

Introduced by Senator Leno
(Principal coauthor: Senator Pan)
(Principal coauthor: Assembly Member Ting)
(Coauthor: Senator Hernandez)
(Coauthor: Assembly Member Chiu)

January 26, 2015

An act to amend Sections 22950.5, 22958, and 22962 of 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, 113978, 114332.3, 114371, 118910, 118925, 118930, 118935, and 118948 of, 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 140, 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 change the STAKE Act's definition of tobacco products to include electronic devices, such as electronic cigarettes,

that deliver nicotine and make furnishing such a tobacco product to a minor a misdemeanor.

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 new definition of tobacco products. The bill would make the use of electronic cigarettes in some of these restricted locations a violation punishable as an infraction.

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) (1) “Tobacco product” means any of the following:
- 12 (A) A product containing, made, or derived from tobacco or
- 13 nicotine that is intended for human consumption, whether smoked,
- 14 heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or
- 15 ingested by any other means, including, but not limited to,
- 16 cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or
- 17 snuff.

1 (B) *An electronic device that delivers nicotine or other*
2 *substances to the person inhaling from the device, including, but*
3 *not limited to, an electronic cigarette, cigar, pipe, or hookah.*

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

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

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

13 22958. (a) An enforcing agency may assess civil penalties
14 against any person, firm, or corporation that sells, gives, or in any
15 way furnishes to another person who is under the age of 18 years,
16 any tobacco, cigarette, cigarette papers, any other instrument or
17 paraphernalia that is designed for the smoking or ingestion of
18 tobacco, ~~products prepared from tobacco,~~ *tobacco products,* or
19 any controlled substance, according to the following schedule: (1)
20 a civil penalty of from four hundred dollars (\$400) to six hundred
21 dollars (\$600) for the first violation, (2) a civil penalty of from
22 nine hundred dollars (\$900) to one thousand dollars (\$1,000) for
23 the second violation within a five-year period, (3) a civil penalty
24 of from one thousand two hundred dollars (\$1,200) to one thousand
25 eight hundred dollars (\$1,800) for a third violation within a
26 five-year period, (4) a civil penalty of from three thousand dollars
27 (\$3,000) to four thousand dollars (\$4,000) for a fourth violation
28 within a five-year period, or (5) a civil penalty of from five
29 thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a
30 fifth violation within a five-year period.

31 (b) (1) In addition to the civil penalties described in subdivision
32 (a), upon the assessment of a civil penalty for the third, fourth, or
33 fifth violation, the department, within 60 days of the date of service
34 of the final administrative adjudication on the parties or payment
35 of the civil penalty for an uncontested violation, shall notify the
36 State Board of Equalization of the violation. The State Board of
37 Equalization shall then assess a civil penalty of two hundred fifty
38 dollars (\$250) and suspend or revoke a license issued pursuant to
39 Chapter 2 (commencing with Section 22972) of Division 8.6 in
40 accordance with the following schedule:

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

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

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

7 (2) The provisions of Chapter 4 (commencing with Section
8 55121) of Part 30 of Division 2 of the Revenue and Taxation Code
9 apply with respect to the collection of the penalty imposed by the
10 State Board of Equalization pursuant to paragraph (1).

11 (c) (1) For each suspension or revocation pursuant to
12 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)
13 assessed pursuant to that subdivision, notwithstanding Section
14 22953, shall be deposited into the Cigarette and Tobacco Products
15 Compliance Fund established pursuant to Section 22990. Moneys
16 from that civil penalty deposited into this fund shall be made
17 available to the State Board of Equalization, upon appropriation
18 by the Legislature, for the purposes of meeting its duties under
19 subdivision (b).

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

25 (d) The enforcing agency shall assess penalties pursuant to the
26 schedule set forth in subdivision (a) against a person, firm, or
27 corporation that sells, offers for sale, or distributes tobacco products
28 from a cigarette or tobacco products vending machine, or a person,
29 firm, or corporation that leases, furnishes, or services these
30 machines in violation of Section 22960.

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

39 (f) An enforcing agency shall assess penalties in accordance
40 with the schedule set forth in subdivision (a) against a person, firm,

1 or corporation that advertises or causes to be advertised a tobacco
2 product on an outdoor billboard in violation of Section 22961.

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

14 (h) (1) In the case of a corporation or business with more than
15 one retail location, to determine the number of accumulated
16 violations for purposes of the penalty schedule set forth in
17 subdivision (a), violations of this division by one retail location
18 shall not be accumulated against other retail locations of that same
19 corporation or business.

20 (2) In the case of a retail location that operates pursuant to a
21 franchise as defined in Section 20001, violations of this division
22 accumulated and assessed against a prior owner of a single
23 franchise location shall not be accumulated against a new owner
24 of the same single franchise location for purposes of the penalty
25 schedule set forth in subdivision (a).

26 (i) Proceedings under this section shall be conducted pursuant
27 to Section 131071 of the Health and Safety Code, except in cases
28 where a civil penalty is assessed by an enforcing agency other than
29 the department, in which case proceedings shall be conducted
30 pursuant to the procedures of that agency that are consistent with
31 Section 131071 of the Health and Safety Code.

