

AMENDED IN SENATE MARCH 10, 2015

**SENATE BILL**

**No. 140**

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**Introduced by Senator Leno**  
**(Principal coauthor: Senator Pan)**  
(Principal coauthor: Assembly Member Ting)  
**(Coauthor: ~~Senator Hernandez~~)**  
**(Coauthors: *Senators Hernandez, McGuire, and Stone*)**  
(Coauthor: Assembly Member Chiu)

January 26, 2015

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An act to amend Sections 22950.5, 22958, ~~and 22962~~, *and 22971* 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 amended, 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 *or other substances*, and make furnishing such a tobacco product to a minor a misdemeanor.

*Existing law, the Cigarette and Tobacco Products Licensing Act of 2003, requires the State Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products. Under existing law, a violation of this act is a misdemeanor.*

*This bill would change the act’s definition of tobacco products to reflect the STAKE Act’s new definition of tobacco products.*

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.

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

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

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

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

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

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

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

- 1 SECTION 1. Section 22950.5 of the Business and Professions
- 2 Code is amended to read:
- 3 22950.5. For purposes of this division, the following terms
- 4 have the following meanings:
- 5 (a) “Department” means the State Department of Public Health.

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

(c) (1) “Tobacco product” means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (3) “Tobacco product” means a product or device as defined in  
18 subdivision (c) of Section 22950.5 of the Business and Professions  
19 Code.

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

22 (A) Primarily sells tobacco products.

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

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

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

32 (b) (1) (A) Except as permitted in subdivision (b) of Section  
33 22960, it is unlawful for a person engaged in the retail sale of  
34 tobacco products to sell, offer for sale, or display for sale any  
35 tobacco product or tobacco paraphernalia by self-service display.  
36 A person who violates this section is subject to those civil penalties  
37 specified in the schedule in subdivision (a) of Section 22958.

38 (B) A person who violates this section is subject to those civil  
39 penalties specified in the schedule in subdivision (a) of Section  
40 22958.

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

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

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

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

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

*SEC. 4. Section 22971 of the Business and Professions Code is amended to read:*

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

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

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

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

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

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

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

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

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

14 (e) “Display for sale” means the placement of cigarettes or  
15 tobacco products in a vending machine or in retail stock for the  
16 purpose of selling or gifting the cigarettes or tobacco products.  
17 For purposes of this definition, the clear and easily visible display  
18 of cigarettes or tobacco products shall create a rebuttable  
19 presumption that either were displayed for sale.

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

22 (g) “Gifting” means any transfer of title or possession without  
23 consideration, exchange, or barter, in any manner or by any means,  
24 of cigarettes or tobacco products that have been purchased for  
25 resale under a license issued pursuant to this division if the transfer  
26 occurs while the license is suspended or after the effective date of  
27 its revocation.

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

30 (i) “Law enforcement agency” means a sheriff, a police  
31 department, or a city, county, or city and county agency or  
32 department designated by the governing body of that agency to  
33 enforce this chapter or to enforce local smoking and tobacco  
34 ordinances and regulations.

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

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

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



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

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

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

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

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

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

(2) A vending machine.

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

(s) “Tobacco products” means ~~tobacco products as defined in subdivision (b) of Section 30121 and subdivision (b) of Section 30131.1 of the Revenue and Taxation Code~~ *a product or device as defined in subdivision (c) of Section 22950.5.*

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

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

~~SEC. 4.~~

SEC. 5. Section 1947.5 of the Civil Code is amended to read:

1947.5. (a) A landlord of a residential dwelling unit, as defined in Section 1940, or his or her agent, may prohibit the smoking of a cigarette, as defined in Section 104556 of the Health and Safety Code, or other tobacco product on the property or in any building

1 or portion of the building, including any dwelling unit, other  
2 interior or exterior area, or the premises on which it is located, in  
3 accordance with this article.

4 (b) (1) Every lease or rental agreement entered into on or after  
5 January 1, 2012, for a residential dwelling unit on property on any  
6 portion of which the landlord has prohibited the smoking of  
7 cigarettes or other tobacco products pursuant to this article shall  
8 include a provision that specifies the areas on the property where  
9 smoking is prohibited, if the lessee has not previously occupied  
10 the dwelling unit.

