

SENATE BILL

No. 5

**Introduced by Senator Leno
(Coauthors: Senators Beall, Hernandez, Liu, McGuire, Mitchell,
and Pan)**

July 16, 2015

An act to amend Sections 22950.5, 22958, and 22962 of, to amend, repeal, and add Sections 22973 and 22980.2 of, and to add Section 22971.7 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, 114332.3, 114371, 118910, 118925, and 118948 of, to add Section 119406 to, and to repeal Section 119405 of, the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Section 308 of the Penal Code, to amend Sections 561 and 99580 of the Public Utilities Code, and to amend Section 12523 of the Vehicle Code, relating to electronic cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

SB 5, as introduced, Leno. Electronic cigarettes.

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

This bill would define the term “smoking” for purposes of the STAKE Act. The bill would also change the STAKE Act’s definition of “tobacco

products” to include electronic devices, such as electronic cigarettes, that deliver nicotine or other vaporized liquids, and make furnishing such a tobacco product to a minor a misdemeanor.

Existing law, the Cigarette and Tobacco Products Tax Law, imposes a tax on the distribution of cigarettes and tobacco products at specified rates, and defines tobacco products for those purposes. Existing law, the Cigarette and Tobacco Products Licensing Act of 2003, requires the State Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products, as defined. Under existing law, a violation of this act is a misdemeanor. Existing law requires a retailer to have in place and maintain a license to engage in the sale of cigarettes or tobacco products, as defined, and prescribes procedures for the issuance of and grounds for revocation or suspension of a license. Existing law requires a retailer who seeks to obtain a license to engage in the sale of cigarettes and tobacco products to pay a one-time license fee of \$100, as specified. Existing law authorizes the State Board of Equalization or a law enforcement agency that discovers that a retailer or other person possesses, stores, owns, or has made a retail sale of tobacco products on which a tax is due but has not been paid to seize those products, and deems those products forfeited, as specified.

This bill would include in the definition of tobacco products for the purposes of those provisions relating to licenses for retailers the STAKE Act’s new definition of tobacco products. This bill would require a retailer that seeks to sell a tobacco product that is not subject to imposition of a tax under the Cigarette and Tobacco Products Tax Law to pay a one-time license fee to engage in the sale of that product, as specified. The bill would except the STAKE Act’s new definition of tobacco products from the provision authorizing seizure of tobacco products described above. The bill would make these provisions operative on October 1, 2016.

Existing law makes it a crime for a person or entity to engage in the business of selling cigarettes or tobacco products without a valid license or after a license has been suspended or revoked, as specified. Existing law also makes it a crime for a person to continue selling or gifting cigarettes or tobacco products without a valid license or after a notification of suspension or revocation, as specified.

This bill would include in the definition of tobacco products for the purposes of those provisions the STAKE Act’s new definition of tobacco products. The bill would require all cartridges for electronic cigarettes

and solutions for filling or refilling an electronic cigarette to be in childproof packaging, as prescribed. The bill would make these provisions operative on October 1, 2016.

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

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

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

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

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

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

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

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

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

- 1 SECTION 1. Section 22950.5 of the Business and Professions
- 2 Code is amended to read:
- 3 22950.5. For purposes of this division, the following terms
- 4 have the following meanings:
- 5 (a) “Department” means the State Department of Public Health.
- 6 (b) “Enforcing agency” means the State Department of Public
- 7 Health, another state agency, including, but not limited to, the
- 8 office of the Attorney General, or a local law enforcement agency,
- 9 including, but not limited to, a city attorney, district attorney, or
- 10 county counsel.
- 11 (c) “Smoking” means *inhaling, exhaling, burning, or carrying*
- 12 *any lighted or heated cigar, cigarette, or pipe, or any other lighted*
- 13 *or heated tobacco or plant product intended for inhalation, whether*

1 *natural or synthetic, in any manner or in any form. “Smoking”*
 2 *includes the use of an electronic smoking device that creates an*
 3 *aerosol or vapor, in any manner or in any form, or the use of any*
 4 *oral smoking device for the purpose of circumventing the*
 5 *prohibition of smoking.*

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

7 (A) *A product containing, made, or derived from tobacco or*
 8 *nicotine that is intended for human consumption, whether smoked,*
 9 *heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or*
 10 *ingested by any other means, including, but not limited to,*
 11 *cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or*
 12 *snuff.*

13 (B) *An electronic device that delivers nicotine or other vaporized*
 14 *liquids to the person inhaling from the device, including, but not*
 15 *limited to, an electronic cigarette, cigar, pipe, or hookah.*

16 (C) *Any component, part, or accessory of a tobacco product,*
 17 *whether or not sold separately.*

18 (2) *“Tobacco product” does not include a product that has been*
 19 *approved by the United States Food and Drug Administration for*
 20 *sale as a tobacco cessation product or for other therapeutic*
 21 *purposes where the product is marketed and sold solely for such*
 22 *an approved purpose.*

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

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

1 five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for
2 a fifth violation within a five-year period.

3 (b) (1) In addition to the civil penalties described in subdivision
4 (a), upon the assessment of a civil penalty for the third, fourth, or
5 fifth violation, the department, within 60 days of the date of service
6 of the final administrative adjudication on the parties or payment
7 of the civil penalty for an uncontested violation, shall notify the
8 State Board of Equalization of the violation. The State Board of
9 Equalization shall then assess a civil penalty of two hundred fifty
10 dollars (\$250) and suspend or revoke a license issued pursuant to
11 Chapter 2 (commencing with Section 22972) of Division 8.6 in
12 accordance with the following schedule:

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

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

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

19 (2) The provisions of Chapter 4 (commencing with Section
20 55121) of Part 30 of Division 2 of the Revenue and Taxation Code
21 apply with respect to the collection of the penalty imposed by the
22 State Board of Equalization pursuant to paragraph (1).

