

SENATE BILL

No. 7

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

July 16, 2015

An act to amend Sections 17537.3, 22951, 22952, 22956, 22958, and 22963 of, and to add Section 22964 to, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 7, as introduced, Hernandez. Tobacco products: minimum legal age.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, establishes various requirements for distributors and retailers relating to tobacco sales to minors. Existing law prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, a person under 18 years of age. Under existing law, a person is prohibited from making various promotional or advertising offers of smokeless tobacco products without taking actions to ensure that the product is not available to persons under 18 years of age. Existing law also requires the State Department of Public Health to conduct random, onsite sting inspections of tobacco product retailers with the assistance of persons under 18 years of age.

This bill would extend the applicability of those provisions to persons under 21 years of age. The bill would authorize the State Department of Public Health to conduct random, onsite sting inspections of tobacco product retailers with the assistance of persons under 21 years of age.

The bill would also provide that the STAKE Act does not invalidate existing local government ordinances or prohibit the adoption of local

government ordinances requiring a more restrictive legal age to purchase or possess tobacco products.

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

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

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

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

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

1 SECTION 1. Section 17537.3 of the Business and Professions
2 Code is amended to read:

3 17537.3. The following acts are prohibited:

4 (a) For ~~any~~ a person to offer as part of an advertising plan or
5 program, promotional offers of smokeless tobacco products which
6 require proof of purchase of a smokeless tobacco product unless
7 it carries a designation that the offer is not available to ~~minors~~
8 *persons under 21 years of age*. Each promotional offer shall include
9 in any mail-in coupon a statement requesting purchasers to verify
10 that the purchaser is ~~18~~ 21 years of age or older.

11 (b) For ~~any~~ a person to honor mail-in and telephone requests
12 for promotional offers of smokeless tobacco products unless
13 appropriate efforts are made to ascertain that a purchaser is over
14 ~~18~~ 21 years of age. For purposes of this subdivision, appropriate
15 efforts to ascertain the age of a purchaser ~~includes~~ *include*, but ~~is~~
16 *are* not limited to, requests for a purchaser's birth date.

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

24 (d) For ~~any~~ a person to distribute, as part of any advertising
25 plan or program, unsolicited samples of smokeless tobacco
26 products through a mail campaign.

1 SEC. 2. Section 22951 of the Business and Professions Code
2 is amended to read:

3 22951. The Legislature finds and declares that reducing and
4 eventually eliminating the illegal purchase and consumption of
5 tobacco products by ~~minors~~ *any person under 21 years of age* is
6 critical to ensuring the long-term health of our state’s citizens.
7 Accordingly, California must fully comply with federal regulations,
8 particularly the “Synar Amendment,” that restrict tobacco sales to
9 minors and require states to vigorously enforce their laws
10 prohibiting the sale and distribution of tobacco products to persons
11 under 18 years of age. Full compliance and vigorous enforcement
12 of the “Synar Amendment” requires the collaboration of multiple
13 state and local agencies that license, inspect, or otherwise conduct
14 business with retailers, distributors, or wholesalers that sell tobacco.

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

17 22952. ~~On or before July 1, 1995, the~~ *The* State Department
18 of Public Health shall do all of the following:

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

22 (b) Establish requirements that retailers of tobacco products
23 post conspicuously, at each point of purchase, a notice stating that
24 selling tobacco products to anyone under ~~18~~ *21* years of age is
25 illegal and subject to penalties. The notice shall also state that the
26 law requires that all persons selling tobacco products check the
27 identification of a purchaser of tobacco products who reasonably
28 appears to be under ~~18~~ *21* years of age. The warning signs shall
29 include a toll-free telephone number to the department for persons
30 to report unlawful sales of tobacco products to ~~minors~~ *any person*
31 *under 21 years of age*.

32 (c) Provide that primary responsibility for enforcement of this
33 division shall be with the department. In carrying out its
34 enforcement responsibilities, the department shall conduct random,
35 onsite sting inspections at retail sites and shall enlist the assistance
36 of persons that are ~~15 and 16~~ *under 21* years of age in conducting
37 these enforcement activities. The department may conduct onsite
38 sting inspections in response to public complaints or at retail sites
39 where violations have previously occurred, and investigate illegal
40 sales of tobacco products to ~~minors~~ *any person under 21 years of*

1 *age* by telephone, mail, or the Internet. Participation in these
2 enforcement activities by a person under ~~18~~ 21 years of age does
3 not constitute a violation of subdivision (b) of Section 308 of the
4 Penal Code for the person under ~~18~~ 21 years of age, and the person
5 under ~~18~~ 21 years of age is immune from prosecution thereunder,
6 or under any other ~~provision~~ of law prohibiting the purchase of
7 these products by a person under ~~18~~ 21 years of age.

8 (d) In accordance with Chapter 3.5 (commencing with Section
9 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
10 the department shall adopt and publish guidelines for the use of
11 persons under ~~18~~ 21 years of age in inspections conducted pursuant
12 to subdivision (c) that shall include, but not be limited to, all of
13 the following:

14 (1) An enforcing agency may use persons under ~~18~~ years of age
15 ~~who are 15 or 16~~ 21 years of age in random inspections to
16 determine if sales of cigarettes or other tobacco products are being
17 made to persons under ~~18~~ 21 years of age.

