

AMENDED IN SENATE JUNE 1, 2015  
AMENDED IN SENATE APRIL 21, 2015  
AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 24**

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**Introduced by Senator Hill**

December 1, 2014

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An act to amend Sections 22950.5, 22951, ~~22952~~, 22956, 22958, ~~22960, 22961~~, 22961, 22962, 22963, 22970.2, 22971, ~~22972, 22973, 22974, 22974.7~~, 22980, 22980.1, 22980.2, 22980.3, and 22980.4 of, *to amend, repeal, and add Sections 22952, 22960, 22972, and 22973 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, ~~118498~~, 118948, 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 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 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 persons under 18 years of age. The bill would also extend the requirements of the STAKE Act to the sale of electronic cigarettes to persons under 21 years of age. age if SB 151 of the 2015–16 Regular Session is enacted and takes effect.~~ 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 persons under ~~21~~ 18 years of age is illegal, a crime. *The bill would impose the same notice requirements as applied to the sale of electronic cigarettes to persons under 21 years of age if SB 151 of the 2015–16 Regular Session is enacted and takes effect.* 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 *knowingly* selling or otherwise furnishing an electronic cigarette to persons under ~~21~~ 18 years of ~~age~~. *age, and makes a violation punishable as a misdemeanor or subject to a civil action, as specified. The bill would prohibit a person from selling or otherwise furnishing an electronic cigarette to persons under 21 years of age if SB 151 of the 2015–16 Regular Session is enacted and takes effect.* 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 *the State Board of Equalization to administer a statewide program to license retailers of electronic cigarettes. The bill would require* retailers to apply for a license to sell electronic cigarettes *and pay a specified license fee*, 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 require the State Board of Equalization to use the revenue from this license fee only for purposes of administering the licensure program for retailers selling 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.

15 (b) “Enforcing agency” means the State Department of Public  
16 Health, another state agency, including, but not limited to, the  
17 office of the Attorney General, or a local law enforcement agency,  
18 including, but not limited to, a city attorney, district attorney, or  
19 county counsel.

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

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

28 22951. The Legislature finds and declares that reducing and  
29 eventually eliminating the illegal purchase and consumption of  
30 tobacco products and electronic cigarettes by minors is critical to  
31 ensuring the long-term health of our state’s citizens. Accordingly,  
32 California must fully comply with federal regulations, particularly  
33 the “Synar Amendment,” that restrict tobacco sales to minors and  
34 require states to vigorously enforce their laws prohibiting the sale  
35 and distribution of tobacco products to persons under 18 years of

1 age. Full compliance and vigorous enforcement of the “Synar  
2 Amendment” requires the collaboration of multiple state and local  
3 agencies that license, inspect, or otherwise conduct business with  
4 retailers, distributors, or wholesalers that sell tobacco.

5 ~~SEC. 4. Section 22952 of the Business and Professions Code~~  
6 ~~is amended to read:~~

7 ~~22952. The State Department of Public Health shall do all of~~  
8 ~~the following:~~

9 ~~(a) Establish and develop a program to reduce the availability~~  
10 ~~of tobacco products and electronic cigarettes to persons under 21~~  
11 ~~years of age through the enforcement activities authorized by this~~  
12 ~~division.~~

13 ~~(b) Establish requirements that retailers of tobacco products or~~  
14 ~~electronic cigarettes post conspicuously, at each point of purchase,~~  
15 ~~a notice stating that selling tobacco products or electronic cigarettes~~  
16 ~~to anyone under 21 years of age is illegal and subject to penalties.~~  
17 ~~The notice shall also state that the law requires that all persons~~  
18 ~~selling tobacco products or electronic cigarettes check the~~  
19 ~~identification of a purchaser of tobacco products or electronic~~  
20 ~~cigarettes who reasonably appears to be under 21 years of age.~~  
21 ~~The warning signs shall include a toll-free telephone number to~~  
22 ~~the department for persons to report unlawful sales of tobacco~~  
23 ~~products or electronic cigarettes to persons under 21 years of age.~~

24 ~~(c) Provide that primary responsibility for enforcement of this~~  
25 ~~division shall be with the department. In carrying out its~~  
26 ~~enforcement responsibilities, the department shall conduct random,~~  
27 ~~onsite sting inspections at retail sites and shall enlist the assistance~~  
28 ~~of persons that are under 21 years of age in conducting these~~  
29 ~~enforcement activities. The department may conduct onsite sting~~  
30 ~~inspections in response to public complaints or at retail sites where~~  
31 ~~violations have previously occurred, and investigate illegal sales~~  
32 ~~of tobacco products or electronic cigarettes to persons under 21~~  
33 ~~years of age by telephone, mail, or the Internet. Participation in~~  
34 ~~these enforcement activities by a person under 21 years of age~~  
35 ~~does not constitute a violation of subdivision (b) of Section 308~~  
36 ~~of the Penal Code for the person under 21 years of age, and the~~  
37 ~~person under 21 years of age is immune from prosecution~~  
38 ~~thereunder, or under any other provision of law prohibiting the~~  
39 ~~purchase of these products by a person under 21 years of age.~~

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

7 ~~(1) An enforcing agency may use persons under 21 years of age~~  
8 ~~in random inspections to determine if sales of cigarettes, electronic~~  
9 ~~cigarettes, or other tobacco products are being made to persons~~  
10 ~~under 21 years of age.~~

11 ~~(2) A photograph or video recording of the person under 21~~  
12 ~~years of age shall be taken prior to each inspection or shift of~~  
13 ~~inspections and retained by the enforcing agency for purposes of~~  
14 ~~verifying appearances.~~

15 ~~(3) An enforcing agency may use video recording equipment~~  
16 ~~when conducting the inspections to record and document illegal~~  
17 ~~sales or attempted sales.~~

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

24 ~~(5) The person under 21 years of age shall be under the~~  
25 ~~supervision of a regularly employed peace officer during the~~  
26 ~~inspection.~~

27 ~~(6) All persons under 21 years of age used in this manner by an~~  
28 ~~enforcing agency shall display the appearance of a person under~~  
29 ~~21 years of age. It shall be a defense to an action under this division~~  
30 ~~that the person's appearance was not that which could be generally~~  
31 ~~expected of a person under 21 years of age, under the actual~~  
32 ~~circumstances presented to the seller of the cigarettes, electronic~~  
33 ~~cigarettes, or other tobacco products at the time of the alleged~~  
34 ~~offense.~~

35 ~~(7) Following the completion of the sale, the peace officer~~  
36 ~~accompanying the person under 21 years of age shall reenter the~~  
37 ~~retail establishment and shall inform the seller of the random~~  
38 ~~inspection. Following an attempted sale, the enforcing agency shall~~  
39 ~~notify the retail establishment of the inspection.~~

1 ~~(8) Failure to comply with the procedures set forth in this~~  
2 ~~subdivision shall be a defense to an action brought pursuant to this~~  
3 ~~section.~~

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

10 ~~(f) Provide that any civil penalties imposed pursuant to Section~~  
11 ~~22958 shall be enforced against the owner or owners of the retail~~  
12 ~~business and not the employees of the business.~~

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

15 *SEC. 4. 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 years of age through the  
21 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 years of age is illegal  
25 and subject to penalties. The notice shall also state that the law  
26 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 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.

31 (c) Provide that primary responsibility for enforcement of this  
32 division shall be with the department. In carrying out its  
33 enforcement responsibilities, the department shall conduct random,  
34 onsite sting inspections at retail sites and shall enlist the assistance  
35 of persons that are 15 and 16 years of age in conducting these  
36 enforcement activities. The department may conduct onsite sting  
37 inspections in response to public complaints or at retail sites where  
38 violations have previously occurred, and investigate illegal sales  
39 of tobacco products to minors by telephone, mail, or the Internet.  
40 Participation in these enforcement activities by a person under 18

1 years of age does not constitute a violation of subdivision (b) of  
2 Section 308 of the Penal Code for the person under 18 years of  
3 age, and the person under 18 years of age is immune from  
4 prosecution thereunder, or under any other provision of law  
5 prohibiting the purchase of these products by a person under 18  
6 years of age.

7 (d) In accordance with Chapter 3.5 (commencing with Section  
8 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
9 the department shall adopt and publish guidelines for the use of  
10 persons under 18 years of age in inspections conducted pursuant  
11 to subdivision (c) that shall include, but not be limited to, all of  
12 the following:

13 (1) An enforcing agency may use persons under 18 years of age  
14 who are 15 or 16 years of age in random inspections to determine  
15 if sales of cigarettes or other tobacco products are being made to  
16 persons under 18 years of age.

17 (2) A photograph or video recording of the person under 18  
18 years of age shall be taken prior to each inspection or shift of  
19 inspections and retained by the enforcing agency for purposes of  
20 verifying appearances.

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

24 (4) The person under 18 years of age, if questioned about his  
25 or her age, need not state his or her actual age but shall present a  
26 true and correct identification if verbally asked to present it. Any  
27 failure on the part of the person under 18 years of age to provide  
28 true and correct identification, if verbally asked for it, shall be a  
29 defense to an action pursuant to this section.

30 (5) The person under 18 years of age shall be under the  
31 supervision of a regularly employed peace officer during the  
32 inspection.

33 (6) All persons under 18 years of age used in this manner by an  
34 enforcing agency shall display the appearance of a person under  
35 18 years of age. It shall be a defense to an action under this division  
36 that the person's appearance was not that which could be generally  
37 expected of a person under 18 years of age, under the actual  
38 circumstances presented to the seller of the cigarettes or other  
39 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 years of age shall reenter the  
3 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 (g) *This section shall become inoperative on July 1, 2016, and,  
19 as of January 1, 2017, is repealed, unless a later enacted statute,  
20 that becomes operative on or before January 1, 2017, deletes or  
21 extends the dates on which it becomes inoperative and is repealed.*

22 *SEC. 5. Section 22952 is added to the Business and Professions  
23 Code, to read:*

24 *22952. The State Department of Public Health shall do all of  
25 the following:*

26 (a) *Establish and develop a program to reduce the availability  
27 of tobacco products and electronic cigarettes to persons under 21  
28 years of age through the enforcement activities authorized by this  
29 division.*

30 (b) *Establish requirements that retailers of tobacco products  
31 or electronic cigarettes post conspicuously, at each point of  
32 purchase, a notice stating that selling tobacco products or  
33 electronic cigarettes to anyone under 21 years of age is illegal  
34 and subject to penalties. The notice shall also state that the law  
35 requires that all persons selling tobacco products or electronic  
36 cigarettes check the identification of a purchaser of tobacco  
37 products or electronic cigarettes who reasonably appears to be  
38 under 21 years of age. The warning signs shall include a toll-free  
39 telephone number to the department for persons to report unlawful*

1 sales of tobacco products or electronic cigarettes to persons under  
2 21 years of age.

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

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

25 (1) An enforcing agency may use persons under 21 years of age  
26 in random inspections to determine if sales of cigarettes, electronic  
27 cigarettes, or other tobacco products are being made to persons  
28 under 21 years of age.

29 (2) A photograph or video recording of the person under 21  
30 years of age shall be taken prior to each inspection or shift of  
31 inspections and retained by the enforcing agency for purposes of  
32 verifying appearances.

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

36 (4) The person under 21 years of age, if questioned about his  
37 or her age, need not state his or her actual age but shall present  
38 a true and correct identification if verbally asked to present it. Any  
39 failure on the part of the person under 21 years of age to provide

1 true and correct identification, if verbally asked for it, shall be a  
2 defense to an action pursuant to this section.

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

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

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

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

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

28 (f) Provide that any civil penalties imposed pursuant to Section  
29 22958 shall be enforced against the owner or owners of the retail  
30 business and not the employees of the business.

31 (g) This section shall become operative on July 1, 2016.

