

AMENDED IN ASSEMBLY SEPTEMBER 2, 2009

AMENDED IN ASSEMBLY JULY 23, 2009

AMENDED IN ASSEMBLY JUNE 23, 2009

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE MAY 21, 2009

AMENDED IN SENATE MAY 12, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 400

Introduced by Senator Corbett

(Coauthor: Senator Alquist)

(Coauthors: Assembly Members Eng, Fong, and Jones)

February 26, 2009

An act to amend Sections 22950.5, 22955, and 22962 of the Business and Professions Code, *and to add Section 111247 to the Health and Safety Code*, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 400, as amended, Corbett. Tobacco.

Existing law, the Stop Tobacco Access to Kids Enforcement Act (STAKE Act), establishes various requirements for retailers relating to tobacco sales to minors. A violation of this act is a crime.

This bill would ~~include within the act's definition of tobacco product tobacco substitutes, as defined by the bill, and make conforming changes~~ *authorize action to halt the sale, distribution, or offering for sale of electronic cigarettes that have not been approved or cleared by the*

federal Food and Drug Administration. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law, the Sherman Food, Drug, and Cosmetic Law, requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the federal Food, Drug, and Cosmetic Act. A violation of these provisions is a crime.

This bill would deem any article that can provide inhaled doses of nicotine by delivering a vaporized solution a drug under these provisions. By expanding the definition of an existing crime, this 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) "Tobacco product" means a product containing tobacco leaf,
12 including, but not limited to, cigarettes, cigars, pipe tobacco, snuff,
13 chewing tobacco, dipping tobacco, bidis, or other preparation of
14 tobacco, or a tobacco substitute.

15 ~~(d) "Tobacco substitute" means a battery-powered device that~~
16 ~~can provide inhaled doses of nicotine by delivering a vaporized~~
17 ~~solution.~~

18 SEC. 2. Section 22955 of the Business and Professions Code
19 is amended to read:

1 22955. Agents of the—state department, while conducting
2 enforcement activities pursuant to this division, are peace officers
3 and are subject to all of the powers and immunities granted to Food
4 and Drug Section inspectors pursuant to Section 106500 of the
5 Health and Safety Code in the same manner as are any Food and
6 Drug Section inspectors of the state department. *These agents may*
7 *take enforcement action to halt the sale, distribution, or offering*
8 *for sale of electronic cigarettes that can deliver inhaled doses of*
9 *nicotine by delivering a vaporized solution that has not been*
10 *approved or cleared by the United States Food and Drug*
11 *Administration.*

12 ~~SEC. 2.~~

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

15 22962. (a) For purposes of this section, the following terms
16 have the following meanings:

17 (1) “Self-service display” means the open display of tobacco
18 products or tobacco paraphernalia in a manner that is accessible
19 to the general public without the assistance of the retailer or
20 employee of the retailer.

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

26 (3) “Tobacco store” means a retail business that meets all of the
27 following requirements:

28 (A) Primarily sells tobacco products.

29 (B) Generates more than 60 percent of its gross revenues
30 annually from the sale of tobacco products and tobacco
31 paraphernalia.

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

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

38 (b) (1) (A) Except as permitted in subdivision (b) of Section
39 22960, it is unlawful for a person engaged in the retail sale of
40 tobacco products to sell, offer for sale, or display for sale a tobacco

1 product or tobacco paraphernalia by self-service display. A person
2 who violates this section is subject to those civil penalties specified
3 in the schedule in subdivision (a) of Section 22958.

4 (B) A person who violates this section is subject to those civil
5 penalties specified in the schedule in subdivision (a) of Section
6 22958.

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

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

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

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

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

32 *SEC. 4. Section 111247 is added to the Health and Safety Code,*
33 *to read:*

34 *111247. Any article that can provide inhaled doses of nicotine*
35 *by delivering a vaporized solution, including, but not limited to,*
36 *an electronic cigarette, shall be deemed to be a drug as defined*
37 *in Section 109925. This section shall not be construed as bearing*
38 *on or being relevant to the question of whether any other product*
39 *is a drug as defined in Section 109925 or a device as defined in*
40 *Section 109920.*

1 ~~SEC. 3.~~

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