23 (c) (1) For each suspension or revocation pursuant to
24 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)
25 assessed pursuant to that subdivision, notwithstanding Section
26 22953, shall be deposited into the Cigarette and Tobacco Products
27 Compliance Fund established pursuant to Section 22990. Moneys
28 from that civil penalty deposited into this fund shall be made
29 available to the State Board of Equalization, upon appropriation
30 by the Legislature, for the purposes of meeting its duties under
31 subdivision (b).

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

37 (d) The enforcing agency shall assess penalties pursuant to the
38 schedule set forth in subdivision (a) against a person, firm, or
39 corporation that sells, offers for sale, or distributes tobacco products
40 from a cigarette or tobacco products vending machine, or a person,

1 firm, or corporation that leases, furnishes, or services these
2 machines in violation of Section 22960.

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

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

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

26 (h) (1) In the case of a corporation or business with more than
27 one retail location, to determine the number of accumulated
28 violations for purposes of the penalty schedule set forth in
29 subdivision (a), violations of this division by one retail location
30 shall not be accumulated against other retail locations of that same
31 corporation or business.

32 (2) In the case of a retail location that operates pursuant to a
33 franchise as defined in Section 20001, violations of this division
34 accumulated and assessed against a prior owner of a single
35 franchise location shall not be accumulated against a new owner
36 of the same single franchise location for purposes of the penalty
37 schedule set forth in subdivision (a).

38 (i) Proceedings under this section shall be conducted pursuant
39 to Section 131071 of the Health and Safety Code, except in cases
40 where a civil penalty is assessed by an enforcing agency other than

1 the department, in which case proceedings shall be conducted
2 pursuant to the procedures of that agency that are consistent with
3 Section 131071 of the Health and Safety Code.

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

6 22962. (a) For purposes of this section, the following terms
7 have the following meanings:

8 (1) “Self-service display” means the open display of tobacco
9 products or tobacco paraphernalia in a manner that is accessible
10 to the general public without the assistance of the retailer or
11 employee of the retailer.

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

17 (3) “Tobacco product” means ~~any a product containing tobacco~~
18 ~~leaf, including, but not limited to, cigarettes, cigars, pipe tobacco,~~
19 ~~snuff, chewing tobacco, dipping tobacco, bidis, or any other~~
20 ~~preparation of tobacco; or device as defined in subdivision (d) of~~
21 *Section 22950.5 of the Business and Professions Code.*

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

24 (A) Primarily sells tobacco products.

25 (B) Generates more than 60 percent of its gross revenues
26 annually from the sale of tobacco products and tobacco
27 paraphernalia.

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

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

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

1 (B) A person who violates this section is subject to those civil
2 penalties specified in the schedule in subdivision (a) of Section
3 22958.

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

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

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

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

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

30 SEC. 4. Section 22971.7 is added to the Business and
31 Professions Code, immediately preceding Section 22972, to read:

32 22971.7. (a) For the purposes of this chapter, except as
33 provided in subdivision (b), and notwithstanding subdivision (s)
34 of Section 22971, a “tobacco product” includes a product or device
35 as defined in subdivision (d) of Section 22950.5.

36 (b) This section does not apply to subdivision (b) of Section
37 22974.3.

38 (c) This section shall be operative on October 1, 2016.

39 SEC. 5. Section 22973 of the Business and Professions Code
40 is amended to read:

1 22973. (a) An application for a license shall be filed on or
2 before April 15, 2004, on a form prescribed by the board and shall
3 include the following:

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

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

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

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

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

33 (6) The signature of the applicant.

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

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

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

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

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

15 (e) *This section shall become inoperative on October 1, 2016,*
16 *and, as of January 1, 2017, is repealed.*

17 SEC. 6. Section 22973 is added to the Business and Professions
18 Code, to read:

19 22973. (a) An application for a license shall be filed on or
20 before April 15, 2004, on a form prescribed by the board and shall
21 include the following:

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

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

30 (3) A statement by the applicant affirming that the applicant
31 has not been convicted of a felony and has not violated and will
32 not violate or cause or permit to be violated any of the provisions
33 of this division or any rule of the board applicable to the applicant
34 or pertaining to the manufacture, sale, or distribution of cigarettes
35 or tobacco products. If the applicant is unable to affirm this
36 statement, the application shall contain a statement by the applicant
37 of the nature of any violation or the reasons that will prevent the
38 applicant from complying with the requirements with respect to
39 the statement.

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

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

12 (6) The signature of the applicant.

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

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

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

22 (d) (1) A one-time license fee of one hundred dollars (\$100)
23 shall be submitted with each application to obtain a license to
24 engage in the sale of a cigarette or a tobacco product, as defined
25 in Sections 30121 and 30131.1 of the Revenue and Taxation Code.
26 An applicant that owns or controls more than one retail location
27 shall obtain a separate license for each retail location, but may
28 submit a single application for those licenses with a one-time
29 license fee of one hundred dollars (\$100) per location.

30 (2) A one-time license fee in an amount determined by the State
31 Board of Equalization shall be submitted with each application to
32 obtain a license to engage in the sale of a tobacco product, as
33 defined in subdivision (d) of Section 22950.5, that is not subject
34 to a tax imposed by the Cigarette and Tobacco Products Tax Law
35 pursuant to Part 13 (commencing with Section 30001) of Division
36 2 of the Revenue and Taxation Code. The fee collected pursuant
37 to this paragraph shall not exceed the total cost associated with
38 the administration and enforcement of the license.

