

ASSEMBLY BILL

No. 221

Introduced by Assembly Member Koretz
(Principal coauthor: Senator Dunn)
(Coauthors: Assembly Members Chu, Hancock, Lieber,
Maldonado, Nation, and Vargas)
(Coauthor: Senator Kuehl)

January 29, 2003

An act to amend Sections 17537.3, 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

AB 221, as introduced, Koretz. Tobacco products: minimum legal age: advertising, display, and distribution limitations.

Existing law prohibits persons from making various promotional or advertising offers of smokeless tobacco products without taking specified actions to ensure that the product is not available to persons under 18 years of age.

This bill would extend the applicability of those provisions to persons under 21 years of age, except those born before January 1, 1986.

The Stop Tobacco Access to Kids Enforcement (STAKE) Act is designed to reduce the availability of tobacco products to minors through specified sales restrictions and enforcement activities. The act, among other things, prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, any person under the age of 18 years, authorizes the assessment of civil penalties of a violation of the act, and makes the violation of the act a criminal offense.

This bill would extend the applicability of the act to persons under the age of 21 years, except for those who were born before January 1, 1986. Because this bill would change the definition of a crime, it would create a state-mandated local program.

The act requires the State Department of Health Services to conduct random, onsite sting inspections at retail sites, and requires the department to enlist the assistance of persons who are 15 and 16 years of age for this purpose.

This bill would, instead, authorize the department, until January 1, 2007, to enlist the assistance of persons who are 15 and 16 years of age, and, on and after January 1, 2007, to enlist the assistance of persons under 21 years of age, for these inspections.

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. The Legislature finds and declares the
- 2 following:
- 3 (a) Tobacco kills 480,000 Americans every year, causing more
- 4 deaths than AIDS, alcohol abuse, illegal drug use, auto accidents,
- 5 firearms accidents, fires, homicides, and suicides combined.
- 6 (b) Youth smoking has been identified as one of the most
- 7 important health care problems, and beginning to smoke as an
- 8 adolescent is the most important cause of a lifetime smoking
- 9 addiction.
- 10 (c) Three states, Alabama, Alaska, and Utah, have raised the
- 11 minimum legal age for smoking above that required by California.
- 12 (d) Increasing the legal minimum sale age for tobacco will
- 13 reduce the number of older youth who smoke and will help reduce
- 14 sales of tobacco to younger children.
- 15 (e) Studies and surveys have shown that when states increased
- 16 the legal minimum sale age for alcohol, drinking by high school



1 seniors fell by over a third and daily drinking in the same group fell
2 more than 50 percent.

3 (f) According to a United States Surgeon General report,
4 smokers have sampled cigarettes at the median age of 14 years but
5 did not begin to smoke daily until the age of 18 years, and a small
6 percentage began smoking after the age of 21 years.

7 (g) According to the American Lung Association,
8 approximately 90 percent of smokers begin smoking before the
9 age of 21 years, and those who begin smoking at an early age are
10 more likely to develop a severe level of addiction to nicotine than
11 those who start at a later age.

12 (h) The legal minimum sale age for alcohol in California is 21
13 years of age, and persons under 21 years of age have visibly
14 different drivers' licenses. Raising the legal minimum age
15 required to purchase tobacco would ease the ability of merchants
16 and vendors to check identification and would establish a uniform
17 age for the purchase of both of these legal drugs.

18 (i) The state should continue its commitment to vigorous
19 antitobacco education efforts and strict enforcement of existing
20 laws limiting access by youth to tobacco products.

21 (j) It is in the interest of the public health to prevent adolescents
22 from taking up the deadly habit of smoking in order to prevent their
23 addiction to nicotine later in life.

24 SEC. 2. Section 17537.3 of the Business and Professions
25 Code is amended to read:

26 17537.3. The following acts are prohibited:

27 (a) For any person to ~~offer~~ *make*, as part of an advertising plan
28 or program, *any promotional offers—offer of any smokeless*
29 *tobacco products which require—product that requires* proof of
30 purchase of a smokeless tobacco product unless ~~it~~ *that product*
31 carries a designation that the offer is not available to ~~minors~~ *any*
32 *person under the age of 21 years*. Each promotional offer shall
33 include in any mail-in coupon a statement requesting purchasers
34 to verify that the purchaser is ~~18~~ *21* years of age or older.