11 (2) For a lease or rental agreement entered into before January  
12 1, 2012, a prohibition against the smoking of cigarettes or other  
13 tobacco products in any portion of the property in which smoking  
14 was previously permitted shall constitute a change of the terms of  
15 tenancy, requiring adequate notice in writing, to be provided in  
16 the manner prescribed in Section 827.

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

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

27 (e) A limitation or prohibition of the use of any tobacco product  
28 shall not affect any other term or condition of the tenancy, nor  
29 shall this section be construed to require statutory authority to  
30 establish or enforce any other lawful term or condition of the  
31 tenancy.

32 (f) 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. 5.~~

36 *SEC. 6.* Section 48901 of the Education Code is amended to  
37 read:

38 48901. (a) No school shall permit the smoking or use of a  
39 tobacco product by pupils of the school while the pupils are on

campus, or while attending school-sponsored activities or while under the supervision and control of school district employees.

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

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

~~SEC. 6.~~

SEC. 7. Section 7597 of the Government Code is amended to read:

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

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

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

~~SEC. 7.~~

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

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

(b) Clearly legible signs shall either:

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

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

1 If “smoking permitted” signs are posted, there shall also be  
2 conspicuously posted, near all major entrances, clearly legible  
3 signs stating that smoking is unlawful except in areas designated  
4 “smoking permitted.”

5 (c) This section shall not apply to skilled nursing facilities,  
6 intermediate care facilities, and intermediate care facilities for the  
7 developmentally disabled.

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

11 ~~SEC. 8.~~

12 *SEC. 9.* Section 1286 of the Health and Safety Code is amended  
13 to read:

14 1286. (a) Smoking a tobacco product shall be prohibited in  
15 patient care areas, waiting rooms, and visiting rooms of a health  
16 facility, except those areas specifically designated as smoking  
17 areas, and in patient rooms as specified in subdivision (b).

18 (b) Smoking a tobacco product shall not be permitted in a  
19 patient room unless all persons assigned to the room have requested  
20 a room where smoking is permitted. In the event that the health  
21 facility occupancy has reached capacity, the health facility shall  
22 have reasonable time to reassign patients to appropriate rooms.

23 (c) Clearly legible signs shall either:

24 (1) State that smoking is unlawful and be conspicuously posted  
25 by, or on behalf of, the owner or manager of the health facility, in  
26 all areas of a health facility where smoking is unlawful, or

27 (2) Identify “smoking permitted” areas, and be posted by, or  
28 on behalf of, the owner or manager of the health facility, only in  
29 areas of the health facility where smoking is lawfully permitted.

30 If “smoking permitted” signs are posted, there shall also be  
31 conspicuously posted, near all major entrances, clearly legible  
32 signs stating that smoking is unlawful except in areas designated  
33 “smoking permitted.”

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

36 (e) This section shall not apply to skilled nursing facilities,  
37 intermediate care facilities, and intermediate care facilities for the  
38 developmentally disabled.

1 (f) 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. 9.~~

5 *SEC. 10.* Section 1530.7 of the Health and Safety Code is  
6 amended to read:

7 1530.7. (a) Group homes, foster family agencies, small family  
8 homes, transitional housing placement providers, and crisis  
9 nurseries licensed pursuant to this chapter shall maintain a  
10 smoke-free environment in the facility.

11 (b) A person who is licensed or certified pursuant to this chapter  
12 to provide residential care in a foster family home or certified  
13 family home shall not smoke a tobacco product or permit any other  
14 person to smoke a tobacco product inside the facility, and, when  
15 the child is present, on the outdoor grounds of the facility.

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

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

22 ~~SEC. 10.~~

23 *SEC. 11.* Section 1596.795 of the Health and Safety Code is  
24 amended to read:

25 1596.795. (a) The smoking of a tobacco product in a private  
26 residence that is licensed as a family day care home shall be  
27 prohibited in the home and in those areas of the family day care  
28 home where children are present. Nothing in this section shall  
29 prohibit a city or county from enacting or enforcing an ordinance  
30 relating to smoking in a family day care home if the ordinance is  
31 more stringent than this section.