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

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

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

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

34 (6) All persons under ~~18~~ 21 years of age used in this manner by
35 an enforcing agency shall display the appearance of a person under
36 ~~18~~ 21 years of age. It shall be a defense to an action under this
37 division that the person's appearance was not that which could be
38 generally expected of a person under ~~18~~ 21 years of age, under the
39 actual circumstances presented to the seller of the cigarettes or
40 other tobacco products at the time of the alleged offense.

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

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

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

15 (f) Provide that any civil penalties imposed pursuant to Section
16 22958 shall be enforced against the owner or owners of the retail
17 business and not the employees of the business.

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

20 22956. All persons engaging in the retail sale of tobacco
21 products shall check the identification of tobacco purchasers, to
22 establish the age of the purchaser, if the purchaser reasonably
23 appears to be under ~~18~~ 21 years of age.

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

26 22958. (a) An enforcing agency may assess civil penalties
27 against any person, firm, or corporation that sells, gives, or in any
28 way furnishes to another person who is under ~~the age of 18 years,~~
29 *21 years of age*, any tobacco, cigarette, cigarette papers, any other
30 instrument or paraphernalia that is designed for the smoking or
31 ingestion of tobacco, products prepared from tobacco, or any
32 controlled substance, according to the following schedule: (1) a
33 civil penalty of ~~from~~ four hundred dollars (\$400) to six hundred
34 dollars (\$600) for the first violation, (2) a civil penalty of ~~from~~
35 nine hundred dollars (\$900) to one thousand dollars (\$1,000) for
36 the second violation within a five-year period, (3) a civil penalty
37 of ~~from~~ one thousand two hundred dollars (\$1,200) to one thousand
38 eight hundred dollars (\$1,800) for a third violation within a
39 five-year period, (4) a civil penalty of ~~from~~ three thousand dollars
40 (\$3,000) to four thousand dollars (\$4,000) for a fourth violation

1 within a five-year period, or (5) a civil penalty of ~~from~~ five
2 thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a
3 fifth violation within a five-year period.

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

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

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

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

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

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

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

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

1 from a cigarette or tobacco products vending machine, or a person,
2 firm, or corporation that leases, furnishes, or services these
3 machines in violation of Section 22960.

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

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

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

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

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

39 (i) Proceedings under this section shall be conducted pursuant
40 to Section 131071 of the Health and Safety Code, except in cases

1 where a civil penalty is assessed by an enforcing agency other than
2 the department, in which case proceedings shall be conducted
3 pursuant to the procedures of that agency that are consistent with
4 Section 131071 of the Health and Safety Code.

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

7 22963. (a) The sale, distribution, or nonsale distribution of
8 tobacco products directly or indirectly to any person under ~~the age~~
9 ~~of 18~~ *21 years of age* through the United States Postal Service or
10 through any other public or private postal or package delivery
11 service at locations, including, but not limited to, public mailboxes
12 and mailbox stores, is prohibited.

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

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

32 (B) If the seller, distributor, or nonsale distributor, is unable to
33 verify that the purchaser or recipient is ~~18~~ *21* years of age or older
34 pursuant to subparagraph (A), he or she shall require the customer
35 or recipient to submit an age-verification kit consisting of an
36 attestation signed by the customer or recipient that he or she is ~~18~~
37 *21* years of age or older and a copy of a valid form of government
38 identification. For the purposes of this section, a valid form of
39 government identification includes a driver's license, state
40 identification card, passport, an official naturalization or

1 immigration document, such as an alien registration receipt card
2 (commonly known as a “green card”) or an immigrant visa, or
3 military identification. In the case of a sale, the distributor or seller
4 shall also verify that the billing address on the check or credit card
5 provided by the consumer matches the address listed in the form
6 of government identification.

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

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

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

30 (c) Notwithstanding subdivisions (a) and (b), if a seller,
31 distributor, or nonsale distributor, complies with all of the
32 requirements of this section and a ~~minor~~ *person under 21 years of*
33 *age* obtains a tobacco product by any of the means described in
34 subdivision (b), the seller, distributor, or nonsale distributor is not
35 in violation of this section.

36 (d) For the purposes of the enforcement of this section pursuant
37 to Section 22958, the acts of the United States Postal Service or
38 other common carrier when engaged in the business of transporting
39 and delivering packages for others, and the acts of a person,
40 whether compensated or not, who transports or delivers a package

1 for another person without any reason to know of the package's
2 contents, are not unlawful and are not subject to civil penalties.

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

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

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

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

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

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

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

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

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

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

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

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

14 22964. This division sets forth minimum state restrictions with
15 respect to the legal age to purchase or possess tobacco products
16 and does not preempt or otherwise prohibit the adoption of a local
17 standard that imposes a more restrictive legal age to purchase or
18 possess tobacco products. A local standard that imposes a more
19 restrictive legal age to purchase or possess tobacco products shall
20 control in the event of any inconsistency between this division and
21 a local standard.

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

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

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

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

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

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

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

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

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

1 (\$100) for the second offense, two hundred fifty dollars (\$250) for
2 the third offense, and five hundred dollars (\$500) for the fourth
3 offense and each subsequent violation of this provision, or by
4 imprisonment in a county jail not exceeding 30 days.

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

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

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

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

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

27 SEC. 9. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

O