39 (3) The one-time fee required by paragraph (1) of this
40 subdivision does not apply to an application for renewal of a license

1 for a retail location for which the one-time license fee has already
2 been paid. If a license is reinstated after its expiration, the retailer,
3 as a condition precedent to its reinstatement, shall pay a
4 reinstatement fee of one hundred dollars (\$100).

5 (e) This section shall be operative on October 1, 2016.

6 SEC. 7. Section 22980.2 of the Business and Professions Code
7 is amended to read:

8 22980.2. (a) A person or entity that engages in the business
9 of selling cigarettes or tobacco products in this state either without
10 a valid license or after a license has been suspended or revoked,
11 and each officer of any corporation that so engages in this business,
12 is guilty of a misdemeanor punishable as provided in Section
13 22981.

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

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

28 (d) *This section shall become inoperative on October 1, 2016,*
29 *and, as of January 1, 2017, is repealed.*

30 SEC. 8. Section 22980.2 is added to the Business and
31 Professions Code, to read:

32 22980.2. (a) A person or entity that engages in the business
33 of selling cigarettes or tobacco products in this state either without
34 a valid license or after a license has been suspended or revoked,
35 and each officer of any corporation that so engages in this business,
36 is guilty of a misdemeanor punishable as provided in Section
37 22981.

38 (b) Each day after notification by the board or by a law
39 enforcement agency that a manufacturer, wholesaler, distributor,
40 importer, retailer, or any other person required to be licensed under

1 this division offers cigarette and tobacco products for sale or
2 exchange without a valid license for the location from which they
3 are offered for sale shall constitute a separate violation.

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

12 (d) For the purposes of this section, notwithstanding subdivision
13 (s) of Section 22971, “tobacco products” includes a product or
14 device as defined in subdivision (d) of Section 22950.5.

15 (e) This section shall be operative on October 1, 2016.

16 SEC. 9. Section 1947.5 of the Civil Code is amended to read:

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

24 (b) (1) Every lease or rental agreement entered into on or after
25 January 1, 2012, for a residential dwelling unit on property on any
26 portion of which the landlord has prohibited the smoking of
27 cigarettes or other tobacco products pursuant to this article shall
28 include a provision that specifies the areas on the property where
29 smoking is prohibited, if the lessee has not previously occupied
30 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 in any portion of the property in which smoking
34 was previously permitted shall constitute a change of the terms of
35 tenancy, requiring adequate notice in writing, to be provided in
36 the manner prescribed in Section 827.

37 (c) A landlord who exercises the authority provided in
38 subdivision (a) to prohibit smoking shall be subject to federal,
39 state, and local requirements governing changes to the terms of a
40 lease or rental agreement for tenants with leases or rental

1 agreements that are in existence at the time that the policy limiting
2 or prohibiting smoking is adopted.

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

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

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

15 (g) *For purposes of this section, “tobacco product” means a*
16 *product or device as defined in subdivision (d) of Section 22950.5*
17 *of the Business and Professions Code.*

18 SEC. 10. Section 48901 of the Education Code is amended to
19 read:

20 48901. (a) No school shall permit the smoking or use of
21 ~~tobacco, or any product containing a tobacco or nicotine products,~~
22 *product* by pupils of the school while the pupils are on campus,
23 or while attending school-sponsored activities or while under the
24 supervision and 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.

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

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

34 SEC. 11. Section 7597 of the Government Code is amended
35 to read:

36 7597. (a) No public employee or member of the public shall
37 smoke ~~any~~ a tobacco product inside a public building, or in an
38 outdoor area within 20 feet of a main exit, entrance, or operable
39 window of a public building, or in a passenger vehicle, as defined
40 by Section 465 of the Vehicle Code, owned by the state.

1 (b) This section shall not preempt the authority of any county,
2 city, city and county, California Community College campus,
3 campus of the California State University, or campus of the
4 University of California to adopt and enforce additional smoking
5 and tobacco control ordinances, regulations, or policies that are
6 more restrictive than the applicable standards required by this
7 chapter.

8 (c) *For purposes of this section, “smoke” and “smoking” have*
9 *the meaning of the definition in subdivision (c) of Section 22950.5*
10 *of the Business and Professions Code.*

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

14 SEC. 12. Section 1234 of the Health and Safety Code is
15 amended to read:

16 1234. (a) Smoking *a tobacco product* shall not be permitted
17 in patient areas of a clinic except those rooms designated for
18 occupancy exclusively by smokers.

19 (b) Clearly legible signs shall either:

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

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

26 If “smoking permitted” signs are posted, there shall also be
27 conspicuously posted, near all major entrances, clearly legible
28 signs stating that smoking is unlawful except in areas designated
29 “smoking permitted.”

30 (c) This section shall not apply to skilled nursing facilities,
31 intermediate care facilities, and intermediate care facilities for the
32 developmentally disabled.

33 (d) *For purposes of this section, “smoking” has the meaning*
34 *of the definition in subdivision (c) of Section 22950.5 of the*
35 *Business and Professions Code.*

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

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

1 1286. (a) Smoking *a tobacco product* shall be prohibited in
 2 patient care areas, waiting rooms, and visiting rooms of a health
 3 facility, except those areas specifically designated as smoking
 4 areas, and in patient rooms as specified in subdivision (b).