35 (b) For any person to honor *any* mail-in ~~and~~ *or* telephone
36 ~~requests~~ *request* for *any* promotional ~~offers~~ *of—offer of any*
37 *smokeless tobacco products product* unless appropriate efforts are
38 made to ascertain that a purchaser is over ~~18~~ *21* years of age. For
39 purposes of this subdivision, appropriate efforts to ascertain the



1 age of a purchaser ~~includes~~ *include*, but ~~is~~ *are* not limited to,
2 requests for a purchaser's birth date.

3 (c) For any person by any means, as part of an advertising plan
4 or program, to distribute *any* free ~~samples~~ *sample* of *any*
5 smokeless tobacco ~~products~~ *product* within a ~~two-block~~ *two-block*
6 radius of any premises or facilities whose primary purpose is
7 directed toward persons under the age of ~~18~~ *21* years including,
8 but not limited to, schools, clubhouses, and youth centers, when
9 those premises are being used for their primary purposes.

10 (d) For any person to distribute, as part of any advertising plan
11 or program, *any* unsolicited ~~samples~~ *sample* of *any* smokeless
12 tobacco ~~products~~ *product* through a mail campaign.

13 (e) *This section shall not be construed to prohibit any*
14 *promotional offer of any smokeless tobacco product, the honoring*
15 *of that promotional offer, or the distribution of samples, to any*
16 *person who was born before January 1, 1986.*

17 SEC. 3. Section 22952 of the Business and Professions Code
18 is amended to read:

19 22952. ~~On or before July 1, 1995, the~~ *The* State Department
20 of Health Services shall do all of the following:

21 (a) Establish and develop a program to reduce the availability
22 of tobacco products to persons under ~~18~~ *21* years of age through
23 the enforcement activities authorized by this division.

24 (b) Establish requirements that retailers of tobacco products
25 post conspicuously, at each point of purchase, a notice stating that
26 selling tobacco products to anyone under ~~18~~ *21* years of age is
27 illegal and subject to penalties *unless otherwise specified by law*.
28 The notice shall also state that the law requires that all persons
29 selling tobacco products check the identification of any purchaser
30 of tobacco products who reasonably appears to be under ~~18~~ *21*
31 years of age. The ~~warning signs~~ *notice* shall include a toll-free
32 telephone number to the state department for persons to report
33 unlawful sales of tobacco products to ~~minors~~ *any person under 21*
34 *years of age who was not born before January 1, 1986.*

35 (c) Provide that *the* primary responsibility for enforcement of
36 this division shall be with the state department. In carrying out its
37 enforcement responsibilities, the state department shall conduct
38 random, onsite sting inspections at retail ~~sites and shall~~ *sites*. *Until*
39 *January 1, 2007, the state department may enlist the assistance of*
40 *persons that* ~~who~~ are 15 and 16 years of age in conducting these



1 enforcement activities. *On and after January 1, 2007, the state*
2 *department may enlist the assistance of persons who are under 21*
3 *years of age in conducting these enforcement activities.* The state
4 department may conduct onsite sting inspections in response to
5 public complaints or at retail sites where violations have
6 previously occurred, and *may investigate illegal sales of tobacco*
7 *products to ~~minors~~ any person under 21 years of age by telephone,*
8 *mail, or the Internet. Participation in these enforcement activities*
9 *by ~~a~~ any person under ~~18-21~~ years of age shall not constitute a*
10 *violation of subdivision (b) of Section 308 of the Penal Code for*
11 *the person under ~~18-21~~ years of age, and the person under ~~18-21~~*
12 *years of age is immune from prosecution ~~thereunder~~ under that*
13 *section, or under any other provision of law prohibiting the*
14 *purchase of these products by a person under ~~18-21~~ years of age.*

15 (d) In accordance with Chapter 3.5 (commencing with Section
16 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
17 the state department shall adopt and publish guidelines for the use
18 of persons under ~~18-21~~ years of age in inspections conducted
19 pursuant to subdivision (c) that shall include, but not be limited to,
20 all of the following:

21 (1) The state department and any local law enforcement agency
22 under an enforcement delegation contract with the department
23 may use persons under ~~18-21~~ years of age ~~who are 15 or 16 years~~
24 ~~of age~~ in random inspections to determine if sales of cigarettes or
25 other tobacco products are being made to persons under ~~18-21~~
26 years of age.

27 (2) A photograph or video recording, *pursuant to this section,*
28 *of the person under ~~18-21~~ years of age shall be taken prior to each*
29 *inspection or shift of inspections and retained by the department*
30 *or the local law enforcement agency under an enforcement*
31 *delegation contract with the department for purposes of verifying*
32 *appearances.*

33 (3) The state department or a local law enforcement agency
34 under an enforcement delegation contract with the department
35 may use video recording equipment when conducting the
36 inspections to record and document illegal sales or attempted
37 *illegal sales.*

38 (4) The person under ~~18-21~~ years of age, if questioned about his
39 or her age, need not state his or her actual age but shall present a
40 true and correct identification if verbally asked to present it. Any



1 failure on the part of the person under ~~18-21~~ years of age to provide
2 true and correct identification, if verbally asked for it, shall be a
3 defense to any action pursuant to this section.