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

34 (c) 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. 11.~~

38 *SEC. 12.* Section 104495 of the Health and Safety Code is  
39 amended to read:

1 104495. (a) For the purposes of this section, the following  
2 definitions shall govern:

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

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

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

14 (4) “Smoke or smoking” means the carrying of a lighted pipe,  
15 lighted cigar, or lighted cigarette of any kind, or the lighting of a  
16 pipe, cigar, or cigarette of any kind, including, but not limited to,  
17 tobacco, or any other weed or plant.

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

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

20 (7) “Tobacco product” means a product or device as defined in  
21 subdivision (c) of Section 22950.5 of the Business and Professions  
22 Code.

23 (b) No person shall smoke a cigarette, cigar, or other tobacco  
24 product within 25 feet of any playground or tot lot sandbox area.

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

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

31 (e) Any person who violates this section is guilty of an  
32 infraction and shall be punished by a fine of two hundred fifty  
33 dollars (\$250) for each violation of this section. Punishment under  
34 this section shall not preclude punishment pursuant to Section  
35 13002, Section 374.4 of the Penal Code, or any other provision of  
36 law proscribing the act of littering.

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

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

4 (h) This section shall not preempt the authority of any county,  
5 city, or city and county to regulate smoking around playgrounds  
6 or tot lot sandbox areas. Any county, city, or city and county may  
7 enforce any ordinance adopted prior to January 1, 2002, or may  
8 adopt and enforce new regulations that are more restrictive than  
9 this section, on and after January 1, 2002.

10 ~~SEC. 12.~~

11 *SEC. 13.* Section 113978 of the Health and Safety Code is  
12 amended to read:

13 113978. (a) Food facilities shall have a “no smoking tobacco  
14 products” sign posted in the food preparation, food storage, and  
15 warewashing areas.

16 (b) 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. 13.~~

20 *SEC. 14.* Section 114332.3 of the Health and Safety Code is  
21 amended to read:

22 114332.3. (a) No potentially hazardous food or beverage stored  
23 or prepared in a private home may be offered for sale, sold, or  
24 given away from a nonprofit charitable temporary food facility.  
25 Potentially hazardous food shall be prepared in a food  
26 establishment or on the premises of a nonprofit charitable  
27 temporary food facility.

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

31 (c) Potentially hazardous food and ~~beverage~~ *beverages* shall be  
32 maintained at or below 7 degrees Celsius (45 degrees Fahrenheit)  
33 or at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all  
34 times.

35 (d) Ice used in beverages shall be protected from contamination  
36 and shall be maintained separate from ice used for refrigeration  
37 purposes.

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

1 (f) Smoking a tobacco product is prohibited in nonprofit  
2 charitable temporary food facilities.

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

6 (2) Paragraph (1) does not prohibit the presence, in any room  
7 where food is served to the public, guests, or patrons, of a guide  
8 dog, signal dog, or service dog, as defined by Section 54.1 of the  
9 Civil Code, accompanied by a totally or partially blind person,  
10 deaf person, person whose hearing is impaired, or handicapped  
11 person, or dogs accompanied by persons licensed to train guide  
12 dogs for the blind pursuant to Chapter 9.5 (commencing with  
13 Section 7200) of Division 3 of the Business and Professions Code.

14 (3) Paragraph (1) does not apply to dogs under the control of  
15 uniformed law enforcement officers or of uniformed employees  
16 of private patrol operators and operators of a private patrol service  
17 who are licensed pursuant to Chapter 11.5 (commencing with  
18 Section 7580) of Division 3 of the Business and Professions Code,  
19 while these employees are acting within the course and scope of  
20 their employment as private patrol persons.

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

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

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

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

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

34 ~~SEC. 14.~~

35 *SEC. 15.* Section 114371 of the Health and Safety Code is  
36 amended to read:

37 114371. Certified farmers’ markets shall meet all of the  
38 following requirements:

39 (a) All food shall be stored at least six inches off the floor or  
40 ground or under any other conditions that are approved. Tents,



1 canopies, or other overhead coverings are not required for fresh  
2 whole produce sales displays or storage, except when specifically  
3 required pursuant to this chapter. Flavored nuts and dried fruits  
4 that are being sold on a bulk or nonprepackaged basis shall be  
5 displayed and dispensed by the producer from covered containers.  
6 All processed food products being sold shall be in compliance with  
7 Section 113735 and the applicable provisions of Section 110460,  
8 114365, or 114365.2.