32 SEC. 6. Section 22952 is added to the Business and Professions  
33 Code, to read:

34 22952. The State Department of Public Health shall do all of  
35 the following:

36 (a) Establish and develop a program to reduce the availability  
37 of tobacco products and electronic cigarettes to persons under 18  
38 years of age through the enforcement activities authorized by this  
39 division.

1     **(b)** Establish requirements that retailers of tobacco products  
2 or electronic cigarettes post conspicuously, at each point of  
3 purchase, a notice stating that selling tobacco products or  
4 electronic cigarettes to anyone under 18 years of age is illegal  
5 and subject to penalties. The notice shall also state that the law  
6 requires that all persons selling tobacco products or electronic  
7 cigarettes check the identification of a purchaser of tobacco  
8 products or electronic cigarettes who reasonably appears to be  
9 under 18 years of age. The warning signs shall include a toll-free  
10 telephone number to the department for persons to report unlawful  
11 sales of tobacco products or electronic cigarettes to minors.

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

28     **(d)** In accordance with Chapter 3.5 (commencing with Section  
29 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
30 the department shall adopt and publish guidelines for the use of  
31 persons under 18 years of age in inspections conducted pursuant  
32 to subdivision (c) that shall include, but not be limited to, all of  
33 the following:

34     **(1)** An enforcing agency may use persons under 18 years of age  
35 who are 15 or 16 years of age in random inspections to determine  
36 if sales of cigarettes, electronic cigarettes, or other tobacco  
37 products are being made to persons under 18 years of age.

38     **(2)** A photograph or video recording of the person under 18  
39 years of age shall be taken prior to each inspection or shift of

1 inspections and retained by the enforcing agency for purposes of  
2 verifying appearances.

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

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

12 (5) The person under 18 years of age shall be under the  
13 supervision of a regularly employed peace officer during the  
14 inspection.

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

23 (7) Following the completion of the sale, the peace officer  
24 accompanying the person under 18 years of age shall reenter the  
25 retail establishment and shall inform the seller of the random  
26 inspection. Following an attempted sale, the enforcing agency  
27 shall notify the retail establishment of the inspection.

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

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

37 (f) Provide that any civil penalties imposed pursuant to Section  
38 22958 shall be enforced against the owner or owners of the retail  
39 business and not the employees of the business.

40 (g) This section shall become operative on July 1, 2016.

1 ~~SEC. 5.~~

2 *SEC. 7.* Section 22956 of the Business and Professions Code  
3 is amended to read:

4 22956. All persons engaging in the retail sale of tobacco  
5 products or electronic cigarettes shall check the identification of  
6 purchasers of those items, to establish the age of the purchaser, if  
7 the purchaser reasonably appears to be under 21 years of age.

8 *SEC. 8. Section 22956 of the Business and Professions Code*  
9 *is amended to read:*

10 22956. All persons engaging in the retail sale of tobacco  
11 products *or electronic cigarettes* shall check the identification of  
12 ~~tobacco purchasers,~~ *purchasers of those items*, to establish the age  
13 of the purchaser, if the purchaser reasonably appears to be under  
14 18 years of age.

15 ~~SEC. 6.~~

16 *SEC. 9.* Section 22958 of the Business and Professions Code  
17 is amended to read:

18 22958. (a) An enforcing agency may assess civil penalties  
19 against any person, firm, or corporation that sells, gives, or in any  
20 way furnishes to another person who is under 21 years of age, any  
21 tobacco, cigarette, electronic cigarette, cigarette papers, any other  
22 instrument or paraphernalia that is designed for the smoking or  
23 ingestion of tobacco, products prepared from tobacco, or any  
24 controlled substance, according to the following schedule: (1) a  
25 civil penalty of from four hundred dollars (\$400) to six hundred  
26 dollars (\$600) for the first violation, (2) a civil penalty of from  
27 nine hundred dollars (\$900) to one thousand dollars (\$1,000) for  
28 the second violation within a five-year period, (3) a civil penalty  
29 of from one thousand two hundred dollars (\$1,200) to one thousand  
30 eight hundred dollars (\$1,800) for a third violation within a  
31 five-year period, (4) a civil penalty of from three thousand dollars  
32 (\$3,000) to four thousand dollars (\$4,000) for a fourth violation  
33 within a five-year period, or (5) a civil penalty of from five  
34 thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a  
35 fifth violation within a five-year period.

36 (b) (1) In addition to the civil penalties described in subdivision  
37 (a), upon the assessment of a civil penalty for the third, fourth, or  
38 fifth violation, the department, within 60 days of the date of service  
39 of the final administrative adjudication on the parties or payment  
40 of the civil penalty for an uncontested violation, shall notify the

1 State Board of Equalization of the violation. The State Board of  
2 Equalization shall then assess a civil penalty of two hundred fifty  
3 dollars (\$250) and suspend or revoke a license issued pursuant to  
4 Chapter 2 (commencing with Section 22972) of Division 8.6 in  
5 accordance with the following schedule:

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

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

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

12 (2) The provisions of Chapter 4 (commencing with Section  
13 55121) of Part 30 of Division 2 of the Revenue and Taxation Code  
14 apply with respect to the collection of the penalty imposed by the  
15 State Board of Equalization pursuant to paragraph (1).

16 (c) (1) For each suspension or revocation pursuant to  
17 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)  
18 assessed pursuant to that subdivision, notwithstanding Section  
19 22953, shall be deposited into the Cigarette and Tobacco Products  
20 Compliance Fund established pursuant to Section 22990. Moneys  
21 from that civil penalty deposited into this fund shall be made  
22 available to the State Board of Equalization, upon appropriation  
23 by the Legislature, for the purposes of meeting its duties under  
24 subdivision (b).

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

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

36 (e) An enforcing agency may assess civil penalties against a  
37 person, firm, or corporation that sells or deals in tobacco or any  
38 preparation thereof, and fails to post conspicuously and keep posted  
39 in the place of business at each point of purchase the notice  
40 required pursuant to subdivision (b) of Section 22952. The civil

1 penalty shall be in the amount of two hundred dollars (\$200) for  
2 the first offense and five hundred dollars (\$500) for each additional  
3 violation.

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

9 (g) If a civil penalty has been assessed pursuant to this section  
10 against a person, firm, or corporation for a single, specific violation  
11 of this division, the person, firm, or corporation shall not be  
12 prosecuted under Section 308 of the Penal Code for a violation  
13 based on the same facts or specific incident for which the civil  
14 penalty was assessed. If a person, firm, or corporation has been  
15 prosecuted for a single, specific violation of Section 308 of the  
16 Penal Code, the person, firm, or corporation shall not be assessed  
17 a civil penalty under this section based on the same facts or specific  
18 incident upon which the prosecution under Section 308 of the Penal  
19 Code was based.

20 (h) (1) In the case of a corporation or business with more than  
21 one retail location, to determine the number of accumulated  
22 violations for purposes of the penalty schedule set forth in  
23 subdivision (a), violations of this division by one retail location  
24 shall not be accumulated against other retail locations of that same  
25 corporation or business.

26 (2) In the case of a retail location that operates pursuant to a  
27 franchise as defined in Section 20001, violations of this division  
28 accumulated and assessed against a prior owner of a single  
29 franchise location shall not be accumulated against a new owner  
30 of the same single franchise location for purposes of the penalty  
31 schedule set forth in subdivision (a).

32 (i) Proceedings under this section shall be conducted pursuant  
33 to Section 131071 of the Health and Safety Code, except in cases  
34 where a civil penalty is assessed by an enforcing agency other than  
35 the department, in which case proceedings shall be conducted  
36 pursuant to the procedures of that agency that are consistent with  
37 Section 131071 of the Health and Safety Code.

38 *SEC. 10. Section 22958 of the Business and Professions Code*  
39 *is amended to read:*

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

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

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

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

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

35 (2) The provisions of Chapter 4 (commencing with Section  
36 55121) of Part 30 of Division 2 of the Revenue and Taxation Code  
37 apply with respect to the collection of the penalty imposed by the  
38 State Board of Equalization pursuant to paragraph (1).

39 (c) (1) For each suspension or revocation pursuant to  
40 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)

1 assessed pursuant to that subdivision, notwithstanding Section  
2 22953, shall be deposited into the Cigarette and Tobacco Products  
3 Compliance Fund established pursuant to Section 22990. Moneys  
4 from that civil penalty deposited into this fund shall be made  
5 available to the State Board of Equalization, upon appropriation  
6 by the Legislature, for the purposes of meeting its duties under  
7 subdivision (b).

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

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

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

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

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

1 incident upon which the prosecution under Section 308 of the Penal  
2 Code was based.

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

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

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

21 ~~SEC. 7. Section 22960 of the Business and Professions Code~~  
22 ~~is amended to read:~~

23 ~~22960. (a) Except as provided in subdivision (b), a cigarette,~~  
24 ~~electronic cigarette, or tobacco product shall not be sold, offered~~  
25 ~~for sale, or distributed from a vending machine or appliance, or~~  
26 ~~any other coin or token operated mechanical device designed or~~  
27 ~~used for vending purposes, including, but not limited to, machines~~  
28 ~~or devices that use remote control locking mechanisms.~~

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

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

37 ~~(c) This section and subdivision (b) of Section 22958 set forth~~  
38 ~~minimum state restrictions on the sale of cigarettes, electronic~~  
39 ~~cigarettes, or tobacco products from vending machines or devices~~  
40 ~~and do not preempt or otherwise prohibit the adoption of a local~~

1 ~~standard that further restricts access to and reduces the availability~~  
2 ~~of cigarettes, electronic cigarettes, or tobacco products from~~  
3 ~~vending machines or devices or that imposes a complete ban on~~  
4 ~~the sale of cigarettes or tobacco products from vending machines~~  
5 ~~or devices. A local standard that further restricts or imposes a~~  
6 ~~complete ban on the sale of cigarettes, electronic cigarettes, or~~  
7 ~~tobacco products from vending machines or devices shall control~~  
8 ~~in the event of an inconsistency between this section and a local~~  
9 ~~standard.~~

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

12 *SEC. 11. Section 22960 of the Business and Professions Code*  
13 *is amended to read:*

14 22960. (a) Except as provided in subdivision (b), no cigarette  
15 or tobacco product shall be sold, offered for sale, or distributed  
16 from a vending machine or appliance, or any other coin or token  
17 operated mechanical device designed or used for vending purposes,  
18 including, but not limited to, machines or devices that use remote  
19 control locking mechanisms.

20 (b) (1) Commencing January 1, 1996, cigarette or tobacco  
21 product vending machines or appliances may be located at least  
22 15 feet away from the entrance of a premise issued an on-sale  
23 public premises license as defined in Section 23039 by the  
24 Department of Alcoholic Beverage Control to sell alcoholic  
25 beverages.

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

29 (c) This section and subdivision (b) of Section 22958 set forth  
30 minimum state restrictions on the sale of cigarettes or tobacco  
31 products from vending machines or devices and do not preempt  
32 or otherwise prohibit the adoption of a local standard that further  
33 restricts access to and reduces the availability of cigarette or  
34 tobacco products from vending machines or devices or that imposes  
35 a complete ban on the sale of cigarettes or tobacco products from  
36 vending machines or devices. A local standard that further restricts  
37 or imposes a complete ban on the sale of cigarettes or tobacco  
38 products from vending machines or devices shall control in the  
39 event of an inconsistency between this section and a local standard.

1 (d) This section shall become inoperative on July 1, 2016, and,  
2 as of January 1, 2017, is repealed, unless a later enacted statute,  
3 that becomes operative on or before January 1, 2017, deletes or  
4 extends the dates on which it becomes inoperative and is repealed.

5 SEC. 12. Section 22960 is added to the Business and  
6 Professions Code, to read:

7 22960. (a) Except as provided in subdivision (b), a cigarette,  
8 electronic cigarette, or tobacco product shall not be sold, offered  
9 for sale, or distributed from a vending machine or appliance, or  
10 any other coin or token operated mechanical device designed or  
11 used for vending purposes, including, but not limited to, machines  
12 or devices that use remote control locking mechanisms.