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

7 (6) All persons under ~~18-21~~ years of age used in this manner by
8 the department or a local law enforcement agency under an
9 enforcement delegation contract with the department shall display
10 the appearance of a person under ~~18-21~~ years of age. It shall be a
11 defense to any action under this division that the person's
12 appearance was not that which could be generally expected of a
13 person under ~~18-21~~ years of age, under the actual circumstances
14 presented to the seller of ~~the cigarettes~~ *any cigarette* or other
15 tobacco ~~products~~ *product* at the time of the alleged offense.

16 (7) Following the completion of the sale, the peace officer
17 accompanying the person under ~~18-21~~ years of age shall reenter
18 the retail establishment and inform the seller of the random
19 ~~inspection and following inspection.~~ *Following* an attempted sale,
20 the department shall notify the retail establishment of the
21 inspection.

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

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

35 SEC. 4. Section 22956 of the Business and Professions Code
36 is amended to read:

37 22956. ~~All persons~~ *Any person* engaging in the retail sale of
38 *any tobacco products* ~~product~~ shall check the identification of *any*
39 tobacco ~~purchasers~~ *purchaser*; *in order to establish* ~~ascertain~~ the



1 age of the purchaser, if the purchaser reasonably appears to be
2 under ~~18-21~~ years of age.

3 SEC. 5. Section 22958 of the Business and Professions Code
4 is amended to read:

5 22958. (a) The state department 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 years~~
8 *21 years, except any person born before January 1, 1986*, any
9 tobacco, cigarette, or cigarette papers, or any other instrument or
10 paraphernalia that is designed for the smoking or ingestion of
11 tobacco, ~~products—any product~~ prepared from tobacco, or any
12 controlled substance, according to the following schedule: (1) a
13 civil penalty of from two hundred dollars (\$200) to three hundred
14 dollars (\$300) for the first violation, (2) a civil penalty of from six
15 hundred dollars (\$600) to nine hundred dollars (\$900) for the
16 second violation within a five-year period, (3) a civil penalty of
17 from one thousand two hundred dollars (\$1,200) to one thousand
18 eight hundred dollars (\$1,800) for a third violation within a
19 five-year period, (4) a civil penalty of from three thousand dollars
20 (\$3,000) to four thousand dollars (\$4,000) for a fourth violation
21 within a five-year period, or (5) a civil penalty of from five
22 thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a
23 fifth or subsequent violation within a five-year period.

24 (b) The state department shall assess penalties in accordance
25 with the schedule set forth in subdivision (a) against any person,
26 firm, or corporation that sells, offers for sale, or distributes *any*
27 tobacco ~~products—product~~ from a cigarette or tobacco products
28 vending machine, or *against* any person, firm, or corporation that
29 leases, furnishes, or services these machines in violation of Section
30 22960.

31 (c) The state department shall assess penalties in accordance
32 with the schedule set forth in subdivision (a) against any person,
33 firm, or corporation that advertises or causes to be advertised any
34 tobacco product on any outdoor billboard in violation of Section
35 22961.

36 (d) If a civil penalty has been assessed pursuant to this section
37 against any person, firm, or corporation for a single, specific
38 violation of this division, the person, firm, or corporation shall not
39 be 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 any 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
6 Penal Code was based.

7 (e) (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 *any other retail locations* ~~location~~
12 of that same 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 (f) Proceedings under this section shall be conducted in
20 accordance with Section 100171 of the Health and Safety Code.

21 SEC. 6. Section 22963 of the Business and Professions Code
22 is amended to read:

23 22963. (a) The distribution or sale of tobacco products
24 directly or indirectly to any person under the age of ~~18~~ 21 years
25 through the United States Postal Service or through any other
26 public or private postal or package delivery service at locations,
27 including, but not limited to, public mailboxes and mailbox stores,
28 is prohibited.