5 (b) Smoking *a tobacco product* shall not be permitted in a
 6 patient room unless all persons assigned to ~~such~~ *the* room have
 7 requested a room where smoking is permitted. In the event that
 8 the health facility occupancy has reached capacity, the health
 9 facility shall have reasonable time to reassign patients to
 10 appropriate rooms.

11 (c) Clearly legible signs shall either:

12 (1) State that smoking is unlawful and be conspicuously posted
 13 by, or on behalf of, the owner or manager of ~~such~~ *the* health
 14 facility, in all areas of a health facility where smoking is unlawful,
 15 or

16 (2) Identify “smoking permitted” areas, and be posted by, or
 17 on behalf of, the owner or manager of ~~such~~ *the* health facility, only
 18 in areas of the health facility where smoking is lawfully permitted.

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

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

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

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

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

34 SEC. 14. Section 1530.7 of the Health and Safety Code is
 35 amended to read:

36 1530.7. (a) Group homes, foster family agencies, small family
 37 homes, transitional housing placement providers, and crisis
 38 nurseries licensed pursuant to this chapter shall maintain a
 39 smoke-free environment in the facility.

1 (b) A person who is licensed or certified pursuant to this chapter
2 to provide residential care in a foster family home or certified
3 family home shall not smoke *a tobacco product* or permit any
4 other person to smoke *a tobacco product* inside the facility, and,
5 when the child is present, on the outdoor grounds of the facility.

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

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

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

15 SEC. 15. Section 1596.795 of the Health and Safety Code is
16 amended to read:

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

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

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

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

32 SEC. 16. Section 104495 of the Health and Safety Code is
33 amended to read:

34 104495. (a) For the purposes of this section, the following
35 definitions shall govern:

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

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

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

8 (4) ~~“Smoke or smoking” means “Smoke” and “smoking” have~~
9 ~~the carrying meaning of a lighted pipe, lighted cigar, or lighted~~
10 ~~cigarette of any kind, or the lighting definition in subdivision (c)~~
11 ~~of a pipe, cigar, or cigarette Section 22950.5 of any kind, including,~~
12 ~~but not limited to, tobacco, or any other weed or plant. the Business~~
13 ~~and Professions Code.~~

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

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

16 (7) *“Tobacco product” means a product or device as defined*
17 *in subdivision (d) of Section 22950.5 of the Business and*
18 *Professions Code.*

19 (b) No person shall smoke a cigarette, cigar, or other
20 ~~tobacco-related~~ tobacco product within 25 feet of any playground
21 or tot lot sandbox area.

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

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

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

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

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

39 (h) This section shall not preempt the authority of any county,
40 city, or city and county to regulate smoking around playgrounds

1 or tot lot sandbox areas. Any county, city, or city and county may
2 enforce any ordinance adopted prior to January 1, 2002, or may
3 adopt and enforce new regulations that are more restrictive than
4 this section, on and after January 1, 2002.

5 SEC. 17. Section 114332.3 of the Health and Safety Code is
6 amended to read:

7 114332.3. (a) No potentially hazardous food or beverage stored
8 or prepared in a private home may be offered for sale, sold, or
9 given away from a nonprofit charitable temporary food facility.
10 Potentially hazardous food shall be prepared in a food
11 establishment or on the premises of a nonprofit charitable
12 temporary food facility.

13 (b) All food and ~~beverage~~ *beverages* shall be protected at all
14 times from unnecessary handling and shall be stored, displayed,
15 and served so as to be protected from contamination.

16 (c) Potentially hazardous food and ~~beverage~~ *beverages* shall be
17 maintained at or below 7 degrees Celsius (45 degrees Fahrenheit)
18 or at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all
19 times.

20 (d) Ice used in beverages shall be protected from contamination
21 and shall be maintained separate from ice used for refrigeration
22 purposes.

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

25 (f) Smoking *a tobacco product* is prohibited in nonprofit
26 charitable temporary food facilities.

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

30 (2) Paragraph (1) does not prohibit the presence, in any room
31 where food is served to the public, guests, or patrons, of a guide
32 dog, signal dog, or service dog, as defined by Section 54.1 of the
33 Civil Code, accompanied by a totally or partially blind person,
34 deaf person, person whose hearing is impaired, or handicapped
35 person, or dogs accompanied by persons licensed to train guide
36 dogs for the blind pursuant to Chapter 9.5 (commencing with
37 Section 7200) of Division 3 of the Business and Professions Code.

38 (3) Paragraph (1) does not apply to dogs under the control of
39 uniformed law enforcement officers or of uniformed employees
40 of private patrol operators and operators of a private patrol service

1 who are licensed pursuant to Chapter 11.5 (commencing with
2 Section 7580) of Division 3 of the Business and Professions Code,
3 while these employees are acting within the course and scope of
4 their employment as private patrol persons.

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

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

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

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

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

18 (k) *For purposes of this section, “tobacco product” means a*
19 *product or device as defined in subdivision (d) of Section 22950.5*
20 *of the Business and Professions Code.*

21 SEC. 18. 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°F~~ *45 degrees Fahrenheit* and shall be disposed of
20 within 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~~ *tobacco* products shall not be permitted within 25 feet of
11 the common commerce area comprised of sales personnel and
12 shopping customers of the certified farmers' market.

13 (g) Notwithstanding Chapter 10 (commencing with Section
14 114294) vendors selling food adjacent to, and under the jurisdiction
15 and management of, a certified farmers' market may store, display,
16 and sell from a table or display fixture apart from the mobile
17 facility in a manner approved by the enforcement agency.