9 (b) Food preparation is prohibited at certified farmers' markets  
10 with the exception of food samples. Trimming whole produce for  
11 sale shall not be considered food preparation. Distribution of food  
12 samples may occur provided that the following sanitary conditions  
13 exist:

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

18 (2) All food samples shall be distributed by the producer in a  
19 manner that is sanitary and in which each sample is distributed  
20 without the possibility of a consumer touching the remaining  
21 samples.

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

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

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

31 (6) Potentially hazardous food samples shall be maintained at  
32 or below ~~45°F~~ *45 degrees Fahrenheit* and shall be disposed of  
33 within two hours after cutting. A certified farmers' market or an  
34 enforcement officer may cause immediate removal and disposal,  
35 or confiscate and destroy, any potentially hazardous food samples  
36 found not in compliance with this paragraph.

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

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

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

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

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

23 (f) Smoking of cigarettes, cigars, pipe tobacco, and other tobacco  
24 products shall not be permitted within 25 feet of the common  
25 commerce area comprised of sales personnel and shopping  
26 customers of the certified farmers' market.

27 (g) Notwithstanding Chapter 10 (commencing with Section  
28 114294) vendors selling food adjacent to, and under the jurisdiction  
29 and management of, a certified farmers' market may store, display,  
30 and sell from a table or display fixture apart from the mobile  
31 facility in a manner approved by the enforcement agency.

32 (h) Temporary food facilities may be operated at a separate  
33 community event adjacent to, and in conjunction with, certified  
34 farmers' markets. The organization in control of the community  
35 event at which these temporary food facilities operate shall comply  
36 with Section 114381.1.

37 (i) All harvested, cut, wrapped, or otherwise processed meat,  
38 poultry, and fish products shall be from approved sources as set  
39 forth in Section 113735, and shall be properly labeled or have  
40 documentation present at the point of sale that demonstrates

1 compliance with this requirement. All harvested, cut, wrapped, or  
2 otherwise processed meat, poultry, and fish products offered for  
3 sale shall be transported, stored, displayed, and maintained at a  
4 temperature of ~~41° F~~ *41 degrees Fahrenheit* or colder. The  
5 temperature holding capabilities of the storage containers used  
6 shall be sufficient to maintain safe product temperatures. Storage  
7 containers for meat, poultry, and fish products shall be insulated  
8 and have interior surfaces that are smooth, nonabsorbent, and easily  
9 cleanable. All meat, poultry, and fish products shall be stored in  
10 a manner that reduces the risk of cross-contamination.

11 (j) 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. 15.~~

15 *SEC. 16.* Section 118910 of the Health and Safety Code is  
16 amended to read:

17 118910. (a) The Legislature declares its intent not to preempt  
18 the field of regulation of the smoking of tobacco products. A local  
19 governing body may ban completely the smoking of tobacco  
20 products, or may regulate smoking of tobacco products in any  
21 manner not inconsistent with this article and Article 3 (commencing  
22 with Section 118920) or any other provision of state law.

23 (b) 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. 16.~~

27 *SEC. 17.* Section 118925 of the Health and Safety Code is  
28 amended to read:

29 118925. (a) It is unlawful for any person to smoke a tobacco  
30 product or any other plant product in any vehicle of a passenger  
31 stage corporation, the National Railroad Passenger Corporation  
32 (Amtrak) except to the extent permitted by federal law, in any  
33 aircraft except to the extent permitted by federal law, on a public  
34 transportation system, as defined by Section 99211 of the Public  
35 Utilities Code, or in any vehicle of an entity receiving any transit  
36 assistance from the state.

37 (b) 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. 17.~~

2     *SEC. 18.* Section 118930 of the Health and Safety Code is  
3 amended to read:

4     118930. (a) A notice prohibiting smoking tobacco products,  
5 displayed as a symbol and in English, shall be posted in each  
6 vehicle or aircraft subject to this article.

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. 18.~~

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

13    118935. (a) Every person and public agency providing  
14 transportation services for compensation, including, but not limited  
15 to, the National Railroad Passenger Corporation (Amtrak) to the  
16 extent permitted by federal law, passenger stage corporations, and  
17 local agencies that own or operate airports, shall designate and  
18 post, by signs of sufficient number and posted in locations that  
19 may be readily seen by persons within the area, a contiguous area  
20 of not less than 75 percent of any area made available by the person  
21 or public agency as a waiting room for these passengers where the  
22 smoking of tobacco products is prohibited. Not more than 25  
23 percent of any given area may be set aside for smokers of tobacco  
24 products.