29 (b) Any person selling or distributing tobacco products directly
30 to a consumer in the state through the United States Postal Service
31 or by any other public or private postal or package delivery
32 service, including orders placed by mail, telephone, facsimile
33 transmission, or the Internet, shall comply with the following
34 provisions:

35 (1) (A) Before enrolling a person as a customer or distributing
36 or selling the tobacco product through any of these means, the
37 distributor or seller shall verify that the purchaser is ~~18~~ 21 years
38 of age or older. The distributor or seller shall attempt to match the
39 name, address, and date of birth provided by the customer to
40 information contained in records in a database of individuals



1 whose age has been verified to be ~~18~~ 21 years or older by reference
2 to an appropriate database of government records kept by the
3 distributor, a direct marketing firm, or any other entity. The
4 distributor or seller shall also verify that the billing address on the
5 check or credit card offered for payment by the purchaser matches
6 the address listed in the database.

7 (B) If the distributor or seller is unable to verify that the
8 purchaser is ~~18~~ 21 years of age or older pursuant to subparagraph
9 (A), he or she shall require the customer to submit an
10 age-verification kit consisting of an attestation signed by the
11 customer that he or she is ~~18~~ 21 years of age or older and a copy
12 of a valid form of government identification. For the purposes of
13 this section, a valid form of government identification includes a
14 driver's license, state identification card, passport, an official
15 naturalization or immigration document, such as an alien
16 registration receipt card (commonly known as a "green card") or
17 an immigrant visa, or military identification. The distributor or
18 seller shall also verify that the billing address on the check or credit
19 card provided by the consumer matches the address listed in the
20 form of government identification.

21 (2) The distributor or seller shall impose a two-carton
22 minimum on each order of cigarettes, and shall require payment
23 for the purchase of any tobacco product to be made by personal
24 check of the purchaser or the purchaser's credit card. No money
25 order or cash payment shall be received or permitted. The
26 distributor or seller shall submit to each credit card acquiring
27 company with which it has credit card sales identification
28 information in an appropriate form and format so that the words
29 "tobacco product" may be printed in the purchaser's credit card
30 statement when a purchase of a tobacco product is made by credit
31 card payment.

32 (3) The distributor or seller shall make a telephone call after 5
33 p.m. to the purchaser confirming the order prior to shipping the
34 tobacco products. The telephone call may be a person-to-person
35 call or a recorded message. The distributor or seller is not required
36 to speak directly with a person and may leave a message on an
37 answering machine or by voice mail.

38 (4) The distributor or seller shall deliver the tobacco product to
39 the purchaser's verified billing address on the check or credit card



1 used for payment. No delivery described under this section shall
2 be permitted to any post office box.

3 (c) Notwithstanding subdivisions (a) and (b), if a distributor or
4 seller complies with all of the requirements of this section and a
5 ~~minor~~ *person under the age of 21 years, except any person born*
6 *before January 1, 1986*, obtains a tobacco product by any of the
7 means described in subdivision (b), the seller or distributor is not
8 in violation of this section.

9 (d) For the purposes of the enforcement of this section pursuant
10 to Section 22958, the acts of the United States Postal Service or
11 other common carrier when engaged in the business of
12 transporting and delivering packages for others, and the acts of a
13 person, whether compensated or not, who transports or delivers a
14 package for another person without any reason to know of the
15 package's contents, are not unlawful and are not subject to civil
16 penalties.

17 (e) (1) For the purposes of this section, a "distributor" is any
18 person or entity, within or outside the state, who agrees to
19 distribute tobacco products to a customer within the state. The
20 United States Postal Service or any other public or private postal
21 or package delivery service ~~are~~ *is not distributors-a distributor*
22 within the meaning of this section.

23 (2) For the purpose of this section, a "seller" is any person or
24 entity, within or outside the state, who agrees to sell tobacco
25 products to a customer within the state. The United States Postal
26 Service or any other public or private postal or package delivery
27 service ~~are~~ *is not sellers-a seller* within the meaning of this section.

28 (3) For the purpose of this section, a "carton" is a package or
29 container that contains 200 cigarettes.

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

34 (1) A civil penalty of not less than one thousand dollars
35 (\$1,000) and not more than two thousand dollars (\$2,000) for the
36 first violation.

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



1 (3) A civil penalty of not less than four thousand dollars
2 (\$4,000) and not more than five thousand dollars (\$5,000) for the
3 third violation within a five-year period.

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

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

9 SEC. 7. Section 22964 is added to the Business and
10 Professions Code, to read:

11 22964. The provisions of this division shall not be construed
12 to prohibit a city or county from enacting laws with respect to the
13 legal age to purchase or possess any tobacco product as long as
14 they are at least as stringent as state law.