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

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

37 (j) *For purposes of this section, "smoking" has the meaning of*
38 *the definition in subdivision (c) of Section 22950.5 of the Business*
39 *and Professions Code.*

1 (k) For purposes of this section, “tobacco product” means a
2 product or device as defined in subdivision (d) of Section 22950.5
3 of the Business and Professions Code.

4 SEC. 19. Section 118910 of the Health and Safety Code is
5 amended to read:

6 118910. (a) The Legislature declares its intent not to preempt
7 the field of regulation of the smoking of ~~tobacco~~ tobacco products.
8 A local governing body may ban completely the smoking of
9 ~~tobacco~~ tobacco products, or may regulate smoking of tobacco
10 products in any manner not inconsistent with this article and Article
11 3 (commencing with Section 118920) or any other provision of
12 state law.

13 (b) For purposes of this section, “smoking” has the meaning
14 of the definition in subdivision (c) of Section 22950.5 of the
15 Business and Professions Code.

16 (c) For purposes of this section, “tobacco product” means a
17 product or device as defined in subdivision (d) of Section 22950.5
18 of the Business and Professions Code.

19 SEC. 20. Section 118925 of the Health and Safety Code is
20 amended to read:

21 118925. (a) (1) It is unlawful for any person to smoke a
22 tobacco product in any vehicle of a passenger stage corporation,
23 the National Railroad Passenger Corporation (Amtrak) except to
24 the extent permitted by federal law, in any aircraft except to the
25 extent permitted by federal law, on a public transportation system,
26 as defined by Section 99211 of the Public Utilities Code, or in any
27 vehicle of an entity receiving any transit assistance from the state.

28 (2) (A) For purposes of this subdivision, “smoke” has the
29 meaning of the definition in subdivision (c) of Section 22950.5 of
30 the Business and Professions Code.

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

34 (b) It is unlawful for any person to smoke ~~tobacco~~ or any other
35 plant product other than a tobacco product in any vehicle of a
36 passenger stage corporation, the National Railroad Passenger
37 Corporation (Amtrak) except to the extent permitted by federal
38 law, in any aircraft except to the extent permitted by federal law,
39 on a public transportation system, as defined by Section 99211 of

1 the Public Utilities Code, or in any vehicle of an entity receiving
2 any transit assistance from the state.

3 SEC. 21. Section 118948 of the Health and Safety Code is
4 amended to read:

5 118948. (a) It is unlawful for a person to smoke a pipe, cigar,
6 ~~or cigarette~~ *tobacco product* in a motor vehicle, whether in motion
7 or at rest, in which there is a minor.

8 (b) *For purposes of this section, “smoke” has the meaning of*
9 *the definition in subdivision (c) of Section 22950.5 of the Business*
10 *and Professions Code.*

11 (b)
12 (c) ~~For the purposes of this section, “to smoke” “tobacco~~
13 ~~product” means to have in one’s immediate possession a lighted~~
14 ~~pipe, cigar, product or cigarette containing tobacco or any other~~
15 ~~plant device as defined in subdivision (d) of Section 22950.5 of~~
16 ~~the Business and Professions Code.~~

17 (e)
18 (d) A violation of this section is an infraction punishable by a
19 fine not exceeding one hundred dollars (\$100) for each violation.

20 SEC. 22. Section 119405 of the Health and Safety Code is
21 repealed.

22 ~~119405. (a) To the extent not preempted by federal law,~~
23 ~~including, but not limited to, the regulation of electronic cigarettes~~
24 ~~by the United States Food and Drug Administration, it shall be~~
25 ~~unlawful for a person to sell or otherwise furnish an electronic~~
26 ~~cigarette, as defined in subdivision (b), to a person under 18 years~~
27 ~~of age.~~

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

30 (c) ~~A violation of this section shall be an infraction punishable~~
31 ~~by a fine not exceeding two hundred dollars (\$200) for the first~~
32 ~~violation, by a fine not exceeding five hundred dollars (\$500) for~~
33 ~~the second violation, or by a fine not exceeding one thousand~~
34 ~~dollars (\$1,000) for a third or subsequent violation.~~

35 (d) ~~Nothing in this section nor any other law shall be construed~~
36 ~~to invalidate an existing ordinance of, or prohibit the adoption of~~
37 ~~an ordinance by, a city or county that regulates the distribution of~~
38 ~~electronic cigarettes in a manner that is more restrictive than this~~
39 ~~section, to the extent that the ordinance is not otherwise prohibited~~
40 ~~by federal law.~~

1 SEC. 23. Section 119406 is added to the Health and Safety
2 Code, to read:

3 119406. (a) Commencing October 1, 2016, all cartridges for
4 electronic cigarettes and solutions for filling or refilling an
5 electronic cigarette shall be in childproof packaging.

6 (b) “Child-resistant packaging” means packaging that meets
7 the specifications in Section 1700.15 (b) of, and is tested by the
8 method described in Section 1700.20 of, Title 16 of the Code of
9 Federal Regulations.

10 SEC. 24. Section 6404.5 of the Labor Code is amended to read:

11 6404.5. (a) The Legislature finds and declares that regulation
12 of smoking in the workplace is a matter of statewide interest and
13 concern. It is the intent of the Legislature in enacting this section
14 to prohibit the smoking of tobacco products in all (100 percent of)
15 enclosed places of employment in this state, as covered by this
16 section, thereby eliminating the need of local governments to enact
17 workplace smoking restrictions within their respective jurisdictions.
18 It is further the intent of the Legislature to create a uniform
19 statewide standard to restrict and prohibit the smoking of tobacco
20 products in enclosed places of employment, as specified in this
21 section, in order to reduce employee exposure to environmental
22 tobacco smoke to a level that will prevent anything other than
23 insignificantly harmful effects to exposed employees, and also to
24 eliminate the confusion and hardship that can result from enactment
25 or enforcement of disparate local workplace smoking restrictions.
26 Notwithstanding any other provision of this section, it is the intent
27 of the Legislature that any area not defined as a “place of
28 employment” pursuant to subdivision (d) or in which the smoking
29 of tobacco products is not regulated pursuant to subdivision (e)
30 shall be subject to local regulation of smoking of tobacco products.