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

34 22962. (a) For purposes of this section, the following terms
35 have the following meanings:

36 (1) “Self-service display” means the open display of tobacco
37 products or tobacco paraphernalia in a manner that is accessible
38 to the general public without the assistance of the retailer or
39 employee of the retailer.

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

6 (3) “Tobacco product” means ~~any product containing tobacco~~
7 ~~leaf, including, but not limited to, cigarettes, cigars, pipe tobacco,~~
8 ~~snuff, chewing tobacco, dipping tobacco, bidis, or any other~~
9 ~~preparation of tobacco.~~ *a product or device as defined in*
10 *subdivision (c) of Section 22950.5 of the Business and Professions*
11 *Code.*

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

14 (A) Primarily sells tobacco products.

15 (B) Generates more than 60 percent of its gross revenues
16 annually from the sale of tobacco products and tobacco
17 paraphernalia.

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

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

24 (b) (1) (A) Except as permitted in subdivision (b) of Section
25 22960, it is unlawful for a person engaged in the retail sale of
26 tobacco products to sell, offer for sale, or display for sale any
27 tobacco product or tobacco paraphernalia by self-service display.
28 A person who violates this section is subject to those civil penalties
29 specified in the schedule in subdivision (a) of Section 22958.

30 (B) A person who violates this section is subject to those civil
31 penalties specified in the schedule in subdivision (a) of Section
32 22958.

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

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

1 (c) Subdivision (b) shall not apply to the display in a tobacco
2 store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping
3 tobacco, provided that in the case of cigars they are generally not
4 sold or offered for sale in a sealed package of the manufacturer or
5 importer containing less than six cigars. In any enforcement action
6 brought pursuant to this division, the retail business that displays
7 any of the items described in this subdivision in a self-service
8 display shall have the burden of proving that it qualifies for the
9 exemption established in this subdivision.

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

12 (e) This section does not preempt or otherwise prohibit the
13 adoption of a local standard that imposes greater restrictions on
14 the access to tobacco products than the restrictions imposed by
15 this section. To the extent that there is an inconsistency between
16 this section and a local standard that imposes greater restrictions
17 on the access to tobacco products, the greater restriction on the
18 access to tobacco products in the local standard shall prevail.

19 SEC. 4. Section 1947.5 of the Civil Code is amended to read:

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

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

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

1 (c) A landlord who exercises the authority provided in
2 subdivision (a) to prohibit smoking shall be subject to federal,
3 state, and local requirements governing changes to the terms of a
4 lease or rental agreement for tenants with leases or rental
5 agreements that are in existence at the time that the policy limiting
6 or prohibiting smoking is adopted.

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

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

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

19 SEC. 5. Section 48901 of the Education Code is amended to
20 read:

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

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

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

32 SEC. 6. Section 7597 of the Government Code is amended to
33 read:

34 7597. (a) No public employee or member of the public shall
35 ~~smoke any~~ *a tobacco product* inside a public building, or in an
36 outdoor area within 20 feet of a main exit, entrance, or operable
37 window of a public building, or in a passenger vehicle, as defined
38 by Section 465 of the Vehicle Code, owned by the state.

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

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

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

9 SEC. 7. Section 1234 of the Health and Safety Code is amended
10 to read:

11 1234. (a) Smoking a tobacco product shall not be permitted
12 in patient areas of a clinic except those rooms designated for
13 occupancy exclusively by smokers.

14 (b) Clearly legible signs shall either:

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

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

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

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

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

31 SEC. 8. Section 1286 of the Health and Safety Code is amended
32 to read:

33 1286. (a) Smoking a tobacco product shall be prohibited in
34 patient care areas, waiting rooms, and visiting rooms of a health
35 facility, except those areas specifically designated as smoking
36 areas, and in patient rooms as specified in subdivision (b).

37 (b) Smoking a tobacco product shall not be permitted in a
38 patient room unless all persons assigned to ~~such~~ the room have
39 requested a room where smoking is permitted. In the event that
40 the health facility occupancy has reached capacity, the health

1 facility shall have reasonable time to reassign patients to
2 appropriate rooms.

3 (c) Clearly legible signs shall either:

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

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

11 If “smoking permitted” signs are posted, there shall also be
12 conspicuously posted, near all major entrances, clearly legible
13 signs stating that smoking is unlawful except in areas designated
14 “smoking permitted.”

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

17 (e) This section shall not apply to skilled nursing facilities,
18 intermediate care facilities, and intermediate care facilities for the
19 developmentally disabled.

20 (f) *For purposes of this section, “tobacco product” means a*
21 *product or device as defined in subdivision (c) of Section 22950.5*
22 *of the Business and Professions Code.*

23 SEC. 9. Section 1530.7 of the Health and Safety Code is
24 amended to read:

25 1530.7. (a) Group homes, foster family agencies, small family
26 homes, transitional housing placement providers, and crisis
27 nurseries licensed pursuant to this chapter shall maintain a
28 smoke-free environment in the facility.

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

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

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

1 SEC. 10. Section 1596.795 of the Health and Safety Code is
2 amended to read:

3 1596.795. (a) The smoking of *a tobacco product* in a private
4 residence that is licensed as a family day care home shall be
5 prohibited in the home and in those areas of the family day care
6 home where children are present. Nothing in this section shall
7 prohibit a city or county from enacting or enforcing an ordinance
8 relating to smoking in a family day care home if the ordinance is
9 more stringent than this section.