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

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

21 (c) This section and subdivision (b) of Section 22958 set forth  
22 minimum state restrictions on the sale of cigarettes, electronic  
23 cigarettes, or tobacco products from vending machines or devices  
24 and do not preempt or otherwise prohibit the adoption of a local  
25 standard that further restricts access to and reduces the availability  
26 of cigarettes, electronic cigarettes, or tobacco products from  
27 vending machines or devices or that imposes a complete ban on  
28 the sale of cigarettes, electronic cigarettes, or tobacco products  
29 from vending machines or devices. A local standard that further  
30 restricts or imposes a complete ban on the sale of cigarettes,  
31 electronic cigarettes, or tobacco products from vending machines  
32 or devices shall control in the event of an inconsistency between  
33 this section and a local standard.

34 (d) This section shall become operative on July 1, 2016.

35 ~~SEC. 8.~~

36 SEC. 13. Section 22961 of the Business and Professions Code  
37 is amended to read:

38 22961. (a) No person, firm, corporation, partnership, or other  
39 organization shall advertise or cause to be advertised any tobacco  
40 products or electronic cigarettes on any outdoor billboard located

1 within 1,000 feet of any public or private elementary school, junior  
2 high school, or high school, or public playground.

3 (b) This section sets forth minimum state restrictions on the  
4 advertisement of any tobacco products or electronic cigarettes on  
5 outdoor billboards near schools and public playgrounds and does  
6 not preempt or otherwise prohibit the adoption of a local standard  
7 that imposes a more restrictive or complete ban on billboard  
8 advertising or on tobacco-related billboard advertising. A local  
9 standard that imposes a more restrictive or complete ban on  
10 billboard advertising or on tobacco-related billboard advertising  
11 shall control in the event of any inconsistency between this section  
12 and a local standard.

13 (c) This section shall not be construed to prohibit the display  
14 of a message or advertisement opposing the use of tobacco products  
15 or electronic cigarettes. However, this subdivision shall not be  
16 construed to permit an advertisement promoting the use of tobacco  
17 products or electronic cigarettes by including a message opposing  
18 the use of tobacco products or electronic cigarettes within that  
19 advertisement.

20 ~~SEC. 9:~~

21 *SEC. 14.* Section 22962 of the Business and Professions Code  
22 is amended to read:

23 22962. (a) For purposes of this section, the following terms  
24 have the following meanings:

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

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

34 (3) “Tobacco product” means any product containing tobacco  
35 leaf, including, but not limited to, cigarettes, cigars, pipe tobacco,  
36 snuff, chewing tobacco, dipping tobacco, bidis, or any other  
37 preparation of tobacco.

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

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

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

4 (C) Does not permit any person under 21 years of age to be  
5 present or enter the premises at any time, unless accompanied by  
6 the person's parent or legal guardian, as defined in Section 6903  
7 of the Family Code.

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

10 (b) (1) (A) Except as permitted in subdivision (b) of Section  
11 22960, it is unlawful for a person engaged in the retail sale of  
12 tobacco products or electronic cigarettes to sell, offer for sale, or  
13 display for sale any electronic cigarette, tobacco product, or tobacco  
14 paraphernalia by self-service display. A person who violates this  
15 section is subject to those civil penalties specified in the schedule  
16 in subdivision (a) of Section 22958.

17 (B) A person who violates this section is subject to those civil  
18 penalties specified in the schedule in subdivision (a) of Section  
19 22958.

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

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

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

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

39 (e) This section does not preempt or otherwise prohibit the  
40 adoption of a local standard that imposes greater restrictions on

1 the access to tobacco products or electronic cigarettes than the  
2 restrictions imposed by this section. To the extent that there is an  
3 inconsistency between this section and a local standard that  
4 imposes greater restrictions on the access to tobacco products or  
5 electronic cigarettes, the greater restriction on the access to tobacco  
6 products or electronic cigarettes in the local standard shall prevail.

7 ~~SEC. 10.~~

8 *SEC. 15.* Section 22963 of the Business and Professions Code  
9 is amended to read:

10 22963. (a) The sale, distribution, or nonsale distribution of  
11 tobacco products or electronic cigarettes directly or indirectly to  
12 any person under 21 years of age through the United States Postal  
13 Service or through any other public or private postal or package  
14 delivery service at locations, including, but not limited to, public  
15 mailboxes and mailbox stores, is prohibited.

16 (b) Any person selling or distributing, or engaging in the nonsale  
17 distribution of, tobacco products or electronic cigarettes directly  
18 to a consumer in the state through the United States Postal Service  
19 or by any other public or private postal or package delivery service,  
20 including orders placed by mail, telephone, facsimile transmission,  
21 or the Internet, shall comply with the following provisions:

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

36 (B) If the seller, distributor, or nonsale distributor, is unable to  
37 verify that the purchaser or recipient is 21 years of age or older  
38 pursuant to subparagraph (A), he or she shall require the customer  
39 or recipient to submit an age-verification kit consisting of an  
40 attestation signed by the customer or recipient that he or she is 21

1 years of age or older and a copy of a valid form of government  
2 identification. For the purposes of this section, a valid form of  
3 government identification includes a driver’s license, state  
4 identification card, passport, an official naturalization or  
5 immigration document, such as an alien registration receipt card  
6 (commonly known as a “green card”) or an immigrant visa, or  
7 military identification. In the case of a sale, the distributor or seller  
8 shall also verify that the billing address on the check or credit card  
9 provided by the consumer matches the address listed in the form  
10 of government identification.

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

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

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

37 (c) Notwithstanding subdivisions (a) and (b), if a seller,  
38 distributor, or nonsale distributor, complies with all of the  
39 requirements of this section and a person under 21 years of age  
40 obtains a tobacco product or *an* electronic cigarette by any of the

1 means described in subdivision (b), the seller, distributor, or  
2 nonsale distributor is not in violation of this section.

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

10 (e) (1) (A) For the purposes of this section, a "distributor" is  
11 any person or entity, within or outside the state, who agrees to  
12 distribute tobacco products or electronic cigarettes to a customer  
13 or recipient within the state. The United States Postal Service or  
14 any other public or private postal or package delivery service are  
15 not distributors within the meaning of this section.

16 (B) A "nonsale distributor" is any person inside or outside of  
17 this state who, directly or indirectly, knowingly provides tobacco  
18 products or electronic cigarettes to any person in this state as part  
19 of a nonsale transaction. "Nonsale distributor" includes the person  
20 or entity who provides the tobacco product or electronic cigarette  
21 for delivery and the person or entity who delivers the product to  
22 the recipient as part of a nonsale transaction.

23 (C) "Nonsale distribution" means to give electronic cigarettes,  
24 smokeless tobacco, or cigarettes to the general public at no cost,  
25 or at nominal cost, or to give coupons, coupon offers, gift  
26 certificates, gift cards, or other similar offers, or rebate offers for  
27 electronic cigarettes, smokeless tobacco, or cigarettes to the general  
28 public at no cost or at nominal cost. Distribution of electronic  
29 cigarettes, tobacco products, coupons, coupon offers, gift  
30 certificates, gift cards, or other similar offers, or rebate offers in  
31 connection with the sale of another item, including electronic  
32 cigarettes, tobacco products, cigarette lighters, magazines, or  
33 newspapers shall not constitute nonsale distribution.

34 (2) For the purpose of this section, a "seller" is any person or  
35 entity, within or outside the state, who agrees to sell tobacco  
36 products or electronic cigarettes to a customer within the state.  
37 The United States Postal Service or any other public or private  
38 postal or package delivery service are not sellers within the  
39 meaning of this section.

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

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

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

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

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

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

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

21 *SEC. 16. Section 22963 of the Business and Professions Code*  
22 *is amended to read:*

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

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

35 (1) (A) Before enrolling a person as a customer, or distributing  
36 or selling, or engaging in the nonsale distribution of, the tobacco  
37 product *or electronic cigarette* through any of these means, the  
38 distributor or seller shall verify that the purchaser or recipient of  
39 the product is 18 years of age or older. The distributor or seller  
40 shall attempt to match the name, address, and date of birth provided

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

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

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

36 (3) In the case of a sale, the distributor or seller shall make a  
37 telephone call after 5 p.m. to the purchaser confirming the order  
38 prior to shipping the tobacco ~~products~~ *products or electronic*  
39 *cigarettes*. The telephone call may be a person-to-person call or a  
40 recorded message. The distributor or seller is not required to speak

1 directly with a person and may leave a message on an answering  
2 machine or by voice mail.

3 (4) The nonsale distributor shall deliver the tobacco product *or*  
4 *electronic cigarette* to the recipient’s verified mailing address, or  
5 in the case of a sale, the seller or distributor shall deliver the  
6 tobacco product *or electronic cigarette* to the purchaser’s verified  
7 billing address on the check or credit card used for payment. No  
8 delivery described under this section shall be permitted to any post  
9 office box.

10 (c) Notwithstanding subdivisions (a) and (b), if a seller,  
11 distributor, or nonsale distributor, complies with all of the  
12 requirements of this section and a minor obtains a tobacco product  
13 *or an electronic cigarette* by any of the means described in  
14 subdivision (b), the seller, distributor, or nonsale distributor is not  
15 in violation of this section.

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

23 (e) (1) (A) For the purposes of this section, a “distributor” is  
24 any person or entity, within or outside the state, who agrees to  
25 distribute tobacco products *or electronic cigarettes* to a customer  
26 or recipient within the state. The United States Postal Service or  
27 any other public or private postal or package delivery service are  
28 not distributors within the meaning of this section.

29 (B) A “nonsale distributor” is any person inside or outside of  
30 this state who, directly or indirectly, knowingly provides tobacco  
31 products *or electronic cigarettes* to any person in this state as part  
32 of a nonsale transaction. “Nonsale distributor” includes the person  
33 or entity who provides the tobacco product *or electronic cigarette*  
34 for delivery and the person or entity who delivers the product to  
35 the recipient as part of a nonsale transaction.

36 (C) “Nonsale distribution” means to give *electronic cigarettes*,  
37 ~~smokeless-tobacco~~ *tobacco*, or cigarettes to the general public at  
38 no cost, or at nominal cost, or to give coupons, coupon offers, gift  
39 certificates, gift cards, or other similar offers, or rebate offers for  
40 *electronic cigarettes*, ~~smokeless-tobacco~~ *tobacco*, or cigarettes to

1 the general public at no cost or at nominal cost. Distribution of  
2 *electronic cigarettes*, tobacco products, coupons, coupon offers,  
3 gift certificates, gift cards, or other similar offers, or rebate offers  
4 in connection with the sale of another item, including *electronic*  
5 *cigarettes*, tobacco products, cigarette lighters, magazines, or  
6 newspapers shall not constitute nonsale distribution.

7 (2) For the purpose of this section, a “seller” is any person or  
8 entity, within or outside the state, who agrees to sell tobacco  
9 products *or electronic cigarettes* to a customer within the state.  
10 The United States Postal Service or any other public or private  
11 postal or package delivery service are not sellers within the  
12 meaning of this section.

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

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

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

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

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

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

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

33 ~~SEC. 11.~~

34 *SEC. 17.* Section 22970.2 of the Business and Professions Code  
35 is amended to read:

36 22970.2. The board shall administer a statewide program to  
37 license manufacturers, importers, distributors, wholesalers, and  
38 retailers of cigarettes and tobacco products, and retailers of  
39 electronic cigarettes.

1 ~~SEC. 12.~~

2 *SEC. 18.* Section 22971 of the Business and Professions Code  
3 is amended to read:

4 22971. For purposes of this division, the following terms shall  
5 have the following meanings:

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

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

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

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

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

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

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

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

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

31 (e) “Display for sale” means the placement of cigarettes,  
32 electronic cigarettes, or tobacco products in a vending machine or  
33 in retail stock for the purpose of selling or gifting the cigarettes,  
34 electronic cigarettes, or tobacco products. For purposes of this  
35 definition, the clear and easily visible display of cigarettes,  
36 electronic cigarettes, or tobacco products shall create a rebuttable  
37 presumption that the products were displayed for sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (2) A vending machine.