31 (b) No employer shall knowingly or intentionally permit, and
32 no person shall engage in, the smoking of tobacco products in an
33 enclosed space at a place of employment. “Enclosed space”
34 includes lobbies, lounges, waiting areas, elevators, stairwells, and
35 restrooms that are a structural part of the building and not
36 specifically defined in subdivision (d).

37 (c) For purposes of this section, an employer who permits any
38 nonemployee access to his or her place of employment on a regular
39 basis has not acted knowingly or intentionally in violation of this

1 section if he or she has taken the following reasonable steps to
2 prevent smoking by a nonemployee:

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

4 (A) Where smoking is prohibited throughout the building or
5 structure, a sign stating “No smoking” shall be posted at each
6 entrance to the building or structure.

7 (B) Where smoking is permitted in designated areas of the
8 building or structure, a sign stating “Smoking is prohibited except
9 in designated areas” shall be posted at each entrance to the building
10 or structure.

11 (2) Has requested, when appropriate, that a nonemployee who
12 is smoking refrain from smoking in the enclosed workplace.

13 For purposes of this subdivision, “reasonable steps” does not
14 include (A) the physical ejection of a nonemployee from the place
15 of employment or (B) any requirement for making a request to a
16 nonemployee to refrain from smoking, under circumstances
17 involving a risk of physical harm to the employer or any employee.

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

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

22 (2) Areas of the lobby in a hotel, motel, or other similar transient
23 lodging establishment designated for smoking by the establishment.
24 An establishment may permit smoking in a designated lobby area
25 that does not exceed 25 percent of the total floor area of the lobby
26 or, if the total area of the lobby is 2,000 square feet or less, that
27 does not exceed 50 percent of the total floor area of the lobby. For
28 purposes of this paragraph, “lobby” means the common public
29 area of an establishment in which registration and other similar or
30 related transactions, or both, are conducted and in which the
31 establishment’s guests and members of the public typically
32 congregate.

33 (3) Meeting and banquet rooms in a hotel, motel, other transient
34 lodging establishment similar to a hotel or motel, restaurant, or
35 public convention center, except while food or beverage functions
36 are taking place, including setup, service, and cleanup activities,
37 or when the room is being used for exhibit purposes. At times
38 when smoking is not permitted in a meeting or banquet room
39 pursuant to this paragraph, the establishment may permit smoking
40 in corridors and prefunction areas adjacent to and serving the

1 meeting or banquet room if no employee is stationed in that
2 corridor or area on other than a passing basis.

3 (4) Retail or wholesale tobacco shops and private smokers'
4 lounges. For purposes of this paragraph:

5 (A) "Private smokers' lounge" means any enclosed area in or
6 attached to a retail or wholesale tobacco shop that is dedicated to
7 the use of tobacco products, including, but not limited to, cigars
8 and pipes.

9 (B) "Retail or wholesale tobacco shop" means any business
10 establishment the main purpose of which is the sale of tobacco
11 products, including, but not limited to, cigars, pipe tobacco, and
12 smoking accessories.

13 (5) Cabs of motortrucks, as defined in Section 410 of the Vehicle
14 Code, or truck tractors, as defined in Section 655 of the Vehicle
15 Code, if no nonsmoking employees are present.

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

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

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

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

- 1 (10) Medical research or treatment sites, if smoking is integral
- 2 to the research and treatment being conducted.
- 3 (11) Private residences, except for private residences licensed
- 4 as family day care homes, where smoking is prohibited pursuant
- 5 to Section 1596.795 of the Health and Safety Code.
- 6 (12) Patient smoking areas in long-term health care facilities,
- 7 as defined in Section 1418 of the Health and Safety Code.
- 8 (13) Breakrooms designated by employers for smoking, provided
- 9 that all of the following conditions are met:
- 10 (A) Air from the smoking room shall be exhausted directly to
- 11 the outside by an exhaust fan. Air from the smoking room shall
- 12 not be recirculated to other parts of the building.
- 13 (B) The employer shall comply with any ventilation standard
- 14 or other standard utilizing appropriate technology, including, but
- 15 not limited to, mechanical, electronic, and biotechnical systems,
- 16 adopted by the Occupational Safety and Health Standards Board
- 17 or the federal Environmental Protection Agency. If both adopt
- 18 inconsistent standards, the ventilation standards of the Occupational
- 19 Safety and Health Standards Board shall be no less stringent than
- 20 the standards adopted by the federal Environmental Protection
- 21 Agency.
- 22 (C) The smoking room shall be located in a nonwork area where
- 23 no one, as part of his or her work responsibilities, is required to
- 24 enter. For purposes of this subparagraph, “work responsibilities”
- 25 does not include any custodial or maintenance work carried out in
- 26 the breakroom when it is unoccupied.
- 27 (D) There are sufficient nonsmoking breakrooms to
- 28 accommodate nonsmokers.
- 29 (14) Employers with a total of five or fewer employees, either
- 30 full time or part time, may permit smoking where all of the
- 31 following conditions are met:
- 32 (A) The smoking area is not accessible to minors.
- 33 (B) All employees who enter the smoking area consent to permit
- 34 smoking. No one, as part of his or her work responsibilities, shall
- 35 be required to work in an area where smoking is permitted. An
- 36 employer who is determined by the division to have used coercion
- 37 to obtain consent or who has required an employee to work in the
- 38 smoking area shall be subject to the penalty provisions of Section
- 39 6427.