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

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

15 SEC. 11. Section 104495 of the Health and Safety Code is
16 amended to read:

17 104495. (a) For the purposes of this section, the following
18 definitions shall govern:

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

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

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

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

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

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

36 (7) *“Tobacco product” means a product or device as defined*
37 *in subdivision (c) of Section 22950.5 of the Business and*
38 *Professions Code.*

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

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

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

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

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

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

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

27 SEC. 12. Section 113978 of the Health and Safety Code is
28 amended to read:

29 113978. (a) Food facilities shall have a “~~no-smoking~~” *smoking*
30 *tobacco products*” sign posted in the food preparation, food
31 storage, and warewashing areas.

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

35 SEC. 13. Section 114332.3 of the Health and Safety Code is
36 amended to read:

37 114332.3. (a) No potentially hazardous food or beverage stored
38 or prepared in a private home may be offered for sale, sold, or
39 given away from a nonprofit charitable temporary food facility.
40 Potentially hazardous food shall be prepared in a food

1 establishment or on the premises of a nonprofit charitable
2 temporary food facility.

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

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

9 (d) Ice used in beverages shall be protected from contamination
10 and shall be maintained separate from ice used for refrigeration
11 purposes.

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

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

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

19 (2) Paragraph (1) does not prohibit the presence, in any room
20 where food is served to the public, guests, or patrons, of a guide
21 dog, signal dog, or service dog, as defined by Section 54.1 of the
22 Civil Code, accompanied by a totally or partially blind person,
23 deaf person, person whose hearing is impaired, or handicapped
24 person, or dogs accompanied by persons licensed to train guide
25 dogs for the blind pursuant to Chapter 9.5 (commencing with
26 Section 7200) of Division 3 of the Business and Professions Code.

27 (3) Paragraph (1) does not apply to dogs under the control of
28 uniformed law enforcement officers or of uniformed employees
29 of private patrol operators and operators of a private patrol service
30 who are licensed pursuant to Chapter 11.5 (commencing with
31 Section 7580) of Division 3 of the Business and Professions Code,
32 while these employees are acting within the course and scope of
33 their employment as private patrol persons.

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

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

1 (h) All garbage shall be disposed of in a sanitary manner.
 2 (i) Employees preparing or handling food shall wear clean
 3 clothing and shall keep their hands clean at all times.

4 (j) *For purposes of this section, “tobacco product” means a*
 5 *product or device as defined in subdivision (c) of Section 22950.5*
 6 *of the Business and Professions Code.*

7 SEC. 14. Section 114371 of the Health and Safety Code is
 8 amended to read:

9 114371. Certified farmers’ markets shall meet all of the
 10 following requirements:

11 (a) All food shall be stored at least six inches off the floor or
 12 ground or under any other conditions that are approved. Tents,
 13 canopies, or other overhead coverings are not required for fresh
 14 whole produce sales displays or storage, except when specifically
 15 required pursuant to this chapter. Flavored nuts and dried fruits
 16 that are being sold on a bulk or nonprepackaged basis shall be
 17 displayed and dispensed by the producer from covered containers.
 18 All processed food products being sold shall be in compliance with
 19 Section 113735 and the applicable provisions of Section 110460,
 20 114365, or 114365.2.

21 (b) Food preparation is prohibited at certified farmers’ markets
 22 with the exception of food samples. Trimming whole produce for
 23 sale shall not be considered food preparation. Distribution of food
 24 samples may occur provided that the following sanitary conditions
 25 exist:

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

30 (2) All food samples shall be distributed by the producer in a
 31 manner that is sanitary and in which each sample is distributed
 32 without the possibility of a consumer touching the remaining
 33 samples.

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

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

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

4 (6) Potentially hazardous food samples shall be maintained at
5 or below 45°F and shall be disposed of within two hours after
6 cutting. A certified farmers' market or an enforcement officer may
7 cause immediate removal and disposal, or confiscate and destroy,
8 any potentially hazardous food samples found not in compliance
9 with this paragraph.

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

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

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

21 (d) No live animals, birds, or fowl shall be kept or allowed, and
22 no individual shall bring a live animal, bird, or fowl, within 20
23 feet of any area where food is stored or held for sale within a
24 certified farmers' market. This subdivision does not apply to guide
25 dogs, signal dogs, or service dogs when used in accordance with
26 the federal Americans with Disabilities Act of 1990 (42 U.S.C.
27 Sec. 12101 et seq.), and as provided in Section 36.104 of Title 28
28 of the Code of Federal Regulations. All guide dogs, signal dogs,
29 and service dogs shall be used and properly identified in accordance
30 with Section 54.1 and subdivision (b) of Section 54.2 of the Civil
31 Code, and Sections 30850, 30851, and 30852 of the Food and
32 Agricultural Code.

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

35 (f) Smoking of cigarettes, cigars, pipe tobacco, and other
36 ~~nicotine~~ tobacco products shall not be permitted within 25 feet of
37 the common commerce area comprised of sales personnel and
38 shopping customers of the certified farmers' market.