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

1 (s) “Tobacco products” means tobacco products as defined in  
2 subdivision (b) of Section 30121 and subdivision (b) of Section  
3 30131.1 of the Revenue and Taxation Code.

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

12 (u) “Wholesaler” means a wholesaler as defined in Section  
13 30016 of the Revenue and Taxation Code.

14 ~~SEC. 13.— Section 22972 of the Business and Professions Code~~  
15 ~~is amended to read:~~

16 ~~22972. (a) A retailer shall have in place and maintain a license~~  
17 ~~to engage in the sale of cigarettes, electronic cigarettes, or tobacco~~  
18 ~~products. A retailer that owns or controls more than one retail~~  
19 ~~location shall obtain a separate license for each retail location, but~~  
20 ~~may submit a single application for those licenses.~~

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

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

28 ~~(d) A license shall be valid for a 12-month period, and shall be~~  
29 ~~renewed annually.~~

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

33 ~~SEC. 14.— Section 22973 of the Business and Professions Code~~  
34 ~~is amended to read:~~

35 ~~22973. (a) An application for a license shall be filed on a form~~  
36 ~~prescribed by the board and shall include the following:~~

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

38 ~~(2) The business name, address, and telephone number of each~~  
39 ~~retail location. For applicants who control more than one retail~~  
40 ~~location, an address for receipt of correspondence or notices from~~

1 the board, such as a headquarters or corporate office of the retailer,  
2 shall also be included on the application and listed on the license.  
3 Citations issued to licensees shall be forwarded to all addressees  
4 on the license.

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

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

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

26 ~~(6) The signature of the applicant.~~

27 ~~(7) Any other information the board may require.~~

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

34 ~~(e) The board shall provide electronic means for applicants to~~  
35 ~~download and submit applications.~~

36 ~~(d) (1) A one-time license fee of one hundred dollars (\$100)~~  
37 ~~shall be submitted with each application. An applicant that owns~~  
38 ~~or controls more than one retail location shall obtain a separate~~  
39 ~~license for each retail location, but may submit a single application~~

1 for those licenses with a one-time license fee of one hundred dollars  
2 (\$100) per location.

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

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

11 ~~SEC. 15. Section 22974 of the Business and Professions Code~~  
12 ~~is amended to read:~~

13 ~~22974. A retailer shall retain purchase invoices that meet the~~  
14 ~~requirements set forth in Section 22978.4 for all cigarettes or~~  
15 ~~tobacco products the retailer purchased for a period of four years.~~  
16 ~~The records shall be kept at the retail location for at least one year~~  
17 ~~after the purchase. Invoices shall be made available upon request~~  
18 ~~during normal business hours for review inspection and copying~~  
19 ~~by the board or by a law enforcement agency. Any retailer found~~  
20 ~~in violation of these requirements or any person who fails, refuses,~~  
21 ~~or neglects to retain or make available invoices for inspection and~~  
22 ~~copying in accordance with this section shall be subject to penalties~~  
23 ~~pursuant to Section 22981.~~

24 ~~SEC. 19. Section 22972 of the Business and Professions Code~~  
25 ~~is amended to read:~~

26 ~~22972. (a) Commencing June 30, 2004, a~~ A retailer shall have  
27 in place and maintain a license to engage in the sale of cigarettes  
28 or tobacco products. A retailer that owns or controls more than  
29 one retail location shall obtain a separate license for each retail  
30 location, but may submit a single application for those licenses.

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

33 (c) A license is not assignable or transferable. A person who  
34 obtains a license as a retailer who ceases to do business as specified  
35 in the license, or who never commenced business, or whose license  
36 is suspended or revoked, shall immediately surrender the license  
37 to the board.

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

1 (e) *This section shall become inoperative on September 30,*  
2 *2016, and, as of January 1, 2017, is repealed, unless a later*  
3 *enacted statute, that becomes operative on or before January 1,*  
4 *2017, deletes or extends the dates on which it becomes inoperative*  
5 *and is repealed.*

6 SEC. 20. *Section 22972 is added to the Business and*  
7 *Professions Code, to read:*

8 22972. (a) *A retailer shall have in place and maintain a license*  
9 *to engage in the sale of cigarettes, electronic cigarettes, or tobacco*  
10 *products. A retailer that owns or controls more than one retail*  
11 *location shall obtain a separate license for each retail location,*  
12 *but may submit a single application for those licenses.*

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

15 (c) *A license is not assignable or transferable. A person who*  
16 *obtains a license as a retailer who ceases to do business as*  
17 *specified in the license, or who never commenced business, or*  
18 *whose license is suspended or revoked, shall immediately surrender*  
19 *the license to the board.*

20 (d) *A license shall be valid for a 12-month period, and shall be*  
21 *renewed annually.*

22 (e) *This section shall become operative on September 30, 2016.*

23 SEC. 21. *Section 22973 of the Business and Professions Code*  
24 *is amended to read:*

25 22973. (a) *An application for a license shall be filed on or*  
26 *before April 15, 2004, on a form prescribed by the board and shall*  
27 *include the following:*

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

29 (2) *The business name, address, and telephone number of each*  
30 *retail location. For applicants who control more than one retail*  
31 *location, an address for receipt of correspondence or notices from*  
32 *the board, such as a headquarters or corporate office of the retailer,*  
33 *shall also be included on the application and listed on the license.*  
34 *Citations issued to licensees shall be forwarded to all addressees*  
35 *on the license.*

36 (3) *A statement by the applicant affirming that the applicant*  
37 *has not been convicted of a felony and has not violated and will*  
38 *not violate or cause or permit to be violated any of the provisions*  
39 *of this division or any rule of the board applicable to the applicant*  
40 *or pertaining to the manufacture, sale, or distribution of cigarettes*

1 or tobacco products. If the applicant is unable to affirm this  
2 statement, the application shall contain a statement by the applicant  
3 of the nature of any violation or the reasons that will prevent the  
4 applicant from complying with the requirements with respect to  
5 the statement.

6 (4) If any other licenses or permits have been issued by the  
7 board or the Department of Alcoholic Beverage Control to the  
8 applicant, the license or permit number of those licenses or permits  
9 then in effect.

10 (5) A statement by the applicant that the contents of the  
11 application are complete, true, and correct. Any person who signs  
12 a statement pursuant to this subdivision that asserts the truth of  
13 any material matter that he or she knows to be false is guilty of a  
14 misdemeanor punishable by imprisonment of up to one year in the  
15 county jail, or a fine of not more than one thousand dollars  
16 (\$1,000), or both the imprisonment and the fine.

17 (6) The signature of the applicant.

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

19 (b) The board may investigate to determine the truthfulness and  
20 completeness of the information provided in the application. The  
21 board may issue a license without further investigation to an  
22 applicant for a retail location if the applicant holds a valid license  
23 from the Department of Alcoholic Beverage Control for that same  
24 location.

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

27 (d) (1) A one-time license fee of one hundred dollars (\$100)  
28 shall be submitted with each application. An applicant that owns  
29 or controls more than one retail location shall obtain a separate  
30 license for each retail location, but may submit a single application  
31 for those licenses with a one-time license fee of one hundred dollars  
32 (\$100) per location.

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

39 (e) *This section shall become inoperative on July 1, 2016, and,*  
40 *as of January 1, 2017, is repealed, unless a later enacted statute,*

1 *that becomes operative on or before January 1, 2017, deletes or*  
2 *extends the dates on which it becomes inoperative and is repealed.*

3 *SEC. 22. Section 22973 is added to the Business and*  
4 *Professions Code, to read:*

5 *22973. (a) An application for a license shall be filed on a form*  
6 *prescribed by the board and shall include the following:*

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

8 *(2) The business name, address, and telephone number of each*  
9 *retail location. For applicants who control more than one retail*  
10 *location, an address for receipt of correspondence or notices from*  
11 *the board, such as a headquarters or corporate office of the*  
12 *retailer, shall also be included on the application and listed on*  
13 *the license. Citations issued to licensees shall be forwarded to all*  
14 *addressees on the license.*

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

25 *(4) If any other licenses or permits have been issued by the*  
26 *board or the Department of Alcoholic Beverage Control to the*  
27 *applicant, the license or permit number of those licenses or permits*  
28 *then in effect.*

29 *(5) A statement by the applicant that the contents of the*  
30 *application are complete, true, and correct. Any person who signs*  
31 *a statement pursuant to this subdivision that asserts the truth of*  
32 *any material matter that he or she knows to be false is guilty of a*  
33 *misdemeanor punishable by imprisonment of up to one year in the*  
34 *county jail, or a fine of not more than one thousand dollars*  
35 *(\$1,000), or both the imprisonment and the fine.*

36 *(6) The signature of the applicant.*

37 *(7) Any other information the board may require.*

38 *(b) The board may investigate to determine the truthfulness and*  
39 *completeness of the information provided in the application. The*  
40 *board may issue a license without further investigation to an*

1 applicant for a retail location if the applicant holds a valid license  
2 from the Department of Alcoholic Beverage Control for that same  
3 location.

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

6 (d) (1) A one-time license fee of one hundred dollars (\$100)  
7 shall be submitted with each application for a retailer that sells  
8 cigarettes or tobacco products. An applicant that owns or controls  
9 more than one retail location shall obtain a separate license for  
10 each retail location, but may submit a single application for those  
11 licenses with a one-time license fee of one hundred dollars (\$100)  
12 per location.

13 (2) (A) A one-time license fee in an amount not to exceed the  
14 reasonable cost of administering the licensure program for  
15 retailers selling electronic cigarettes and not to exceed two  
16 hundred eighty dollars (\$280) shall be submitted with each  
17 application for a retailer that sells electronic cigarettes, or  
18 electronic cigarettes along with cigarettes or tobacco products.

19 (B) The revenue from this license fee shall be used only for  
20 purposes of administering the licensure program for retailers  
21 selling electronic cigarettes.

22 (3) (A) The one-time fee required by this subdivision does not  
23 apply to an application for renewal of a license for a retail location  
24 for which the one-time license fee has already been paid.

25 (B) If a license for a retailer that sells cigarettes or tobacco  
26 products is reinstated after its expiration, the retailer, as a  
27 condition precedent to its reinstatement, shall pay a reinstatement  
28 fee of one hundred dollars (\$100).

29 (C) If a license for a retailer that sells electronic cigarettes, or  
30 electronic cigarettes along with cigarettes or tobacco products,  
31 is reinstated after its expiration, the retailer, as a condition  
32 precedent to its reinstatement, shall pay a reinstatement fee of two  
33 hundred eighty dollars (\$280).

34 (e) This section shall become operative on July 1, 2016.

35 ~~SEC. 16.~~

36 SEC. 23. Section 22974.7 of the Business and Professions Code  
37 is amended to read:

38 22974.7. In addition to any other civil or criminal penalty  
39 provided by law, upon a finding that a retailer has violated any  
40 provision of this division, the board may take the following actions:

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

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

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

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

12 ~~SEC. 17.~~

13 *SEC. 24.* Section 22980 of the Business and Professions Code  
14 is amended to read:

15 22980. (a) (1) Any peace officer, or board employee granted  
16 limited peace officer status pursuant to paragraph (6) of subdivision  
17 (a) of Section 830.11 of the Penal Code, upon presenting  
18 appropriate credentials, is authorized to enter any place as described  
19 in paragraph (3) and to conduct inspections in accordance with the  
20 following paragraphs, inclusive.

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

24 (3) Inspections may be at any place at which cigarettes,  
25 electronic cigarettes, or tobacco products are sold, produced, or  
26 stored or at any site where evidence of activities involving evasion  
27 of cigarette or tobacco products tax and violations of Section  
28 30165.1 of the Revenue and Taxation Code may be discovered.