1 (C) Air from the smoking area shall be exhausted directly to
2 the outside by an exhaust fan. Air from the smoking area shall not
3 be recirculated to other parts of the building.

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

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

19 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
20 construed to require employers to provide reasonable
21 accommodation to smokers, or to provide breakrooms for smokers
22 or nonsmokers.

23 (f) (1) Except as otherwise provided in this subdivision,
24 smoking may be permitted in gaming clubs, as defined in paragraph
25 (7) of subdivision (d), and in bars and taverns, as defined in
26 paragraph (8) of subdivision (d), until the earlier of the following:

27 (A) January 1, 1998.

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

37 (2) If a regulation specified in subparagraph (B) of paragraph
38 (1) is adopted on or before January 1, 1998, smoking may thereafter
39 be permitted in gaming clubs and in bars and taverns, subject to
40 full compliance with, or conformity to, the standard in the

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

12 (3) If a regulation specified in subparagraph (B) of paragraph
 13 (1) is not adopted on or before January 1, 1998, the exemptions
 14 specified in paragraphs (7) and (8) of subdivision (d) shall become
 15 inoperative on and after January 1, 1998, until a regulation is
 16 adopted. Upon adoption of such a regulation on or after January
 17 1, 1998, smoking may thereafter be permitted in gaming clubs and
 18 in bars and taverns, subject to full compliance with, or conformity
 19 to, the standard in the regulation within two years following the
 20 date of adoption of the regulation. An employer failing to achieve
 21 compliance with, or conformity to, the regulation within this
 22 two-year period shall prohibit smoking in the gaming club, bar,
 23 or tavern until compliance or conformity is achieved. If the
 24 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 prohibition set forth in this section shall
2 constitute a uniform statewide standard for regulating the smoking
3 of tobacco products in enclosed places of employment and shall
4 supersede and render unnecessary the local enactment or
5 enforcement of local ordinances regulating the smoking of tobacco
6 products in enclosed places of employment. Insofar as the smoking
7 prohibition set forth in this section is applicable to all ~~(100-percent)~~
8 *100 percent* places of employment within this state and, therefore,
9 provides the maximum degree of coverage, the practical effect of
10 this section is to eliminate the need of local governments to enact
11 enclosed workplace smoking restrictions within their respective
12 jurisdictions.

13 (h) Nothing in this section shall prohibit an employer from
14 prohibiting smoking *of tobacco products* in an enclosed place of
15 employment for any reason.

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

32 (j) Any violation of the prohibition set forth in subdivision (b)
33 is an infraction, punishable by a fine not to exceed one hundred
34 dollars (\$100) for a first violation, two hundred dollars (\$200) for
35 a second violation within one year, and five hundred dollars (\$500)
36 for a third and for each subsequent violation within one year. This
37 subdivision shall be enforced by local law enforcement agencies,
38 including, but not limited to, local health departments, as
39 determined by the local governing body.

1 (k) Notwithstanding Section 6309, the division shall not be
 2 required to respond to any complaint regarding the smoking of
 3 tobacco products in an enclosed space at a place of employment,
 4 unless the employer has been found guilty pursuant to subdivision
 5 (j) of a third violation of subdivision (b) within the previous year.

6 (l) If any provision of this act or the application thereof to any
 7 person or circumstances is held invalid, that invalidity shall not
 8 affect other provisions or applications of the act that can be given
 9 effect without the invalid provision or application, and to this end
 10 the provisions of this act are severable.

11 (m) For purposes of this section, “smoking” has the meaning
 12 of the definition in subdivision (c) of Section 22950.5 of the
 13 Business and Professions Code.

14 (n) For purposes of this section, “tobacco product” means a
 15 product or device as defined in subdivision (d) of Section 22950.5
 16 of the Business and Professions Code.

17 SEC. 25. 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 ~~the age of 18 years of~~
 22 ~~age~~ any tobacco, cigarette, or cigarette papers, or ~~blunts~~ *blunt*
 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,~~ *tobacco products*, or
 26 any controlled substance, is subject to either a criminal action for
 27 a misdemeanor or to a civil action brought by a city attorney, a
 28 county counsel, or a district attorney, punishable by a fine of two
 29 hundred dollars (\$200) for the first offense, five hundred dollars
 30 (\$500) for the second offense, and one thousand dollars (\$1,000)
 31 for the third 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 minors by a tobacco vending
13 machine shall be the person authorizing the installation or
14 placement of the tobacco vending machine upon premises he or
15 she manages or otherwise controls and under circumstances in
16 which he or she has knowledge, or should otherwise have grounds
17 for knowledge, that the tobacco vending machine will be utilized
18 by minors.

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 the age of~~ 18 years *of age* who
24 purchases, receives, or possesses any tobacco, 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;~~ *tobacco products*, or any
28 controlled substance shall, upon conviction, be punished by a fine
29 of seventy-five dollars (\$75) or 30 hours of community service
30 work.