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

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

35    (d) 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. 19.~~

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

1 118948. (a) It is unlawful for a person to smoke a tobacco  
2 product in a motor vehicle, whether in motion or at rest, in which  
3 there is a minor.

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

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

12 ~~SEC. 20.~~

13 *SEC. 21.* Section 119405 of the Health and Safety Code is  
14 repealed.

15 ~~SEC. 21.~~

16 *SEC. 22.* Section 6404.5 of the Labor Code is amended to read:

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

37 (b) No employer shall knowingly or intentionally permit, and  
38 no person shall engage in, the smoking of tobacco products in an  
39 enclosed space at a place of employment. “Enclosed space”  
40 includes lobbies, lounges, waiting areas, elevators, stairwells, and

1 restrooms that are a structural part of the building and not  
2 specifically defined in subdivision (d).

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

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

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

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

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

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

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

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

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

38 (3) Meeting and banquet rooms in a hotel, motel, other transient  
39 lodging establishment similar to a hotel or motel, restaurant, or  
40 public convention center, except while food or beverage functions

1 are taking place, including setup, service, and cleanup activities,  
2 or when the room is being used for exhibit purposes. At times  
3 when smoking is not permitted in a meeting or banquet room  
4 pursuant to this paragraph, the establishment may permit smoking  
5 in corridors and prefunction areas adjacent to and serving the  
6 meeting or banquet room if no employee is stationed in that  
7 corridor or area on other than a passing basis.

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

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

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

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

21 (6) Warehouse facilities. For purposes of this paragraph,  
22 "warehouse facility" means a warehouse facility with more than  
23 100,000 square feet of total floorspace, and 20 or fewer full-time  
24 employees working at the facility, but does not include any area  
25 within a facility that is utilized as office space.

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

32 (8) Bars and taverns, in which smoking is permitted by  
33 subdivision (f). For purposes of this paragraph, "bar" or "tavern"  
34 means a facility primarily devoted to the serving of alcoholic  
35 beverages for consumption by guests on the premises, in which  
36 the serving of food is incidental. "Bar or tavern" includes those  
37 facilities located within a hotel, motel, or other similar transient  
38 occupancy establishment. However, when located within a building  
39 in conjunction with another use, including a restaurant, "bar" or  
40 "tavern" includes only those areas used primarily for the sale and

1 service of alcoholic beverages. “Bar” or “tavern” does not include  
2 the dining areas of a restaurant, regardless of whether alcoholic  
3 beverages are served therein.

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

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

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

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

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

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

18 (B) The employer shall comply with any ventilation standard  
19 or other standard utilizing appropriate technology, including, but  
20 not limited to, mechanical, electronic, and biotechnical systems,  
21 adopted by the Occupational Safety and Health Standards Board  
22 or the federal Environmental Protection Agency. If both adopt  
23 inconsistent standards, the ventilation standards of the Occupational  
24 Safety and Health Standards Board shall be no less stringent than  
25 the standards adopted by the federal Environmental Protection  
26 Agency.

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

32 (D) There are sufficient nonsmoking breakrooms to  
33 accommodate nonsmokers.

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

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

38 (B) All employees who enter the smoking area consent to permit  
39 smoking. No one, as part of his or her work responsibilities, shall  
40 be required to work in an area where smoking is permitted. An



1 employer who is determined by the division to have used coercion  
2 to obtain consent or who has required an employee to work in the  
3 smoking area shall be subject to the penalty provisions of Section  
4 6427.

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

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

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

23 (e) Paragraphs (13) and (14) of subdivision (d) shall not be  
24 construed to require employers to provide reasonable  
25 accommodation to smokers, or to provide breakrooms for smokers  
26 or nonsmokers.

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

31 (A) January 1, 1998.

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

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

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

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

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

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

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

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

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

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

1 including, but not limited to, local health departments, as  
2 determined by the local governing body.