15 SEC. 8. Section 308 of the Penal Code is amended to read:

16 308. (a) (1) Every person, firm, or corporation ~~which~~*that*
17 knowingly, or under circumstances in which it has knowledge, or
18 should otherwise have grounds for knowledge, sells, gives, or in
19 any way furnishes to another person who is under the age of ~~18~~
20 ~~years~~ *21 years, except for any person born before January 1, 1986,*
21 any tobacco, cigarette, or cigarette papers, or any other preparation
22 of tobacco, or any other instrument or paraphernalia that is
23 designed for the smoking or ingestion of tobacco, ~~products~~ *any*
24 *product* prepared from tobacco, or any controlled substance, is
25 subject to either a criminal action for a misdemeanor or to a civil
26 action brought by a city attorney, a county counsel, or a district
27 attorney, punishable by a fine of two hundred dollars (\$200) for the
28 first offense, five hundred dollars (\$500) for the second offense,
29 and one thousand dollars (\$1,000) for the third offense.

30 ~~Notwithstanding~~

31 (2) *Notwithstanding* Section 1464 or any other provision of
32 law, 25 percent of each civil and criminal penalty collected
33 pursuant to this subdivision shall be paid to the office of the city
34 attorney, county counsel, or district attorney, ~~whoever~~ *who* is
35 responsible for bringing the successful action, and 25 percent of
36 each civil and criminal penalty collected pursuant to this
37 subdivision shall be paid to the city or county for the
38 administration and cost of the community service work
39 component provided in subdivision (b).

40 **Proof**



1 (3) *Proof* that a defendant, or his or her employee or agent,
2 demanded, was shown, and reasonably relied upon, evidence of
3 majority shall be a defense to any action brought pursuant to this
4 subdivision. Evidence of majority of a *that a person is 21 years of*
5 *age or older or was born before January 1, 1986, may be a*
6 *facsimile of or a reasonable likeness of a document issued by a*
7 *federal, state, county, or municipal government, or subdivision or*
8 *agency thereof, including, but not limited to, a motor vehicle*
9 *operator's license, a registration certificate issued under the*
10 *Federal Selective Service Act, or an identification card issued to*
11 *a member of the Armed Forces indicating the person is 21 years*
12 *of age or older or was born before January 1, 1986.*

13 ~~For~~

14 (4) *For* purposes of this section, the person liable for selling or
15 furnishing tobacco products to ~~minors~~ *any person under the age*
16 *of 21 years or a person born on or after January 1, 1986, by a*
17 *tobacco vending machine shall be the person authorizing the*
18 *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~~ *any person under the age of 21*
23 *years or a person born on or after January 1, 1986.*

24 (b) Every person under the age of ~~18 years~~ *21 years, except for*
25 *any person born before January 1, 1986, who purchases, receives,*
26 *or possesses any tobacco, cigarette, or cigarette papers, or any*
27 *other preparation of tobacco, or any other instrument or*
28 *paraphernalia that is designed for the smoking of tobacco,*
29 ~~products~~ *any product* prepared from tobacco, or any controlled
30 substance shall, upon conviction, be punished by a fine of
31 seventy-five dollars (\$75) or 30 hours of community service work.

32 (c) Every person, firm, or corporation ~~which~~ *that* sells, or deals
33 in tobacco or any preparation thereof, shall post conspicuously,
34 and keep so posted in his, her, or their place of business, at each
35 point of purchase, the notice required pursuant to subdivision (b)
36 of Section 22952 of the Business and Professions Code, and any
37 person failing to do so shall, upon conviction, be punished by a
38 fine of ten dollars (\$10) for the first offense and fifty dollars (\$50)
39 for each succeeding ~~violation of this provision~~ *offense*, or by
40 imprisonment for not more than 30 days.



1 (d) For purposes of determining the liability of ~~persons, firms,~~
2 ~~or corporations~~ *any person, firm, or corporation* controlling
3 franchises or business operations in multiple locations, for the
4 second and subsequent violations of this section, each individual
5 franchise or business location shall be deemed a separate entity.

6 (e) It is the Legislature's intent to regulate the subject matter of
7 this section. As a result, no city, county, or city and county shall
8 adopt any ordinance or regulation inconsistent with this section.

9 (f) Notwithstanding any other provision of this section, the
10 Director of Corrections may sell or supply tobacco and tobacco
11 products, including cigarettes and cigarette papers, to any person
12 confined in any institution or facility under his or her jurisdiction
13 who has attained the age of 16 years, if the parent or guardian of
14 the person consents thereto, and may permit smoking by the person
15 in any institution or facility. No officer or employee of the
16 Department of Corrections shall be considered to have violated
17 this section by any act authorized by this subdivision.

18 SEC. 9. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.