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

1 offense and each subsequent violation of this provision, or by
2 imprisonment in a 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 18 years
9 of age who purchases, receives, or possesses any tobacco, cigarette,
10 or cigarette papers, or any other preparation of tobacco, any other
11 instrument or paraphernalia that is designed for the smoking of
12 tobacco, or *tobacco* products ~~prepared from tobacco~~ is immune
13 from prosecution for that purchase, receipt, or possession while
14 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 (g) *For purposes of this section, "smoking" has the meaning*
26 *of the definition in subdivision (c) of Section 22950.5 of the*
27 *Business and Professions Code.*

28 (h) *For purposes of this section, "tobacco product" means a*
29 *product or device as defined in subdivision (d) of Section 22950.5*
30 *of the Business and Professions Code.*

31 SEC. 26. Section 561 of the Public Utilities Code is amended
32 to read:

33 561. (a) Every railroad corporation, passenger stage
34 corporation, passenger air carrier, and street railroad corporation
35 providing departures originating in this state shall prohibit the
36 smoking of ~~any~~ a tobacco product in the passenger seating area of
37 every passenger car, passenger stage, aircraft, or other vehicle.

38 (b) Every such corporation and carrier shall display in the
39 passenger seating area of every passenger car, passenger stage,
40 aircraft, or other vehicle, notices sufficient in number, posted in

1 such locations as to be readily seen by boarding passengers,
2 advising passengers of the no smoking requirements pursuant to
3 subdivision (a). Words on such notices which state “No Smoking”
4 or an equivalent phrase shall be at least three-quarters of one inch
5 high, and any other explanatory words on the notices shall be at
6 least one-quarter of ~~an~~ one inch high.

7 (c) No person shall smoke ~~any~~ a tobacco product in a space
8 known by him or her to be designated for nonsmoking passengers.
9 A violation of this 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 (e) *For purposes of this section, “smoke” and “smoking” have*
13 *the meaning of the definition in subdivision (c) of Section 22950.5*
14 *of the Business and Professions Code.*

15 (f) *For purposes of this section, “tobacco product” means a*
16 *product or device as defined in subdivision (d) of Section 22950.5*
17 *of the Business and Professions Code.*

18 SEC. 27. Section 99580 of the Public Utilities Code is amended
19 to read:

20 99580. (a) Pursuant to subdivision (e) of Section 640 of the
21 Penal Code, a public transportation agency may enact and enforce
22 an ordinance to impose and enforce an administrative penalty for
23 any of the acts described in subdivision (b). The ordinance shall
24 include the provisions of this chapter and shall not apply to minors.

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

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

28 (3) Playing sound equipment on or in a system facility or
29 vehicle.

30 (4) ~~Smoking,~~ *Smoking a tobacco product,* eating, or drinking
31 in or on a system facility or vehicle in those areas where those
32 activities are prohibited by that system.

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

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

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

38 (8) Urinating or defecating in a system facility or vehicle, except
39 in a lavatory. However, this paragraph shall not apply to a person

1 who cannot comply with this paragraph as a result of a disability,
2 age, or a medical condition.

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

5 (B) This paragraph shall not be interpreted to affect any lawful
6 activities permitted or first amendment rights protected under the
7 laws of this state or applicable federal law, including, but not
8 limited to, laws related to collective bargaining, labor relations,
9 or labor disputes.

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

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

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

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

37 (c) (1) The public transportation agency may contract with a
38 private vendor or governmental agency for the processing of notices
39 of fare evasion or passenger conduct violation, and notices of

1 delinquent fare evasion or passenger conduct violation pursuant
2 to Section 99581.

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

5 (A) The agency issuing the notice of fare evasion or passenger
6 conduct violation and the notice of delinquent fare evasion or
7 passenger conduct violation.

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

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

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

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

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

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

1 (3) If, after a notice of fare evasion or passenger conduct
2 violation is issued pursuant to this section, the issuing officer
3 determines that there is incorrect data on the notice, including, but
4 not limited to, the date or time, the issuing officer may indicate in
5 writing on a form attached to the original notice the necessary
6 correction to allow for the timely entry of the corrected notice on
7 the processing agency’s data system. A copy of the correction shall
8 be mailed to the address provided by the person cited at the time
9 the original notice of fare evasion or passenger conduct violation
10 was served.

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

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

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

21 (g) If an entity enacts an ordinance pursuant to this section it
22 shall, both two years and five years after enactment of the
23 ordinance, report all of the following information to the Senate
24 Committee on Transportation and Housing and the Assembly
25 Committee on Transportation:

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

29 (2) The amount of the administrative penalties.

30 (3) The number and types of citations administered pursuant to
31 the ordinance.

32 (4) To the extent available, a comparison of the number and
33 types of citations administered pursuant to the ordinance with the
34 number and types of citations issued for similar offenses and
35 administered through the courts both in the two years prior to the
36 ordinance and, if any, since enactment of the ordinance.

37 (5) A discussion of the effect of the ordinance on passenger
38 behavior.

39 (6) A discussion of the effect of the ordinance on revenues to
40 the entity described in subdivision (a) and, in consultation with

1 the superior courts, the cost savings to the county courts. The
2 superior courts are encouraged to collaborate on and provide data
3 for this report.

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

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

10 SEC. 28. Section 12523 of the Vehicle Code is amended to
11 read:

12 12523. (a) No person shall operate a youth bus without having
13 in possession a valid driver’s license of the appropriate class,
14 endorsed for passenger transportation and a certificate issued by
15 the department to permit the operation of a youth bus.

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

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

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

- 39 (1) Use seat belts.
40 (2) Refrain from ~~smoking~~ *smoking tobacco products*.

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

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

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

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

14 SEC. 29. This act does not affect any laws or regulations
15 regarding medical cannabis.

16 SEC. 30. No reimbursement is required by this act pursuant
17 to 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.

O