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

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

33 ~~SEC. 18.~~

34 *SEC. 25.* Section 22980.1 of the Business and Professions Code  
35 is amended to read:

36 22980.1. (a) A manufacturer or importer shall not sell  
37 cigarettes or tobacco products to a distributor, wholesaler, retailer,  
38 or any other person who is not licensed pursuant to this division  
39 or whose license has been suspended or revoked.

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

6 (2) This subdivision does not apply to any sale of cigarettes or  
7 tobacco products by a distributor, wholesaler, or any other person  
8 to a retailer, wholesaler, distributor, or any other person that the  
9 state, pursuant to the United States Constitution, the laws of the  
10 United States, or the California Constitution, is prohibited from  
11 regulating.

12 (c) No retailer, distributor, or wholesaler shall purchase packages  
13 of cigarettes or tobacco products from a manufacturer or importer  
14 who is not licensed pursuant to this division or whose license has  
15 been suspended or revoked.

16 (d) (1) A retailer or wholesaler shall not purchase cigarettes or  
17 tobacco products from any person who is not licensed pursuant to  
18 this division or whose license has been suspended or revoked.

19 (2) Notwithstanding subdivision (c), a distributor shall not  
20 purchase cigarettes or tobacco products from any person who is  
21 required to be licensed pursuant to this division but who is not  
22 licensed or whose license has been suspended or revoked.

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

26 (f) A manufacturer, distributor, wholesaler, or importer shall  
27 not sell cigarettes or tobacco products to any retailer or wholesaler  
28 whose license has been suspended or revoked unless all outstanding  
29 debts of that retailer or wholesaler that are owed to a wholesaler  
30 or distributor for cigarettes or tobacco products are paid and the  
31 license of that retailer or wholesaler has been reinstated by the  
32 board. Any payment received from a retailer or wholesaler shall  
33 be credited first to the outstanding debt for cigarettes or tobacco  
34 products and must be immediately reported to the board. The board  
35 shall determine the debt status of a suspended retailer or wholesaler  
36 licensee 25 days prior to the reinstatement of the license.

37 (g) An importer, distributor, or wholesaler, or distributor  
38 functioning as a wholesaler, or retailer, shall not purchase, obtain,  
39 or otherwise acquire any package of cigarettes to which a stamp  
40 or meter impression may not be affixed in accordance with

1 subdivision (b) of Section 30163 or subdivision (e) of Section  
2 30165.1 of the Revenue and Taxation Code, or any cigarettes  
3 obtained from a manufacturer or importer that cannot demonstrate  
4 full compliance with all requirements of the federal Cigarette  
5 Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for  
6 the reporting of ingredients added to cigarettes.

7 (h) (1) Failure to comply with the provisions of this section  
8 shall be a misdemeanor subject to penalties pursuant to Section  
9 22981.

10 (2) Notwithstanding paragraph (1), a manufacturer or importer  
11 who uses the most up-to-date licensing information provided by  
12 the board on the board's Internet Web site to determine a person's  
13 licensing status is presumed to be in compliance with this section.

14 ~~SEC. 19:~~

15 *SEC. 26.* Section 22980.2 of the Business and Professions Code  
16 is amended to read:

17 22980.2. (a) A person or entity that engages in the business  
18 of selling cigarettes or tobacco products in this state, or a retailer  
19 that engages in the business of selling cigarettes, electronic  
20 cigarettes, or tobacco products in this state, either without a valid  
21 license or after a license has been suspended or revoked, and each  
22 officer of any corporation that so engages in this business, is guilty  
23 of a misdemeanor punishable as provided in Section 22981.

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

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

34 (c) (1) Continued sales or gifting of cigarettes and tobacco  
35 products either without a valid license or after a notification of  
36 suspension or revocation shall constitute a violation punishable as  
37 provided in Section 22981, and shall result in the seizure of all  
38 cigarettes and tobacco products in the possession of the person by  
39 the board or a law enforcement agency. Any cigarettes and tobacco

1 products seized by the board or by a law enforcement agency shall  
2 be deemed forfeited.

3 (2) Continued sale or gifting of electronic cigarettes by a retailer  
4 either without a valid license or after a notification of suspension  
5 or revocation shall constitute a violation punishable as provided  
6 in Section 22981, and shall result in the seizure of all electronic  
7 cigarettes in the possession of the person by the board or a law  
8 enforcement agency. Any electronic cigarettes seized by the board  
9 or by a law enforcement agency shall be forfeited.

10 ~~SEC. 20.~~

11 *SEC. 27.* Section 22980.3 of the Business and Professions Code  
12 is amended to read:

13 22980.3. (a) Licenses issued pursuant to this division shall be  
14 subject to suspension or revocation for violations of this division  
15 or the Revenue and Taxation Code as provided in this section.

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

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

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

28 (c) Upon updating a record for a violation triggering a  
29 suspension, the board shall serve the licensee with a notice of  
30 suspension and shall order the licensee to cease the sale, gifting,  
31 or displaying for sale of cigarettes or tobacco products for the  
32 period of the suspension, and in the case of a licensee that is a  
33 retailer, shall also order the retailer to cease the sale, gifting, or  
34 displaying for sale of electronic cigarettes, for the period of the  
35 suspension. The notice of suspension shall inform the licensee of  
36 the effective dates of the suspension.

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

1 (e) Upon completion of a suspension period, a license shall be  
2 reinstated by the board upon certification that all outstanding debts  
3 of that retailer or wholesaler that are owed to a wholesaler or  
4 distributor for the purchase of cigarettes and tobacco products are  
5 paid.

6 (f) Upon updating a record for a violation triggering a  
7 revocation, the board shall serve the licensee with a notice of  
8 revocation and shall order the licensee to cease the sale, gifting,  
9 or displaying for sale of cigarettes or tobacco products, and in the  
10 case of a licensee that is a retailer, shall also order the retailer to  
11 cease the sale, gifting, or displaying for sale of electronic cigarettes,  
12 on and after the effective date of the revocation. The notice of  
13 revocation shall inform the licensee of the effective date of the  
14 revocation.

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

18 (h) Upon updating a license record for a violation, suspension,  
19 or revocation to a license of a person or entity that owns or controls  
20 more than one location, the board shall send notice in writing of  
21 the violations, suspensions, or revocations within 15 days of the  
22 board's action to the address included in the application and listed  
23 on the license for receipt of correspondence or notices from the  
24 board.

25 (i) Upon suspension or revocation of a license pursuant to this  
26 section, the board shall notify all licensed distributors and  
27 wholesalers by electronic mail within 48 hours of the suspension  
28 or revocation of that license. All licensed distributors and  
29 wholesalers shall provide the board and shall update, as necessary,  
30 an electronic mail address that the board can use for purposes of  
31 making the notifications required by this subdivision.

32 (j) Violations by a licensee at one location may not be  
33 accumulated against other locations of that same licensee.  
34 Violations accumulated against a prior owner at a licensed location  
35 may not be accumulated against a new owner at the same licensed  
36 location.

37 (k) For purposes of this section, a violation includes violations  
38 of the Revenue and Taxation Code relating to cigarettes and  
39 tobacco products, and violations of this division. Only one violation

1 per discrete action shall be counted toward a suspension or  
2 revocation of a license.

3 ~~SEC. 21.~~

4 *SEC. 28.* Section 22980.4 of the Business and Professions Code  
5 is amended to read:

6 22980.4. A person who, after receiving a notice of suspension  
7 or revocation, continues to display for sale cigarettes or tobacco  
8 products, or in the case of a retailer also continues to display for  
9 sale electronic cigarettes, shall be subject to a civil penalty of one  
10 thousand dollars (\$1,000) for each offense, and shall not be subject  
11 to Section 22981.

12 ~~SEC. 22.~~

13 *SEC. 29.* Section 1947.5 of the Civil Code is amended to read:

14 1947.5. (a) A landlord of a residential dwelling unit, as defined  
15 in Section 1940, or his or her agent, may prohibit the smoking of  
16 a cigarette, as defined in Section 104556 of the Health and Safety  
17 Code, or other tobacco product, or the using of an electronic  
18 cigarette, as defined in subdivision (c) of Section 22950.5 of the  
19 Business and Professions Code, on the property or in any building  
20 or portion of the building, including any dwelling unit, other  
21 interior or exterior area, or the premises on which it is located, in  
22 accordance with this article.

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

31 (2) For a lease or rental agreement entered into before January  
32 1, 2012, a prohibition against the smoking of cigarettes or other  
33 tobacco products, or the using of an electronic cigarette, in any  
34 portion of the property in which smoking or using an electronic  
35 cigarette was previously permitted shall constitute a change of the  
36 terms of tenancy, requiring adequate notice in writing, to be  
37 provided in the manner prescribed in Section 827.

38 (c) A landlord who exercises the authority provided in  
39 subdivision (a) to prohibit smoking or using an electronic cigarette  
40 shall be subject to federal, state, and local requirements governing

1 changes to the terms of a lease or rental agreement for tenants with  
2 leases or rental agreements that are in existence at the time that  
3 the policy limiting or prohibiting smoking or using an electronic  
4 cigarette is adopted.

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

10 (e) A limitation or prohibition of the use of any tobacco product  
11 or the use of an electronic cigarette shall not affect any other term  
12 or condition of the tenancy, nor shall this section be construed to  
13 require statutory authority to establish or enforce any other lawful  
14 term or condition of the tenancy.

15 ~~SEC. 23.~~

16 *SEC. 30.* Section 48901 of the Education Code is amended to  
17 read:

18 48901. (a) A school shall not permit the smoking or use of  
19 tobacco, or any product containing tobacco or nicotine products,  
20 or using an electronic cigarette as defined in subdivision (c) of  
21 Section 22950.5 of the Business and Professions Code, by pupils  
22 of the school while the pupils are on campus, or while attending  
23 school-sponsored activities or while under the supervision and  
24 control of school district employees.

25 (b) The governing board of any school district maintaining a  
26 high school shall take all steps it deems practical to discourage  
27 high school students from smoking or from using an electronic  
28 cigarette.

29 ~~SEC. 24.~~

30 *SEC. 31.* Section 7597 of the Government Code is amended  
31 to read:

32 7597. (a) A public employee or member of the public shall  
33 not smoke any tobacco product, or use an electronic cigarette as  
34 defined in subdivision (c) of Section 22950.5 of the Business and  
35 Professions Code, inside a public building, or in an outdoor area  
36 within 20 feet of a main exit, entrance, or operable window of a  
37 public building, or in a passenger vehicle, as defined by Section  
38 465 of the Vehicle Code, owned by the state.

39 (b) This section does not preempt the authority of any county,  
40 city, city and county, California Community College campus,

1 campus of the California State University, or campus of the  
2 University of California to adopt and enforce additional smoking  
3 and tobacco control, and electronic cigarette, ordinances,  
4 regulations, or policies that are more restrictive than the applicable  
5 standards required by this chapter.

6 ~~SEC. 25.~~

7 *SEC. 32.* Section 1234 of the Health and Safety Code is  
8 amended to read:

9 1234. (a) Smoking, or using an electronic cigarette as defined  
10 in subdivision (c) of Section 22950.5 of the Business and  
11 Professions Code, is prohibited in patient areas of a clinic except  
12 those rooms designated for occupancy exclusively by smokers.

13 (b) Clearly legible signs shall either:

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

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

22 If “smoking permitted” signs are posted, there shall also be  
23 conspicuously posted, near all major entrances, clearly legible  
24 signs stating that smoking, ~~or using an electronic cigarette,~~ is  
25 unlawful except in areas designated “smoking permitted.”

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

29 ~~SEC. 26.~~

30 *SEC. 33.* Section 1286 of the Health and Safety Code is  
31 amended to read:

32 1286. (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 care areas, waiting rooms,  
35 and visiting rooms of a health facility, except those areas  
36 specifically designated as smoking areas, and in patient rooms as  
37 specified in subdivision (b).

