

**ASSEMBLY BILL**

**No. 1278**

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**Introduced by Assembly Member Gray**

February 27, 2015

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An act to amend Section 22963 of the Business and Professions Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1278, as introduced, Gray. Cigarettes and tobacco products: identification requirements.

Existing law prohibits the sale, distribution, or nonsale distribution of tobacco products directly or indirectly to any person under 18 years of age. Existing law requires a person selling or distributing, or engaging in the nonsale distribution of, tobacco products directly to a consumer in the state through the United States Postal Service or package delivery service to verify that the purchaser or recipient of the product is 18 years of age or older. Under existing law, if the seller, distributor, or nonsale distributor is unable to verify that the purchaser or recipient is 18 years of age or older, he or she is required to require the purchaser or recipient to submit an age-verification kit, which includes a copy of a valid form of government identification, as specified. A violation of these provisions may result in an assessment of civil penalties.

This bill would provide that, for the purposes of these requirements, if a customer or recipient provides an identification card issued by the United States Armed Forces as proof of age and the identification card lacks a physical description, but includes date of birth and a photo, further proof of age is not required.

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

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

1 SECTION 1. Section 22963 of the Business and Professions  
2 Code is amended to read:

3 22963. (a) The sale, distribution, or nonsale distribution of  
4 tobacco products directly or indirectly to any person under ~~the age~~  
5 ~~of~~ 18 years *of age* through the United States Postal Service or  
6 through any other public or private postal or package delivery  
7 service at locations, including, but not limited to, public mailboxes  
8 and mailbox stores, is prohibited.

9 (b) Any person selling or distributing, or engaging in the nonsale  
10 distribution of, tobacco products directly to a consumer in the state  
11 through the United States Postal Service or by any other public or  
12 private postal or package delivery service, including orders placed  
13 by mail, telephone, facsimile transmission, or the Internet, shall  
14 comply with the following provisions:

15 (1) (A) Before enrolling a person as a customer, or distributing  
16 or selling, or engaging in the nonsale distribution of, the tobacco  
17 product through any of these means, the distributor or seller shall  
18 verify that the purchaser or recipient of the product is 18 years of  
19 age or older. The distributor or seller shall attempt to match the  
20 name, address, and date of birth provided by the customer to  
21 information contained in records in a database of individuals whose  
22 age has been verified to be 18 years *of age* or older by reference  
23 to an appropriate database of government records kept by the  
24 distributor, a direct marketing firm, or any other entity. In the case  
25 of a sale, the distributor or seller shall also verify that the billing  
26 address on the check or credit card offered for payment by the  
27 purchaser matches the address listed in the database.

28 (B) If the seller, distributor, or nonsale ~~distributor~~, *distributor*  
29 is unable to verify that the purchaser or recipient is 18 years of age  
30 or older pursuant to subparagraph (A), he or she shall require the  
31 customer or recipient to submit an age-verification kit consisting  
32 of an attestation signed by the customer or recipient that he or she  
33 is 18 years of age or older and a copy of a valid form of government  
34 identification. For the purposes of this section, a valid form of  
35 government identification includes a driver's license, state  
36 identification card, ~~passport~~, *a valid passport issued by the United*  
37 *States or by a foreign government*, an official naturalization or  
38 immigration document, ~~such as including~~ an alien registration

1 receipt card (commonly known as a “green card”) or an immigrant  
2 visa, or military identification. ~~In the~~ *If a customer or recipient*  
3 *provides an identification card issued by the United States Armed*  
4 *Forces as proof of age and the identification card lacks a physical*  
5 *description, but includes date of birth and a photo, further proof*  
6 *of age is not required. In the case of a sale, the distributor or seller*  
7 *shall also verify that the billing address on the check or credit card*  
8 *provided by the consumer matches the address listed in the form*  
9 *of government identification.*

10 (2) In the case of a sale, the distributor or seller shall impose a  
11 two-carton minimum on each order of cigarettes, and shall require  
12 payment for the purchase of any tobacco product to be made by  
13 personal check of the purchaser or the purchaser’s credit card. No  
14 money order or cash payment shall be received or permitted. The  
15 distributor or seller shall submit to each credit card acquiring  
16 company with which it has credit card sales identification  
17 information in an appropriate form and format so that the words  
18 “tobacco product” may be printed in the purchaser’s credit card  
19 statement when a purchase of a tobacco product is made by credit  
20 card payment.

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

27 (4) The nonsale distributor shall deliver the tobacco product to  
28 the recipient’s verified mailing address, or in the case of a sale,  
29 the seller or distributor shall deliver the tobacco product to the  
30 purchaser’s verified billing address on the check or credit card  
31 used for payment. No delivery described under this section shall  
32 be permitted to any post office box.

33 (c) Notwithstanding subdivisions (a) and (b), if a seller,  
34 distributor, or nonsale distributor, complies with all of the  
35 requirements of this section and a minor obtains a tobacco product  
36 by any of the means described in subdivision (b), the seller,  
37 distributor, or nonsale distributor is not in violation of this section.

38 (d) For the purposes of the enforcement of this section pursuant  
39 to Section 22958, the acts of the United States Postal Service or  
40 other common carrier when engaged in the business of transporting

1 and delivering packages for others, and the acts of a person,  
2 whether compensated or not, who transports or delivers a package  
3 for another person without any reason to know of the package's  
4 contents, are not unlawful and are not subject to civil penalties.

5 (e) (1) (A) For the purposes of this section, a “distributor” is  
6 any person or entity, within or outside the state, who agrees to  
7 distribute tobacco products to a customer or recipient within the  
8 state. The United States Postal Service or any other public or  
9 private postal or package delivery service are not distributors within  
10 the meaning of this section.

11 (B) A “nonsale distributor” is any person inside or outside of  
12 this state who, directly or indirectly, knowingly provides tobacco  
13 products to any person in this state as part of a nonsale transaction.  
14 “Nonsale distributor” includes the person or entity who provides  
15 the tobacco product for delivery and the person or entity who  
16 delivers the product to the recipient as part of a nonsale transaction.

17 (C) “Nonsale distribution” means to give smokeless tobacco or  
18 cigarettes to the general public at no cost, or at nominal cost, or  
19 to give coupons, coupon offers, gift certificates, gift cards, or other  
20 similar offers, or rebate offers for smokeless tobacco or cigarettes  
21 to the general public at no cost or at nominal cost. Distribution of  
22 tobacco products, coupons, coupon offers, gift certificates, gift  
23 cards, or other similar offers, or rebate offers in connection with  
24 the sale of another item, including tobacco products, cigarette  
25 lighters, magazines, or newspapers shall not constitute nonsale  
26 distribution.

27 (2) For the purpose of this section, a “seller” is any person or  
28 entity, within or outside the state, who agrees to sell tobacco  
29 products to a customer within the state. The United States Postal  
30 Service or any other public or private postal or package delivery  
31 service are not sellers within the meaning of this section.

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

34 (f) A district attorney, a city attorney, or the Attorney General  
35 may assess civil penalties against any person, firm, corporation,  
36 or other entity that violates this section, according to the following  
37 schedule:

38 (1) A civil penalty of not less than one thousand dollars (\$1,000)  
39 and not more than two thousand dollars (\$2,000) for the first  
40 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.

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