festival all weekend! Stop by our tent to say hi and get free samples! #NeonDesert #NDMF2014

NDMF'ers! Take back your freedom at the blu cigs tent with free samples from the most electric #eCig company in the biz. #bluFreedom #bluNation #NeonDesert #NDMF2014. Restricted to adults +18, ID required upon entry. NOT FOR SALE TO MINORS.



E-cigarette sponsorship of events and samples.

Public Education Campaign on E-Cigarettes

As the State of California Health Officer, and in the face of public health and safety concerns, aggressive e-cigarette marketing, and increasing number of e-cigarette users, I am announcing the intentions of CDPH to launch an educational campaign to inform the public about the dangers of e-cigarettes. The campaign will include:

- **Partnering with the public health, medical, and child care communities:** CDPH will disseminate information to the public health, medical, and child care communities to increase awareness about the known toxicity of e-cigarettes and the high risk of poisonings, especially to children. We will continue to promote and support the use of proven effective cessation therapies.
- **The launch of a media and public education campaign:** California was the first state in the nation to comprehensively address smoking in 1990, including a bold public education campaign. We must do the same today to address the proliferation of e-cigarette marketing and products.
- **Joining with the California Department of Education (CDE) and school officials:** The Department will work with CDE and school officials to assist in providing accurate information to parents, school administrators, and students on the dangers of e-cigarettes.

IT'S NOT JUST "HARMLESS WATER VAPOR"

E-cigarette aerosol contains at least 10 chemicals on California's Prop 65 list of chemicals known to cause cancer, birth defects or other reproductive harm.

TOLUENE
ACETALDEHYDE
BENZENE
CADMIUM
FORMALDEHYDE
ISOPRENE
NICKEL
LEAD
NICOTINE
N-NITROSONORNICOTINE

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Conclusion

The facts outlined in this report indicate a high need to educate the public regarding safety concerns associated with e-cigarettes. These devices pose a poisoning hazard, particularly for children, but also for adults who may confuse e-liquid bottles with other products. The nicotine in e-cigarettes has lasting health implications to the brain development of teens and young adults, and there are indications that chemicals in e-liquids may pose a respiratory hazard to users and to those exposed to the aerosol emitted from these devices. Furthermore, there are worker safety and biohazard concerns regarding the conditions under which e-liquids are mixed and how materials are disposed. Increasingly, there are reports from schools and law enforcement agencies about the use of these e-cigarettes for other illicit substances.

The adverse health effects of e-cigarettes and their by-products make it clear that these products should be strictly regulated. Restrictions on marketing to youth and access by youth, protections to prevent poisonings—particularly among children—and education of the public on the dangers of e-cigarettes are important measures to take to address this growing public health threat.

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April 24, 2015

To: CSAC Health and Human Services Policy Committee

From: Farrah McDaid Ting, Legislative Representative
Michelle Gibbons, Legislative Analyst

Re: **Poverty Platform Language and Framework – ACTION ITEM**

Staff Recommendation. *CSAC staff recommends approval of the attached proposed poverty platform plank by the CSAC Health and Human Services Policy Committee.*

Background. The CSAC Executive Committee directed CSAC staff to convene a Poverty Working Group in 2015 to examine ways in which counties can have an impact on poverty in our communities.

California's counties are the front line California's of human assistance, mental health, and health systems, serving as the community's link between state and federal policies and the delivery of critical poverty reduction services.

There is a growing public dialogue on poverty issues in California and nationally as the recovery from the Great Recession has been uneven and underscored income inequality and the growth in poverty in America. Millions of Californians feel the impact of poverty every day. The 2010 Census reports that 16.3 percent of Californians live at or below the federal poverty level. This number jumps to 23.5 percent of Californians when expanding the federal poverty level formula to include basic needs, such as clothing, shelter, utilities and government programs designed to assist low income families.

Poverty has a large impact on some of our most vulnerable populations, including children. One-third of the 6 million impoverished Californians are children. Nearly one out of four children in the state is currently living in a poverty-stricken household. The impact of childhood poverty can last a lifetime; children who grow up in poverty are three times as likely to live in poverty as adults.

The convergence of the Great Recession, the 50th Anniversary of the federal War on Poverty (2014), and new poverty measurements, such as the enhanced poverty measurement proposed by the Census Bureau, has sparked national, state, and local conversations on the issue. The Democratic-led California Legislature is keenly interested in poverty-related issues, with Assembly Speaker Toni Atkins releasing an affordable housing proposal and Senate President pro Tempore Kevin de León releasing a subsidized child care proposal in the last month alone. Other members of the Legislature are advocating for an Earned Income Tax Credit, repealing the CalWORKs Maximum Family Grant, and creating supportive housing to combat homelessness.

The CSAC Poverty Working Group 2015 (PWG) is tasked with examining the issues related to poverty that are in play in California today and steer the Association toward supporting, developing, or promoting achievable solutions at the county level.

Organization. CSAC President Vito Chiesa has appointed three co-chairs for the group:

Kathy Long, Ventura County, Urban Caucus
Leticia Perez, Kern County, Suburban Caucus
Lee Adams, Sierra County, Rural Caucus

Membership on the PWG is voluntary and is comprised of county supervisors, county administrators, county staff, CSAC affiliate members, and other interested persons who have a nexus with counties. The three co-chairs strongly encourage all members to engage in the conversation to assist the group's decision-making process. County supervisors and their proxies serve as the voting members.

Process. Any action taken by the PWG will be forwarded to the CSAC Health and Human Services Policy Committee for review and/or other relevant policy committees. Should the policy committee approve the action, it will then be taken up by the full CSAC Board of Directors or Executive Committee depending on which body's meeting date arrives first.

Platform Language. Every two years, the CSAC Board of Directors adopts the CSAC Platform. The first task of the PWG was to create and approve a proposed poverty plank for the CSAC platform to guide the Association's policy work on the issue.

PWG Approval of Plank. An initial draft of the proposed plank was presented at the March 26 PWG meeting. PWG members provided feedback, which CSAC staff incorporated and presented at the April 22 PWG meeting. During this meeting, the PWG voted to approve the poverty platform plank, which is now presented before you today for your review and approval, if appropriate. Should the HHS policy committee approve the draft language, it will then be taken up by the full CSAC Board of Directors.

Attachments:

DRAFT Proposed CSAC Poverty Platform Language

Staff Contacts:

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Michelle Gibbons can be reached at (916) 327-7500 Ext. 524 or mgibbons@counties.org.

DRAFT

Approved by the Poverty Working Group on April 22, 2015.

(Proposed) POVERTY PLATFORM STATEMENT

The California State Association of Counties affirms that California's counties are the front line of human assistance systems, serving as the community's link between state and federal policies and the delivery of critical poverty reduction services.

Poverty is influenced by a disparate but connected set of factors, including but not limited to: a lack of sufficient income, geographic challenges, employment and economic climate, availability of supports and services, availability of stable and permanent housing, education resources, incarceration, lack of transportation systems, complex state and federal regulation, access to health care, health disparities, and access to quality child care.

Counties recognize that poverty may be influenced by international, national, and state economic factors outside of local control, but note that any period in which poverty increases results in a pernicious cycle of rising caseloads and needs while revenues at the county level decrease.

Counties must have the local administrative flexibility and resources to meet federal and state standards, while also meeting the unique needs of their residents. Counties recognize that poverty impacts other levels of local government, including schools and cities, and encourage working collaboratively to serve all residents. Counties must also be partners in the design and reform of programs that focus on the whole person/family as the starting point for customizing services in order to address poverty in our communities.