38 (b) Smoking, or using an electronic cigarette, shall not be  
39 permitted in a patient room unless all persons assigned to such  
40 room have requested a room where smoking, or using an electronic

1 cigarette, is permitted. In the event that the health facility  
2 occupancy has reached capacity, the health facility shall have  
3 reasonable time to reassign patients to appropriate rooms.

4 (c) Clearly legible signs shall either:

5 (1) State that smoking, ~~or using an electronic cigarette,~~ is  
6 unlawful and be conspicuously posted by, or on behalf of, the  
7 owner or manager of such health facility, in all areas of a health  
8 facility where smoking, or using an electronic cigarette, is unlawful.

9 (2) Identify “smoking permitted” areas, and be posted by, or  
10 on behalf of, the owner or manager of such health facility, only in  
11 areas of the health facility where smoking, or using an electronic  
12 cigarette, 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, ~~or using an electronic cigarette,~~ is  
16 unlawful except in areas designated “smoking permitted.”

17 (d) No signs pertaining to smoking, ~~or using an electronic~~  
18 ~~cigarette,~~ are required to be posted 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 ~~SEC. 27.~~

23 *SEC. 34.* Section 1530.7 of the Health and Safety Code is  
24 amended to read:

25 1530.7. (a) Group homes, foster family agencies, small family  
26 homes, transitional housing placement providers, and crisis  
27 nurseries licensed pursuant to this chapter shall maintain a  
28 smoke-free environment, and an environment free of electronic  
29 cigarettes as defined in subdivision (c) of Section 22950.5 of the  
30 Business and Professions Code, in the facility.

31 (b) A person who is licensed or certified pursuant to this chapter  
32 to provide residential care in a foster family home or certified  
33 family home shall not smoke, or use an electronic cigarette, or  
34 permit any other person to smoke, or use an electronic cigarette,  
35 inside the facility, and, when the child is present, on the outdoor  
36 grounds of the facility.

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

1 ~~SEC. 28.~~

2 *SEC. 35.* Section 1596.795 of the Health and Safety Code is  
3 amended to read:

4 1596.795. (a) The smoking of tobacco, or use of an electronic  
5 cigarette as defined in subdivision (c) of Section 22950.5 of the  
6 Business and Professions Code, in a private residence that is  
7 licensed as a family day care home is prohibited in the home and  
8 in those areas of the family day care home where children are  
9 present. Nothing in this section shall prohibit a city or county from  
10 enacting or enforcing an ordinance relating to smoking, or using  
11 an electronic cigarette, in a family day care home if the ordinance  
12 is more stringent than this section.

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

15 ~~SEC. 29.~~

16 *SEC. 36.* Section 104495 of the Health and Safety Code is  
17 amended to read:

18 104495. (a) For the purposes of this section, the following  
19 definitions shall govern:

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

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

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

31 (4) “Smoke or smoking” means the carrying of a lighted pipe,  
32 lighted cigar, or lighted cigarette of any kind, or the lighting of a  
33 pipe, cigar, or cigarette of any kind, including, but not limited to,  
34 tobacco, or any other weed or plant.

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

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

37 (b) No person shall smoke a cigarette, cigar, or other  
38 tobacco-related product, or use an electronic cigarette as defined  
39 in subdivision (c) of Section 22950.5 of the Business and

1 Professions Code, within 25 feet of any playground or tot lot  
2 sandbox area.

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

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

9 (e) Any person who violates this section is guilty of an  
10 infraction and shall be punished by a fine of two hundred fifty  
11 dollars (\$250) for each violation of this section. Punishment under  
12 this section shall not preclude punishment pursuant to Section  
13 13002, Section 374.4 of the Penal Code, or any other provision of  
14 law proscribing the act of littering.

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

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

20 (h) This section does not preempt the authority of any county,  
21 city, or city and county to regulate smoking, or the use of an  
22 electronic cigarette, around playgrounds or tot lot sandbox areas.  
23 Any county, city, or city and county may enforce any ordinance  
24 adopted prior to January 1, 2002, or may adopt and enforce new  
25 regulations that are more restrictive than this section, on and after  
26 January 1, 2002.

27 ~~SEC. 30.~~

28 *SEC. 37.* Section 113953.3 of the Health and Safety Code is  
29 amended to read:

30 113953.3. (a) Except as specified in subdivision (b), all  
31 employees shall thoroughly wash their hands and that portion, if  
32 any, of their arms exposed to direct food contact with cleanser and  
33 warm water by vigorously rubbing together the surfaces of their  
34 lathered hands and arms for at least 10 to 15 seconds and  
35 thoroughly rinsing with clean running water followed by drying  
36 of cleaned hands and that portion, if any, of their arms exposed.  
37 Employees shall pay particular attention to the areas underneath  
38 the fingernails and between the fingers. Employees shall wash  
39 their hands in all of the following instances:

- 1 (1) Immediately before engaging in food preparation, including
- 2 working with nonprepackaged food, clean equipment and utensils,
- 3 and unwrapped single-use food containers and utensils.
- 4 (2) After touching bare human body parts other than clean hands
- 5 and clean, exposed portions of arms.
- 6 (3) After using the toilet room.
- 7 (4) After caring for or handling any animal allowed in a food
- 8 facility pursuant to this part.
- 9 (5) After coughing, sneezing, using a handkerchief or disposable
- 10 tissue, using tobacco, using an electronic cigarette as defined in
- 11 subdivision (c) of Section 22950.5 of the Business and Professions
- 12 Code, eating, or drinking.
- 13 (6) After handling soiled equipment or utensils.
- 14 (7) During food preparation, as often as necessary to remove
- 15 soil and contamination and to prevent cross-contamination when
- 16 changing tasks.
- 17 (8) When switching between working with raw food and
- 18 working with ready-to-eat food.
- 19 (9) Before initially donning gloves for working with food.
- 20 (10) Before dispensing or serving food or handling clean
- 21 tableware and serving utensils in the food service area.
- 22 (11) After engaging in other activities that contaminate the
- 23 hands.
- 24 (b) If approved and capable of removing the types of soils
- 25 encountered in the food operations involved, an automatic
- 26 handwashing facility may be used by food employees to clean
- 27 their hands.
- 28 ~~SEC. 31.~~
- 29 *SEC. 38.* Section 113977 of the Health and Safety Code is
- 30 amended to read:
- 31 113977. (a) Except as specified in subdivision (b), an employee
- 32 shall eat, drink, use any form of tobacco, or use an electronic
- 33 cigarette as defined in subdivision (c) of Section 22950.5 of the
- 34 Business and Professions Code, only in designated areas where
- 35 contamination of nonprepackaged food; clean equipment, utensils,
- 36 and linens; unwrapped single-use articles; or other items needing
- 37 protection cannot result.
- 38 (b) A food employee may drink from a closed beverage
- 39 container if the container is handled to prevent contamination of

1 the employee’s hands, the container, nonprepackaged food, and  
2 food-contact surfaces.

3 ~~SEC. 32. Section 113978 of the Health and Safety Code is~~  
4 ~~amended to read:~~

5 ~~113978. Food facilities shall have a sign that states both “no~~  
6 ~~smoking” and “no using electronic cigarettes” posted in the food~~  
7 ~~preparation, food storage, and warewashing areas.~~

8 ~~SEC. 33.~~

9 *SEC. 39.* Section 114332.3 of the Health and Safety Code is  
10 amended to read:

11 114332.3. (a) A potentially hazardous food or beverage stored  
12 or prepared in a private home shall not be offered for sale, sold,  
13 or given away from a nonprofit charitable temporary food facility.  
14 Potentially hazardous food shall be prepared in a food  
15 establishment or on the premises of a nonprofit charitable  
16 temporary food facility.

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

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

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

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

28 (f) Smoking, or using an electronic cigarette as defined in  
29 subdivision (c) of Section 22950.5 of the Business and Professions  
30 Code, is prohibited in nonprofit 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 ~~SEC. 34.~~

21 *SEC. 40.* Section 114371 of the Health and Safety Code is  
22 amended to read:

23 114371. Certified farmers' markets shall meet all of the  
24 following requirements:

25 (a) All food shall be stored at least six inches off the floor or  
26 ground or under any other conditions that are approved. Tents,  
27 canopies, or other overhead coverings are not required for fresh  
28 whole produce sales displays or storage, except when specifically  
29 required pursuant to this chapter. Flavored nuts and dried fruits  
30 that are being sold on a bulk or nonprepackaged basis shall be  
31 displayed and dispensed by the producer from covered containers.  
32 All processed food products being sold shall be in compliance with  
33 Section 113735 and the applicable provisions of Section 110460,  
34 114365, or 114365.2.

35 (b) Food preparation is prohibited at certified farmers' markets  
36 with the exception of food samples. Trimming whole produce for  
37 sale shall not be considered food preparation. Distribution of food  
38 samples may occur provided that the following sanitary conditions  
39 exist:

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

5 (2) All food samples shall be distributed by the producer in a  
6 manner that is sanitary and in which each sample is distributed  
7 without the possibility of a consumer touching the remaining  
8 samples.

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

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

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

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

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

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

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

35 (d) No live animals, birds, or fowl shall be kept or allowed, and  
36 no individual shall bring a live animal, bird, or fowl, within 20  
37 feet of any area where food is stored or held for sale within a  
38 certified farmers' market. This subdivision does not apply to guide  
39 dogs, signal dogs, or service dogs when used in accordance with  
40 the federal Americans with Disabilities Act of 1990 (42 U.S.C.

1 Sec. 12101 et seq.), and as provided in Section 36.104 of Title 28  
2 of the Code of Federal Regulations. All guide dogs, signal dogs,  
3 and service dogs shall be used and properly identified in accordance  
4 with Section 54.1 and subdivision (b) of Section 54.2 of the Civil  
5 Code, and Sections 30850, 30851, and 30852 of the Food and  
6 Agricultural Code.

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

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

15 (g) Notwithstanding Chapter 10 (commencing with Section  
16 114294) vendors selling food adjacent to, and under the jurisdiction  
17 and management of, a certified farmers' market may store, display,  
18 and sell from a table or display fixture apart from the mobile  
19 facility in a manner approved by the enforcement agency.

20 (h) Temporary food facilities may be operated at a separate  
21 community event adjacent to, and in conjunction with, certified  
22 farmers' markets. The organization in control of the community  
23 event at which these temporary food facilities operate shall comply  
24 with Section 114381.1.

25 (i) All harvested, cut, wrapped, or otherwise processed meat,  
26 poultry, and fish products shall be from approved sources as set  
27 forth in Section 113735, and shall be properly labeled or have  
28 documentation present at the point of sale that demonstrates  
29 compliance with this requirement. All harvested, cut, wrapped, or  
30 otherwise processed meat, poultry, and fish products offered for  
31 sale shall be transported, stored, displayed, and maintained at a  
32 temperature of 41 degrees Fahrenheit or colder. The temperature  
33 holding capabilities of the storage containers used shall be  
34 sufficient to maintain safe product temperatures. Storage containers  
35 for meat, poultry, and fish products shall be insulated and have  
36 interior surfaces that are smooth, nonabsorbent, and easily  
37 cleanable. All meat, poultry, and fish products shall be stored in  
38 a manner that reduces the risk of cross-contamination.

1 ~~SEC. 35.~~

2 *SEC. 41.* Section 118910 of the Health and Safety Code is  
3 amended to read:

4 118910. The Legislature declares its intent not to preempt the  
5 field of regulation of the smoking of tobacco, or the use of an  
6 electronic cigarette as defined in subdivision (c) of Section 22950.5  
7 of the Business and Professions Code. A local governing body  
8 may ban completely the smoking of tobacco or using an electronic  
9 cigarette, or may regulate smoking or the using of an electronic  
10 cigarette, in any manner not inconsistent with this article and  
11 Article 3 (commencing with Section 118920) or any other provision  
12 of state law.