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

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

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

16 ~~SEC. 22.~~

17 *SEC. 23.* Section 308 of the Penal Code is amended to read:

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

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

39 Proof that a defendant, or his or her employee or agent,  
40 demanded, was shown, and reasonably relied upon evidence of

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

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

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

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

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

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in

1 multiple locations for the second and subsequent violations of this  
2 section, each individual franchise or business location shall be  
3 deemed a separate entity.

4 (e) Notwithstanding subdivision (b), any person under 18 years  
5 of age who purchases, receives, or possesses any tobacco, cigarette,  
6 or cigarette papers, or any other preparation of tobacco, any other  
7 instrument or paraphernalia that is designed for the smoking of  
8 tobacco, or tobacco products is immune from prosecution for that  
9 purchase, receipt, or possession while participating in either of the  
10 following:

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

14 (2) An activity conducted by the State Department of Public  
15 Health, a local health department, or a law enforcement agency  
16 for the purpose of determining or evaluating youth tobacco  
17 purchase rates.

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

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

24 ~~SEC. 23.~~

25 *SEC. 24.* Section 561 of the Public Utilities Code is amended  
26 to read:

27 561. (a) Every railroad corporation, passenger stage  
28 corporation, passenger air carrier, and street railroad corporation  
29 providing departures originating in this state shall prohibit the  
30 smoking of a tobacco product in the passenger seating area of  
31 every passenger car, passenger stage, aircraft, or other vehicle.

32 (b) Every such corporation and carrier shall display in the  
33 passenger seating area of every passenger car, passenger stage,  
34 aircraft, or other vehicle, notices sufficient in number, posted in  
35 such locations as to be readily seen by boarding passengers,  
36 advising passengers of the no smoking requirements pursuant to  
37 subdivision (a). Words on such notices which state "No Smoking"  
38 or an equivalent phrase shall be at least three-quarters of one inch  
39 high, and any other explanatory words on the notices shall be at  
40 least one-quarter of an one inch high.

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

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

6 (e) 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. 24.~~

10 *SEC. 25.* Section 99580 of the Public Utilities Code is amended  
11 to read:

12 99580. (a) Pursuant to subdivision (e) of Section 640 of the  
13 Penal Code, a public transportation agency may enact and enforce  
14 an ordinance to impose and enforce an administrative penalty for  
15 any of the acts described in subdivision (b). The ordinance shall  
16 include the provisions of this chapter and shall not apply to minors.

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

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

20 (3) Playing sound equipment on or in a system facility or  
21 vehicle.

22 (4) Smoking a tobacco product, eating, or drinking in or on a  
23 system facility or vehicle in those areas where those activities are  
24 prohibited by that system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

30 (3) If, after a notice of fare evasion or passenger conduct  
31 violation is issued pursuant to this section, the issuing officer  
32 determines that there is incorrect data on the notice, including, but  
33 not limited to, the date or time, the issuing officer may indicate in  
34 writing on a form attached to the original notice the necessary  
35 correction to allow for the timely entry of the corrected notice on  
36 the processing agency’s data system. A copy of the correction shall  
37 be mailed to the address provided by the person cited at the time  
38 the original notice of fare evasion or passenger conduct violation  
39 was served.

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

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

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

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

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

(2) The amount of the administrative penalties.

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

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

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

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

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

~~SEC. 25.~~

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

1 12523. (a) No person shall operate a youth bus without having  
2 in possession a valid driver's license of the appropriate class,  
3 endorsed for passenger transportation and a certificate issued by  
4 the department to permit the operation of a youth bus.

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

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

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

- 28 (1) Use seat belts.  
29 (2) Refrain from smoking tobacco products.  
30 (3) Report any accidents reportable under Section 16000 to the  
31 Department of the California Highway Patrol.

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

37 (f) 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. 27. This act does not affect any laws or regulations*  
2     *regarding medical cannabis.*

3     ~~SEC. 26.~~

4     *SEC. 28.* No reimbursement is required by this act pursuant to  
5     Section 6 of Article XIII B of the California Constitution because  
6     the only costs that may be incurred by a local agency or school  
7     district will be incurred because this act creates a new crime or  
8     infraction, eliminates a crime or infraction, or changes the penalty  
9     for a crime or infraction, within the meaning of Section 17556 of  
10    the Government Code, or changes the definition of a crime within  
11    the meaning of Section 6 of Article XIII B of the California  
12    Constitution.