39 (g) Notwithstanding Chapter 10 (commencing with Section
40 114294) vendors selling food adjacent to, and under the jurisdiction

1 and management of, a certified farmers' market may store, display,
2 and sell from a table or display fixture apart from the mobile
3 facility in a manner approved by the enforcement agency.

4 (h) Temporary food facilities may be operated at a separate
5 community event adjacent to, and in conjunction with, certified
6 farmers' markets. The organization in control of the community
7 event at which these temporary food facilities operate shall comply
8 with Section 114381.1.

9 (i) All harvested, cut, wrapped, or otherwise processed meat,
10 poultry, and fish products shall be from approved sources as set
11 forth in Section 113735, and shall be properly labeled or have
12 documentation present at the point of sale that demonstrates
13 compliance with this requirement. All harvested, cut, wrapped, or
14 otherwise processed meat, poultry, and fish products offered for
15 sale shall be transported, stored, displayed, and maintained at a
16 temperature of 41° F or colder. The temperature holding
17 capabilities of the storage containers used shall be sufficient to
18 maintain safe product temperatures. Storage containers for meat,
19 poultry, and fish products shall be insulated and have interior
20 surfaces that are smooth, nonabsorbent, and easily cleanable. All
21 meat, poultry, and fish products shall be stored in a manner that
22 reduces the risk of cross-contamination.

23 (j) *For purposes of this section, "tobacco product" means a*
24 *product or device as defined in subdivision (c) of Section 22950.5*
25 *of the Business and Professions Code.*

26 SEC. 15. Section 118910 of the Health and Safety Code is
27 amended to read:

28 118910. (a) The Legislature declares its intent not to preempt
29 the field of regulation of the smoking of tobacco *products*. A local
30 governing body may ban completely the smoking of tobacco
31 *products*, or may regulate smoking of *tobacco products* in any
32 manner not inconsistent with this article and Article 3 (commencing
33 with Section 118920) or any other provision of state law.

34 (b) *For purposes of this section, "tobacco product" means a*
35 *product or device as defined in subdivision (c) of Section 22950.5*
36 *of the Business and Professions Code.*

37 SEC. 16. Section 118925 of the Health and Safety Code is
38 amended to read:

39 118925. (a) It is unlawful for any person to smoke a tobacco
40 *product* or any other plant product in any vehicle of a passenger

1 stage corporation, the National Railroad Passenger Corporation
2 (Amtrak) except to the extent permitted by federal law, in any
3 aircraft except to the extent permitted by federal law, on a public
4 transportation system, as defined by Section 99211 of the Public
5 Utilities Code, or in any vehicle of an entity receiving any transit
6 assistance from the state.

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

10 SEC. 17. Section 118930 of the Health and Safety Code is
11 amended to read:

12 118930. (a) A notice prohibiting smoking *tobacco products*,
13 displayed as a symbol and in English, shall be posted in each
14 vehicle or aircraft subject to this article.

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

18 SEC. 18. Section 118935 of the Health and Safety Code is
19 amended to read:

20 118935. (a) Every person and public agency providing
21 transportation services for compensation, including, but not limited
22 to, the National Railroad Passenger Corporation (Amtrak) to the
23 extent permitted by federal law, passenger stage corporations, and
24 local agencies that own or operate airports, shall designate and
25 post, by signs of sufficient number and posted in locations that
26 may be readily seen by persons within the area, a contiguous area
27 of not less than 75 percent of any area made available by the person
28 or public agency as a waiting room for these passengers where the
29 smoking of tobacco *products* is prohibited. Not more than 25
30 percent of any given area may be set aside for smokers of *tobacco*
31 *products*.

32 (b) Every person or public agency subject to subdivision (a)
33 shall also post, by sign of sufficient number and posted in locations
34 as to be readily seen by persons within the area of any building
35 where tickets, tokens, or other evidences that a fare has been paid
36 for transportation services that are provided by the person or public
37 agency, a notice that the smoking of tobacco *products* by persons
38 waiting in line to purchase the tickets, tokens, or other evidences
39 that a fare has been paid is prohibited.

1 (c) It is unlawful for any person to smoke *tobacco products* in
2 an area posted pursuant to this section.

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

6 SEC. 19. Section 118948 of the Health and Safety Code is
7 amended to read:

8 118948. (a) It is unlawful for a person to smoke a pipe, cigar,
9 or cigarette a *tobacco product* in a motor vehicle, whether in
10 motion or at rest, in which there is a minor.