13 ~~SEC. 36.~~

14 *SEC. 42.* Section 118925 of the Health and Safety Code is  
15 amended to read:

16 118925. It is unlawful for any person to smoke tobacco or any  
17 other plant product, or use an electronic cigarette as defined in  
18 subdivision (c) of Section 22950.5 of the Business and Professions  
19 Code, in any vehicle of a passenger stage corporation, the National  
20 Railroad Passenger Corporation (Amtrak) except to the extent  
21 permitted by federal law, in any aircraft except to the extent  
22 permitted by federal law, on a public transportation system, as  
23 defined by Section 99211 of the Public Utilities Code, or in any  
24 vehicle of an entity receiving any transit assistance from the state.

25 ~~SEC. 37.~~ ~~Section 118930 of the Health and Safety Code is~~  
26 ~~amended to read:~~

27 ~~118930. A notice prohibiting both smoking and using an~~  
28 ~~electronic cigarette as defined in subdivision (c) of Section 22950.5~~  
29 ~~of the Business and Professions Code, displayed as a symbol and~~  
30 ~~in English, shall be posted in each vehicle or aircraft subject to~~  
31 ~~this article.~~

32 ~~SEC. 38.~~

33 *SEC. 43.* Section 118935 of the Health and Safety Code is  
34 amended to read:

35 118935. (a) Every person and public agency providing  
36 transportation services for compensation, including, but not limited  
37 to, the National Railroad Passenger Corporation (Amtrak) to the  
38 extent permitted by federal law, passenger stage corporations, and  
39 local agencies that own or operate airports, shall designate and  
40 post, by signs of sufficient number and posted in locations that

1 may be readily seen by persons within the area, a contiguous area  
2 of not less than 75 percent of any area made available by the person  
3 or public agency as a waiting room for these passengers where the  
4 smoking of tobacco, or using an electronic cigarette as defined in  
5 subdivision (c) of Section 22950.5 of the Business and Professions  
6 Code, is prohibited. Not more than 25 percent of any given area  
7 may be set aside for smokers or users of electronic cigarettes.

8 (b) Every person or public agency subject to subdivision (a)  
9 shall also post, by sign of sufficient number and posted in locations  
10 as to be readily seen by persons within the area of any building  
11 where tickets, tokens, or other evidences that a fare has been paid  
12 for transportation services that are provided by the person or public  
13 agency, a notice that the smoking of tobacco, ~~or use of an electronic~~  
14 ~~cigarette~~, by persons waiting in line to purchase the tickets, tokens,  
15 or other evidences that a fare has been paid is prohibited.

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

18 ~~SEC. 39.~~

19 *SEC. 44.* Section 118948 of the Health and Safety Code is  
20 amended to read:

21 118948. (a) It is unlawful for a person to smoke a pipe, cigar,  
22 or cigarette in a motor vehicle, or use an electronic cigarette as  
23 defined in subdivision (c) of Section 22950.5 of the Business and  
24 Professions Code, whether in motion or at rest, in which there is  
25 a minor.

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

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

31 ~~SEC. 40.~~

32 *SEC. 45.* Section 119405 of the Health and Safety Code is  
33 amended to read:

34 119405. (a) To the extent not preempted by federal law,  
35 including, but not limited to, the regulation of electronic cigarettes  
36 by the United States Food and Drug Administration, it shall be  
37 unlawful for a person to sell or otherwise furnish an electronic  
38 cigarette, as defined in subdivision (b), to a person under 21 years  
39 of age.

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

3 (c) A violation of this section shall be an infraction punishable  
4 by a fine not exceeding two hundred dollars (\$200) for the first  
5 violation, by a fine not exceeding five hundred dollars (\$500) for  
6 the second violation, or by a fine not exceeding one thousand  
7 dollars (\$1,000) for a third or subsequent violation.

8 (d) Nothing in this section nor any other law shall be construed  
9 to invalidate an existing ordinance of, or prohibit the adoption of  
10 an ordinance by, a city or county that regulates the distribution of  
11 electronic cigarettes in a manner that is more restrictive than this  
12 section, to the extent that the ordinance is not otherwise prohibited  
13 by federal law.

14 ~~SEC. 41.~~

15 *SEC. 46.* Section 119406 is added to the Health and Safety  
16 Code, to read:

17 119406. (a) All cartridges for electronic cigarettes and  
18 solutions for filling or refilling an electronic cigarette shall be in  
19 childproof packaging.

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

24 ~~SEC. 42.~~

25 *SEC. 47.* Section 6404.5 of the Labor Code is amended to read:

26 6404.5. (a) The Legislature finds and declares that regulation  
27 of smoking in the workplace is a matter of statewide interest and  
28 concern. It is the intent of the Legislature in enacting this section  
29 to prohibit the smoking of tobacco products, and the use of  
30 electronic cigarettes as defined in subdivision (c) of Section  
31 22950.5 of the Business and Professions Code, in all (100 percent  
32 of) enclosed places of employment in this state, as covered by this  
33 section, thereby eliminating the need of local governments to enact  
34 workplace smoking restrictions or electronic cigarette restrictions  
35 within their respective jurisdictions. It is further the intent of the  
36 Legislature to create a uniform statewide standard to restrict and  
37 prohibit the smoking of tobacco products, and the use of electronic  
38 cigarettes, in enclosed places of employment, as specified in this  
39 section, in order to reduce employee exposure to environmental  
40 tobacco smoke to a level that will prevent anything other than

1 insignificantly harmful effects to exposed employees, and also to  
2 eliminate the confusion and hardship that can result from enactment  
3 or enforcement of disparate local workplace smoking restrictions.  
4 Notwithstanding any other provision of this section, it is the intent  
5 of the Legislature that any area not defined as a “place of  
6 employment” pursuant to subdivision (d) or in which the smoking  
7 of tobacco products or use of electronic cigarettes is not regulated  
8 pursuant to subdivision (e) shall be subject to local regulation of  
9 smoking of tobacco products or use of electronic cigarettes.

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

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

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

22 (A) Where smoking or using an electronic cigarette is prohibited  
23 throughout the building or structure, a sign ~~that states both “no~~  
24 ~~smoking” and “no using electronic cigarettes”~~ stating “No  
25 smoking” shall be posted at each entrance to the building or  
26 structure.

27 (B) Where smoking or using an electronic cigarette is permitted  
28 in designated areas of the building or structure, a sign stating  
29 ~~“Smoking or using an electronic cigarette, is prohibited except in~~  
30 ~~designated areas”~~ shall be posted at each entrance to the building  
31 or structure.

32 (2) Has requested, when appropriate, that a nonemployee who  
33 is smoking or using an electronic cigarette refrain from smoking  
34 or using an electronic cigarette 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 or using an electronic  
39 cigarette, under circumstances involving a risk of physical harm  
40 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 or using an  
7 electronic cigarette by the establishment. An establishment may  
8 permit smoking or using an electronic cigarette in a designated  
9 lobby area that does not exceed 25 percent of the total floor area  
10 of the lobby or, if the total area of the lobby is 2,000 square feet  
11 or less, that does not exceed 50 percent of the total floor area of  
12 the lobby. For purposes of this paragraph, “lobby” means the  
13 common public area of an establishment in which registration and  
14 other similar or related transactions, or both, are conducted and in  
15 which the establishment’s guests and members of the public  
16 typically congregate.
- 17 (3) Meeting and banquet rooms in a hotel, motel, other transient  
18 lodging establishment similar to a hotel or motel, restaurant, or  
19 public convention center, except while food or beverage functions  
20 are taking place, including setup, service, and cleanup activities,  
21 or when the room is being used for exhibit purposes. At times  
22 when smoking or using an electronic cigarette is not permitted in  
23 a meeting or banquet room pursuant to this paragraph, the  
24 establishment may permit smoking or using an electronic cigarette  
25 in corridors and prefunction areas adjacent to and serving the  
26 meeting or banquet room if no employee is stationed in that  
27 corridor or area on other than a passing basis.
- 28 (4) Retail or wholesale tobacco shops, retail or wholesale  
29 electronic cigarette shops, and private smokers’ lounges. For  
30 purposes of this paragraph:
- 31 (A) “Private smokers’ lounge” means any enclosed area in or  
32 attached to a retail or wholesale tobacco shop that is dedicated to  
33 the use of tobacco products, including, but not limited to, cigars  
34 and pipes.
- 35 (B) “Retail or wholesale tobacco shop” means any business  
36 establishment the main purpose of which is the sale of tobacco  
37 products, including, but not limited to, cigars, pipe tobacco, and  
38 smoking accessories.

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

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

8 (6) Warehouse facilities. For purposes of this paragraph,  
9 “warehouse facility” means a warehouse facility with more than  
10 100,000 square feet of total floorspace, and 20 or fewer full-time  
11 employees working at the facility, but does not include any area  
12 within a facility that is utilized as office space.

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

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

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

33 (10) Medical research or treatment sites, if smoking or using  
34 an electronic cigarette is integral to the research and treatment  
35 being conducted.

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

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

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

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

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

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

23 (D) There are sufficient nonsmoking breakrooms to  
24 accommodate nonsmokers and individuals who do not use  
25 electronic cigarettes.

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

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

30 (B) All employees who enter the area consent to permit smoking  
31 or using an electronic cigarette. No one, as part of his or her work  
32 responsibilities, shall be required to work in an area where smoking  
33 or using an electronic cigarette is permitted. An employer who is  
34 determined by the division to have used coercion to obtain consent  
35 or who has required an employee to work in the area shall be  
36 subject to the penalty provisions of Section 6427.

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

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

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

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

19 (f) (1) Except as otherwise provided in this subdivision,  
20 smoking or using an electronic cigarette may be permitted in  
21 gaming clubs, as defined in paragraph (7) of subdivision (d), and  
22 in bars and taverns, as defined in paragraph (8) of subdivision (d),  
23 until the earlier of the following:

24 (A) January 1, 1998.

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

35 (2) If a regulation specified in subparagraph (B) of paragraph  
36 (1) is adopted on or before January 1, 1998, smoking or using an  
37 electronic cigarette may thereafter be permitted in gaming clubs  
38 and in bars and taverns, subject to full compliance with, or  
39 conformity to, the standard in the regulation within two years  
40 following the date of adoption of the regulation. An employer

1 failing to achieve compliance with, or conformity to, the regulation  
2 within this two-year period shall prohibit smoking or using an  
3 electronic cigarette in the gaming club, bar, or tavern until  
4 compliance or conformity is achieved. If the Occupational Safety  
5 and Health Standards Board and the federal Environmental  
6 Protection Agency both adopt regulations specified in subparagraph  
7 (B) of paragraph (1) that are inconsistent, the regulations of the  
8 Occupational Safety and Health Standards Board shall be no less  
9 stringent than the regulations of the federal Environmental  
10 Protection Agency.

11 (3) If a regulation specified in subparagraph (B) of paragraph  
12 (1) is not adopted on or before January 1, 1998, the exemptions  
13 specified in paragraphs (7) and (8) of subdivision (d) shall become  
14 inoperative on and after January 1, 1998, until a regulation is  
15 adopted. Upon adoption of such a regulation on or after January  
16 1, 1998, smoking or using an electronic cigarette may thereafter  
17 be permitted in gaming clubs and in bars and taverns, subject to  
18 full compliance with, or conformity to, the standard in the  
19 regulation within two years following the date of adoption of the  
20 regulation. An employer failing to achieve compliance with, or  
21 conformity to, the regulation within this two-year period shall  
22 prohibit smoking or using an electronic cigarette in the gaming  
23 club, bar, or tavern until compliance or conformity is achieved. If  
24 the Occupational Safety and Health Standards Board and the federal  
25 Environmental Protection Agency both adopt regulations specified  
26 in subparagraph (B) of paragraph (1) that are inconsistent, the  
27 regulations of the Occupational Safety and Health Standards Board  
28 shall be no less stringent than the regulations of the federal  
29 Environmental Protection Agency.