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

14 (c) For purposes of this section, “*tobacco product*” means a
15 product or device as defined in subdivision (c) of Section 22950.5
16 of 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. 20. 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. 21. Section 6404.5 of the Labor Code is amended to read:

2 6404.5. (a) The Legislature finds and declares that regulation
3 of smoking in the workplace is a matter of statewide interest and
4 concern. It is the intent of the Legislature in enacting this section
5 to prohibit the smoking of tobacco products in all (100 percent of)
6 enclosed places of employment in this state, as covered by this
7 section, thereby eliminating the need of local governments to enact
8 workplace smoking restrictions within their respective jurisdictions.
9 It is further the intent of the Legislature to create a uniform
10 statewide standard to restrict and prohibit the smoking of tobacco
11 products in enclosed places of employment, as specified in this
12 section, in order to reduce employee exposure to environmental
13 tobacco smoke to a level that will prevent anything other than
14 insignificantly harmful effects to exposed employees, and also to
15 eliminate the confusion and hardship that can result from enactment
16 or enforcement of disparate local workplace smoking restrictions.
17 Notwithstanding any other provision of this section, it is the intent
18 of the Legislature that any area not defined as a “place of
19 employment” pursuant to subdivision (d) or in which the smoking
20 of tobacco products is not regulated pursuant to subdivision (e)
21 shall be subject to local regulation of smoking of tobacco products.

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

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

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

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

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

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

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

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

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

12 (2) Areas of the lobby in a hotel, motel, or other similar transient
13 lodging establishment designated for smoking by the establishment.
14 An establishment may permit smoking in a designated lobby area
15 that does not exceed 25 percent of the total floor area of the lobby
16 or, if the total area of the lobby is 2,000 square feet or less, that
17 does not exceed 50 percent of the total floor area of the lobby. For
18 purposes of this paragraph, “lobby” means the common public
19 area of an establishment in which registration and other similar or
20 related transactions, or both, are conducted and in which the
21 establishment’s guests and members of the public typically
22 congregate.

23 (3) Meeting and banquet rooms in a hotel, motel, other transient
24 lodging establishment similar to a hotel or motel, restaurant, or
25 public convention center, except while food or beverage functions
26 are taking place, including setup, service, and cleanup activities,
27 or when the room is being used for exhibit purposes. At times
28 when smoking is not permitted in a meeting or banquet room
29 pursuant to this paragraph, the establishment may permit smoking
30 in corridors and prefunction areas adjacent to and serving the
31 meeting or banquet room if no employee is stationed in that
32 corridor or area on other than a passing basis.

33 (4) Retail or wholesale tobacco shops and private smokers’
34 lounges. For purposes of this paragraph:

35 (A) “Private smokers’ lounge” means any enclosed area in or
36 attached to a retail or wholesale tobacco shop that is dedicated to
37 the use of tobacco products, including, but not limited to, cigars
38 and pipes.

39 (B) “Retail or wholesale tobacco shop” means any business
40 establishment the main purpose of which is the sale of tobacco

1 products, including, but not limited to, cigars, pipe tobacco, and
2 smoking accessories.

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

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

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

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

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

31 (10) Medical research or treatment sites, if smoking is integral
32 to the research and treatment being conducted.

33 (11) Private residences, except for private residences licensed
34 as family day care homes, where smoking is prohibited pursuant
35 to Section 1596.795 of the Health and Safety Code.

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

38 (13) Breakrooms designated by employers for smoking, provided
39 that all of the following conditions are met:

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

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

18 (D) There are sufficient nonsmoking breakrooms to
19 accommodate nonsmokers.

20 (14) Employers with a total of five or fewer employees, either
21 full time or part time, may permit smoking where all of the
22 following conditions are met:

23 (A) The smoking area is not accessible to minors.

24 (B) All employees who enter the smoking area consent to permit
25 smoking. No one, as part of his or her work responsibilities, shall
26 be required to work in an area where smoking is permitted. An
27 employer who is determined by the division to have used coercion
28 to obtain consent or who has required an employee to work in the
29 smoking area shall be subject to the penalty provisions of Section
30 6427.

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

34 (D) The employer shall comply with any ventilation standard
35 or other standard utilizing appropriate technology, including, but
36 not limited to, mechanical, electronic, and biotechnical systems,
37 adopted by the Occupational Safety and Health Standards Board
38 or the federal Environmental Protection Agency. If both adopt
39 inconsistent standards, the ventilation standards of the Occupational
40 Safety and Health Standards Board shall be no less stringent than

1 the standards adopted by the federal Environmental Protection
2 Agency.

3 This paragraph shall not be construed to (i) supersede or render
4 inapplicable any condition or limitation on smoking areas made
5 applicable to specific types of business establishments by any other
6 paragraph of this subdivision or (ii) apply in lieu of any otherwise
7 applicable paragraph of this subdivision that has become
8 inoperative.

9 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
10 construed to require employers to provide reasonable
11 accommodation to smokers, or to provide breakrooms for smokers
12 or nonsmokers.

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

17 (A) January 1, 1998.

18 (B) The date of adoption of a regulation (i) by the Occupational
19 Safety and Health Standards Board reducing the permissible
20 employee exposure level to environmental tobacco smoke to a
21 level that will prevent anything other than insignificantly harmful
22 effects to exposed employees or (ii) by the federal Environmental
23 Protection Agency establishing a standard for reduction of
24 permissible exposure to environmental tobacco smoke to an
25 exposure level that will prevent anything other than insignificantly
26 harmful effects to exposed persons.

27 (2) If a regulation specified in subparagraph (B) of paragraph
28 (1) is adopted on or before January 1, 1998, smoking may thereafter
29 be permitted in gaming clubs and in bars and taverns, subject to
30 full compliance with, or conformity to, the standard in the
31 regulation within two years following the date of adoption of the
32 regulation. An employer failing to achieve compliance with, or
33 conformity to, the regulation within this two-year period shall
34 prohibit smoking in the gaming club, bar, or tavern until
35 compliance or conformity is achieved. If the Occupational Safety
36 and Health Standards Board and the federal Environmental
37 Protection Agency both adopt regulations specified in subparagraph
38 (B) of paragraph (1) that are inconsistent, the regulations of the
39 Occupational Safety and Health Standards Board shall be no less

1 stringent than the regulations of the federal Environmental
2 Protection Agency.

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

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

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

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

31 (g) The smoking prohibition set forth in this section shall
32 constitute a uniform statewide standard for regulating the smoking
33 of tobacco products in enclosed places of employment and shall
34 supersede and render unnecessary the local enactment or
35 enforcement of local ordinances regulating the smoking of tobacco
36 products in enclosed places of employment. Insofar as the smoking
37 prohibition set forth in this section is applicable to all (100-percent)
38 places of employment within this state and, therefore, provides
39 the maximum degree of coverage, the practical effect of this section

1 is to eliminate the need of local governments to enact enclosed
2 workplace smoking restrictions within their respective jurisdictions.

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

6 (i) The enactment of local regulation of smoking of tobacco
7 products in enclosed places of employment by local governments
8 shall be suspended only for as long as, and to the extent that, the
9 (100-percent) smoking prohibition provided for in this section
10 remains in effect. In the event this section is repealed or modified
11 by subsequent legislative or judicial action so that the (100-percent)
12 smoking prohibition is no longer applicable to all enclosed places
13 of employment in California, local governments shall have the full
14 right and authority to enforce previously enacted, and to enact and
15 enforce new, restrictions on the smoking of tobacco products in
16 enclosed places of employment within their jurisdictions, including
17 a complete prohibition of smoking. Notwithstanding any other
18 provision of this section, any area not defined as a “place of
19 employment” or in which smoking is not regulated pursuant to
20 subdivision (d) or (e), shall be subject to local regulation of
21 smoking of tobacco products.

22 (j) Any violation of the prohibition set forth in subdivision (b)
23 is an infraction, punishable by a fine not to exceed one hundred
24 dollars (\$100) for a first violation, two hundred dollars (\$200) for
25 a second violation within one year, and five hundred dollars (\$500)
26 for a third and for each subsequent violation within one year. This
27 subdivision shall be enforced by local law enforcement agencies,
28 including, but not limited to, local health departments, as
29 determined by the local governing body.

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

35 (l) If any provision of this act or the application thereof to any
36 person or circumstances is held invalid, that invalidity shall not
37 affect other provisions or applications of the act that can be given
38 effect without the invalid provision or application, and to this end
39 the provisions of this act are severable.

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

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

5 308. (a) (1) Every person, firm, or corporation that knowingly
6 or under circumstances in which it has knowledge, or should
7 otherwise have grounds for knowledge, sells, gives, or in any way
8 furnishes to another person who is under the age of 18 years any
9 tobacco, cigarette, or cigarette papers, or blunts wraps, or any other
10 preparation of tobacco, or any other instrument or paraphernalia
11 that is designed for the smoking or ingestion of tobacco, ~~products~~
12 ~~prepared from tobacco~~, tobacco products, or any controlled
13 substance, is subject to either a criminal action for a misdemeanor
14 or to a civil action brought by a city attorney, a county counsel, or
15 a district attorney, punishable by a fine of two hundred dollars
16 (\$200) for the first offense, five hundred dollars (\$500) for the
17 second offense, and one thousand dollars (\$1,000) for the third
18 offense.

19 Notwithstanding Section 1464 or any other law, 25 percent of
20 each civil and criminal penalty collected pursuant to this
21 subdivision shall be paid to the office of the city attorney, county
22 counsel, or district attorney, whoever is responsible for bringing
23 the successful action, and 25 percent of each civil and criminal
24 penalty collected pursuant to this subdivision shall be paid to the
25 city or county for the administration and cost of the community
26 service work component provided in subdivision (b).

27 Proof that a defendant, or his or her employee or agent,
28 demanded, was shown, and reasonably relied upon evidence of
29 majority shall be defense to any action brought pursuant to this
30 subdivision. Evidence of majority of a person is a facsimile of or
31 a reasonable likeness of a document issued by a federal, state,
32 county, or municipal government, or subdivision or agency thereof,
33 including, but not limited to, a motor vehicle operator’s license, a
34 registration certificate issued under the federal Selective Service
35 Act, or an identification card issued to a member of the Armed
36 Forces.

37 For purposes of this section, the person liable for selling or
38 furnishing tobacco products to minors by a tobacco vending
39 machine shall be the person authorizing the installation or
40 placement of the tobacco vending machine upon premises he or

1 she manages or otherwise controls and under circumstances in
2 which he or she has knowledge, or should otherwise have grounds
3 for knowledge, that the tobacco vending machine will be utilized
4 by minors.

5 (2) For purposes of this section, “blunt wraps” means cigar
6 papers or cigar wrappers of all types that are designed for smoking
7 or ingestion of tobacco products and contain less than 50 percent
8 tobacco.