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

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

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

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

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

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

37 (j) Any violation of the prohibition set forth in subdivision (b)  
38 is an infraction, punishable by a fine not to exceed one hundred  
39 dollars (\$100) for a first violation, two hundred dollars (\$200) for  
40 a second violation within one year, and five hundred dollars (\$500)

1 for a third and for each subsequent violation within one year. This  
2 subdivision shall be enforced by local law enforcement agencies,  
3 including, but not limited to, local health departments, as  
4 determined by the local governing body.

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

11 (l) If any provision of this act or the application thereof to any  
12 person or circumstances is held invalid, that invalidity shall not  
13 affect other provisions or applications of the act that can be given  
14 effect without the invalid provision or application, and to this end  
15 the provisions of this act are severable.

16 ~~SEC. 43.~~

17 *SEC. 48.* Section 308 of the Penal Code is amended to read:

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

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

1 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 defense to any action brought pursuant to this  
4 subdivision. Evidence of majority of a person is a facsimile of or  
5 a reasonable likeness of a document issued by a federal, state,  
6 county, or municipal government, or subdivision or agency thereof,  
7 including, but not limited to, a motor vehicle operator's license, a  
8 registration certificate issued under the federal Selective Service  
9 Act, or an identification card issued to a member of the Armed  
10 Forces.

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

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

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

30 (c) Every person, firm, or corporation that sells, or deals in  
31 tobacco or any preparation thereof, and, on and after July 1, 2016,  
32 every person, firm, or corporation that sells or deals in electronic  
33 cigarettes, shall post conspicuously and keep so posted in his, her,  
34 or their place of business at each point of purchase the notice  
35 required pursuant to subdivision (b) of Section 22952 of the  
36 Business and Professions Code, and any person failing to do so  
37 shall, upon conviction, be punished by a fine of fifty dollars (\$50)  
38 for the first offense, one hundred dollars (\$100) for the second  
39 offense, two hundred fifty dollars (\$250) for the third offense, and  
40 five hundred dollars (\$500) for the fourth offense and each

1 subsequent violation of this provision, or by imprisonment in a  
2 county jail not exceeding 30 days.

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

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

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

18 (2) An activity conducted by the State Department of Public  
19 Health, a local health department, or a law enforcement agency  
20 for the purpose of determining or evaluating youth tobacco  
21 purchase rates.

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

25 *SEC. 49. Section 308 of the Penal Code is amended to read:*

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

1 Notwithstanding Section 1464 or any other law, 25 percent of  
2 each civil and criminal penalty collected pursuant to this  
3 subdivision shall be paid to the office of the city attorney, county  
4 counsel, or district attorney, whoever is responsible for bringing  
5 the successful action, and 25 percent of each civil and criminal  
6 penalty collected pursuant to this subdivision shall be paid to the  
7 city or county for the administration and cost of the community  
8 service work component provided in subdivision (b).

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

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

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

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

39 (c) Every person, firm, or corporation that sells, or deals in  
40 tobacco or any preparation thereof, *and, on and after July 1, 2016,*

1 every person, firm, or corporation that sells or deals in electronic  
2 cigarettes, shall post conspicuously and keep so posted in his, her,  
3 or their place of business at each point of purchase the notice  
4 required pursuant to subdivision (b) of Section 22952 of the  
5 Business and Professions Code, and any person failing to do so  
6 shall, upon conviction, be punished by a fine of fifty dollars (\$50)  
7 for the first offense, one hundred dollars (\$100) for the second  
8 offense, two hundred fifty dollars (\$250) for the third offense, and  
9 five hundred dollars (\$500) for the fourth offense and each  
10 subsequent violation of this provision, or by imprisonment in a  
11 county jail not exceeding 30 days.

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

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

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

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

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

34 ~~SEC. 44.~~

35 *SEC. 50.* Section 640 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

36 (6) Sale or peddling of any goods, merchandise, property, or  
37 services of any kind whatsoever on the facilities, vehicles, or  
38 property of the public transportation system, if the public  
39 transportation system has prohibited those acts and neither the

1 public transportation system nor its duly authorized representatives  
2 have granted written consent to engage in those acts.

3 (c) (1) Evasion of the payment of a fare of the system. For  
4 purposes of this section, fare evasion includes entering an enclosed  
5 area of a public transit facility beyond posted signs prohibiting  
6 entrance without obtaining valid fare, in addition to entering a  
7 transit vehicle without valid fare.

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

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

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

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

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

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

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

37 (5) Willfully tampering with, removing, displacing, injuring,  
38 or destroying any part of any facility or vehicle of a public  
39 transportation system.

1 (e) Notwithstanding subdivision (a), a public transportation  
2 agency, as defined in paragraph (4) of subdivision (c) of Section  
3 99580 of the Public Utilities Code, may enact and enforce an  
4 ordinance providing that a person who is the subject of a citation  
5 for any of the acts described in subdivision (b) of Section 99580  
6 of the Public Utilities Code on or in a facility or vehicle described  
7 in subdivision (a) for which the public transportation agency has  
8 jurisdiction shall, under the circumstances set forth by the  
9 ordinance, be afforded an opportunity to complete an administrative  
10 process that imposes only an administrative penalty enforced in a  
11 civil proceeding. The ordinance for imposing and enforcing the  
12 administrative penalty shall be governed by Chapter 8  
13 (commencing with Section 99580) of Part 11 of Division 10 of  
14 the Public Utilities Code and shall not apply to minors.

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

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

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

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

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

26 ~~SEC. 45.~~

27 *SEC. 51.* Section 561 of the Public Utilities Code is amended  
28 to read:

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

36 (b) Every such corporation and carrier shall display in the  
37 passenger seating area of every passenger car, passenger stage,  
38 aircraft, or other vehicle, notices sufficient in number, posted in  
39 such locations as to be readily seen by boarding passengers,  
40 advising passengers of the no smoking requirements ~~and no using~~

1 ~~electronic cigarette requirements~~ pursuant to subdivision (a). Words  
2 on such notices which state ~~both~~ “no smoking” ~~and~~ “no using  
3 ~~electronic cigarettes~~” or an equivalent phrase shall be at least  
4 three-quarters of one inch high, and any other explanatory words  
5 on the notices shall be at least one-quarter of an inch high.

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

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

12 ~~SEC. 46.~~

13 *SEC. 52.* Section 99580 of the Public Utilities Code is amended  
14 to read:

15 99580. (a) Pursuant to subdivision (e) of Section 640 of the  
16 Penal Code, a public transportation agency may enact and enforce  
17 an ordinance to impose and enforce an administrative penalty for  
18 any of the acts described in subdivision (b). The ordinance shall  
19 include the provisions of this chapter and shall not apply to minors.

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

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

23 (3) Playing sound equipment on or in a system facility or  
24 vehicle.

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

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

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

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

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

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

1 (B) This paragraph shall not be interpreted to affect any lawful  
2 activities permitted or First Amendment rights protected under the  
3 laws of this state or applicable federal law, including, but not  
4 limited to, laws related to collective bargaining, labor relations,  
5 or labor disputes.

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

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

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

28 (12) Sale or peddling of any goods, merchandise, property, or  
29 services of any kind whatsoever on the facilities, vehicles, or  
30 property of the public transportation system without the express  
31 written consent of the public transportation system or its duly  
32 authorized representatives.

33 (c) (1) The public transportation agency may contract with a  
34 private vendor or governmental agency for the processing of notices  
35 of fare evasion or passenger conduct violation, and notices of  
36 delinquent fare evasion or passenger conduct violation pursuant  
37 to Section 99581.

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

1 (A) The agency issuing the notice of fare evasion or passenger  
2 conduct violation and the notice of delinquent fare evasion or  
3 passenger conduct violation.

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

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

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

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

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

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

36 (3) If, after a notice of fare evasion or passenger conduct  
37 violation is issued pursuant to this section, the issuing officer  
38 determines that there is incorrect data on the notice, including, but  
39 not limited to, the date or time, the issuing officer may indicate in  
40 writing on a form attached to the original notice the necessary

1 correction to allow for the timely entry of the corrected notice on  
2 the processing agency's data system. A copy of the correction shall  
3 be mailed to the address provided by the person cited at the time  
4 the original notice of fare evasion or passenger conduct violation  
5 was served.

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

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

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

16 (g) If an entity enacts an ordinance pursuant to this section it  
17 shall, both two years and five years after enactment of the  
18 ordinance, report all of the following information to the Senate  
19 Committee on Transportation and Housing and the Assembly  
20 Committee on Transportation:

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

24 (2) The amount of the administrative penalties.

25 (3) The number and types of citations administered pursuant to  
26 the ordinance.

27 (4) To the extent available, a comparison of the number and  
28 types of citations administered pursuant to the ordinance with the  
29 number and types of citations issued for similar offenses and  
30 administered through the courts both in the two years prior to the  
31 ordinance and, if any, since enactment of the ordinance.

32 (5) A discussion of the effect of the ordinance on passenger  
33 behavior.

34 (6) A discussion of the effect of the ordinance on revenues to  
35 the entity described in subdivision (a) and, in consultation with  
36 the superior courts, the cost savings to the county courts. The  
37 superior courts are encouraged to collaborate on and provide data  
38 for this report.

1     ~~SEC. 47.~~

2     *SEC. 53.* Section 12523 of the Vehicle Code is amended to  
3 read:

4     12523. (a) A person shall not operate a youth bus without  
5 having in possession a valid driver's license of the appropriate  
6 class, endorsed for passenger transportation and a certificate issued  
7 by the department to permit the operation of a youth bus.

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

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

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

31         (1) Use seat belts.

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

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

37     (e) A person holding a valid certificate to permit the operation  
38 of a youth bus, issued prior to January 1, 1991, shall not be required  
39 to reapply for a certificate to satisfy any additional requirements

1 imposed by the act adding this subdivision until the certificate he  
2 or she holds expires or is canceled or revoked.

3 ~~SEC. 48.~~

4 *SEC. 54.* Section 12523.5 of the Vehicle Code is amended to  
5 read:

6 12523.5. (a) A person shall not operate a general public  
7 paratransit vehicle unless he or she has in his or her possession a  
8 valid driver's license of the appropriate class endorsed for  
9 passenger transportation when operating a vehicle designed, used,  
10 or maintained for carrying more than 10 persons including the  
11 driver and either (1) a certificate issued by the department to permit  
12 the operation of a general public paratransit vehicle, or (2) a  
13 certificate issued by the department to drive a schoolbus or school  
14 pupil activity bus pursuant to Section 12517.

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

31 (c) The driver certificate shall be issued only to applicants  
32 qualified by examinations prescribed by the Department of Motor  
33 Vehicles and the Department of the California Highway Patrol.  
34 The examinations shall be conducted by the Department of the  
35 California Highway Patrol. The Department of Motor Vehicles  
36 may deny, suspend, or revoke a certificate valid for driving a  
37 general public paratransit vehicle for the causes specified in this  
38 code or the Education Code or in regulations adopted pursuant to  
39 this code or the Education Code.

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

3 (1) Use seatbelts.

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

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

9 (e) A person holding a valid certificate to permit the operation  
10 of a general public paratransit vehicle, issued prior to January 1,  
11 1991, shall not be required to reapply for a certificate to satisfy  
12 any additional requirements imposed by the act adding this  
13 subdivision until the certificate he or she holds expires or is  
14 canceled or revoked.

15 ~~SEC. 49.~~

16 *SEC. 55.* No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.

25 *SEC. 56. (a) Sections 5, 7, 9, 15, 45, and 48 of this act shall*  
26 *become operative only if Senate Bill 151 of the 2015–16 Regular*  
27 *Session is enacted and becomes effective.*

28 *(b) Sections 6, 8, 10, 16, and 49 of this act shall become*  
29 *operative only if Senate Bill 151 of the 2015–16 Regular Session*  
30 *is not enacted.*