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

16 (c) Every person, firm, or corporation that sells, or deals in
17 tobacco or any preparation thereof, shall post conspicuously and
18 keep so posted in his, her, or their place of business at each point
19 of purchase the notice required pursuant to subdivision (b) of
20 Section 22952 of the Business and Professions Code, and any
21 person failing to do so shall, upon conviction, be punished by a
22 fine of fifty dollars (\$50) for the first offense, one hundred dollars
23 (\$100) for the second offense, two hundred fifty dollars (\$250) for
24 the third offense, and five hundred dollars (\$500) for the fourth
25 offense and each subsequent violation of this provision, or by
26 imprisonment in a county jail not exceeding 30 days.

27 (d) For purposes of determining the liability of persons, firms,
28 or corporations controlling franchises or business operations in
29 multiple locations for the second and subsequent violations of this
30 section, each individual franchise or business location shall be
31 deemed a separate entity.

32 (e) Notwithstanding subdivision (b), any person under 18 years
33 of age who purchases, receives, or possesses any tobacco, cigarette,
34 or cigarette papers, or any other preparation of tobacco, any other
35 instrument or paraphernalia that is designed for the smoking of
36 tobacco, or ~~products prepared from tobacco~~ *tobacco products* is
37 immune from prosecution for that purchase, receipt, or possession
38 while participating in either of the following:

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

4 (2) An activity conducted by the State Department of Public
5 Health, a local health department, or a law enforcement agency
6 for the purpose of determining or evaluating youth tobacco
7 purchase rates.

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

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

14 SEC. 23. Section 561 of the Public Utilities Code is amended
15 to read:

16 561. (a) Every railroad corporation, passenger stage
17 corporation, passenger air carrier, and street railroad corporation
18 providing departures originating in this state shall prohibit the
19 smoking of ~~any~~ a tobacco product in the passenger seating area of
20 every passenger car, passenger stage, aircraft, or other vehicle.

21 (b) Every such corporation and carrier shall display in the
22 passenger seating area of every passenger car, passenger stage,
23 aircraft, or other vehicle, notices sufficient in number, posted in
24 such locations as to be readily seen by boarding passengers,
25 advising passengers of the no smoking requirements pursuant to
26 subdivision (a). Words on such notices which state "No Smoking"
27 or an equivalent phrase shall be at least three-quarters of one inch
28 high, and any other explanatory words on the notices shall be at
29 least one-quarter of an inch high.

30 (c) No person shall smoke ~~any~~ a tobacco product in a space
31 known by him or her to be designated for nonsmoking passengers.
32 A violation of this subdivision is not a crime.

33 (d) As used in this section, "passenger air carrier" shall have
34 the same meaning as provided in Sections 2741 and 2743.

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

38 SEC. 24. Section 99580 of the Public Utilities Code is amended
39 to read:

- 1 99580. (a) Pursuant to subdivision (e) of Section 640 of the
2 Penal Code, a public transportation agency may enact and enforce
3 an ordinance to impose and enforce an administrative penalty for
4 any of the acts described in subdivision (b). The ordinance shall
5 include the provisions of this chapter and shall not apply to minors.
- 6 (b) (1) Evasion of the payment of a fare of the system.
7 (2) Misuse of a transfer, pass, ticket, or token with the intent to
8 evade the payment of a fare.
9 (3) Playing sound equipment on or in a system facility or
10 vehicle.
11 (4) Smoking *a tobacco product*, eating, or drinking in or on a
12 system facility or vehicle in those areas where those activities are
13 prohibited by that system.
14 (5) Expectorating upon a system facility or vehicle.
15 (6) Willfully disturbing others on or in a system facility or
16 vehicle by engaging in boisterous or unruly behavior.
17 (7) Carrying an explosive or acid, flammable liquid, or toxic or
18 hazardous material in a system facility or vehicle.
19 (8) Urinating or defecating in a system facility or vehicle, except
20 in a lavatory. However, this paragraph shall not apply to a person
21 who cannot comply with this paragraph as a result of a disability,
22 age, or a medical condition.
23 (9) (A) Willfully blocking the free movement of another person
24 in a system facility or vehicle.
25 (B) This paragraph shall not be interpreted to affect any lawful
26 activities permitted or first amendment rights protected under the
27 laws of this state or applicable federal law, including, but not
28 limited to, laws related to collective bargaining, labor relations,
29 or labor disputes.
30 (10) Skateboarding, roller skating, bicycle riding, or roller
31 blading in a system facility, including a parking structure, or in a
32 system vehicle. This paragraph does not apply to an activity that
33 is necessary for utilization of a system facility by a bicyclist,
34 including, but not limited to, an activity that is necessary for
35 parking a bicycle or transporting a bicycle aboard a system vehicle,
36 if that activity is conducted with the permission of the agency of
37 the system in a manner that does not interfere with the safety of
38 the bicyclist or other patrons of the system facility.
39 (11) (A) Unauthorized use of a discount ticket or failure to
40 present, upon request from a system representative, acceptable

1 proof of eligibility to use a discount ticket, in accordance with
2 Section 99155, and posted system identification policies when
3 entering or exiting a system station or vehicle. Acceptable proof
4 of eligibility must be clearly defined in the posting.

5 (B) In the event that an eligible discount ticket user is not in
6 possession of acceptable proof at the time of request, an issued
7 notice of fare evasion or passenger conduct violation shall be held
8 for a period of 72 hours to allow the user to produce acceptable
9 proof. If the proof is provided, that notice shall be voided. If the
10 proof is not produced within that time period, that notice shall be
11 processed.

12 (12) Sale or peddling of any goods, merchandise, property, or
13 services of any kind whatsoever on the facilities, vehicles, or
14 property of the public transportation system without the express
15 written consent of the public transportation system or its duly
16 authorized representatives.

17 (c) (1) The public transportation agency may contract with a
18 private vendor or governmental agency for the processing of notices
19 of fare evasion or passenger conduct violation, and notices of
20 delinquent fare evasion or passenger conduct violation pursuant
21 to Section 99581.

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

24 (A) The agency issuing the notice of fare evasion or passenger
25 conduct violation and the notice of delinquent fare evasion or
26 passenger conduct violation.

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

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

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

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

1 (d) (1) If a fare evasion or passenger conduct violation is
2 observed by a person authorized to enforce the ordinance, a notice
3 of fare evasion or passenger conduct violation shall be issued. The
4 notice shall set forth the violation, including reference to the
5 ordinance setting forth the administrative penalty, the date of the
6 violation, the approximate time, and the location where the
7 violation occurred. The notice shall include a printed statement
8 indicating the date payment is required to be made, and the
9 procedure for contesting the notice. The notice shall be served by
10 personal service upon the violator. The notice, or copy of the
11 notice, shall be considered a record kept in the ordinary course of
12 business of the issuing agency and the processing agency, and
13 shall be prima facie evidence of the facts contained in the notice
14 establishing a rebuttable presumption affecting the burden of
15 producing evidence.

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

19 (3) If, after a notice of fare evasion or passenger conduct
20 violation is issued pursuant to this section, the issuing officer
21 determines that there is incorrect data on the notice, including, but
22 not limited to, the date or time, the issuing officer may indicate in
23 writing on a form attached to the original notice the necessary
24 correction to allow for the timely entry of the corrected notice on
25 the processing agency's data system. A copy of the correction shall
26 be mailed to the address provided by the person cited at the time
27 the original notice of fare evasion or passenger conduct violation
28 was served.

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

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

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

39 (g) If an entity enacts an ordinance pursuant to this section it
40 shall, both two years and five years after enactment of the

1 ordinance, report all of the following information to the Senate
2 Committee on Transportation and Housing and the Assembly
3 Committee on Transportation:

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

7 (2) The amount of the administrative penalties.

8 (3) The number and types of citations administered pursuant to
9 the ordinance.

10 (4) To the extent available, a comparison of the number and
11 types of citations administered pursuant to the ordinance with the
12 number and types of citations issued for similar offenses and
13 administered through the courts both in the two years prior to the
14 ordinance and, if any, since enactment of the ordinance.

15 (5) A discussion of the effect of the ordinance on passenger
16 behavior.

17 (6) A discussion of the effect of the ordinance on revenues to
18 the entity described in subdivision (a) and, in consultation with
19 the superior courts, the cost savings to the county courts. The
20 superior courts are encouraged to collaborate on and provide data
21 for this report.

22 (h) *For purposes of this section, “tobacco product” means a*
23 *product or device as defined in subdivision (c) of Section 22950.5*
24 *of the Business and Professions Code.*

25 SEC. 25. Section 12523 of the Vehicle Code is amended to
26 read:

27 12523. (a) No person shall operate a youth bus without having
28 in possession a valid driver’s license of the appropriate class,
29 endorsed for passenger transportation and a certificate issued by
30 the department to permit the operation of a youth bus.

31 (b) Applicants for a certificate to drive a youth bus shall present
32 evidence that they have successfully completed a driver training
33 course administered by or at the direction of their employer
34 consisting of a minimum of 10 hours of classroom instruction
35 covering applicable laws and regulations and defensive driving
36 practices and a minimum of 10 hours of behind-the-wheel training
37 in a vehicle to be used as a youth bus. Applicants seeking to renew
38 a certificate to drive a youth bus shall present evidence that they
39 have received two hours of refresher training during each 12
40 months of driver certificate validity.

1 (c) The driver certificate shall be issued only to applicants
2 qualified by examinations prescribed by the Department of Motor
3 Vehicles and the Department of the California Highway Patrol,
4 and upon payment of a fee of twenty-five dollars (\$25) for an
5 original certificate and twelve dollars (\$12) for the renewal of that
6 certificate to the Department of the California Highway Patrol.
7 The examinations shall be conducted by the Department of the
8 California Highway Patrol. The Department of Motor Vehicles
9 may deny, suspend, or revoke a certificate valid for driving a youth
10 bus for the causes specified in this code or in regulations adopted
11 pursuant to this code.

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

14 (1) Use seat belts.

15 (2) Refrain from smoking *tobacco products*.

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

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

23 (f) *For purposes of this section, "tobacco product" means a*
24 *product or device as defined in subdivision (c) of Section 22950.5*
25 *of the Business and Professions Code.*

26 SEC. 26. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

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