

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: June 4, 2015

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations Committee

FROM: Sharon M. Tso *KEK for*
Chief Legislative Analyst

Council File No.: 15-0002-S44
Assignment No.: 15-05-0364

SUBJECT: Resolution to support AB 48 (Stone) and SB 151 (Hernandez) relative to controls over tobacco

CLA RECOMMENDATION: That the City Council adopt the attached Resolution (Parks – Koretz) to include in the City's 2015-16 State Legislative Program SUPPORT for AB 48 (Stone) which would prohibit a person or entity from selling or giving another person a cigarette utilizing a single-use filter, and for SB 151 (Hernandez) which would increase the minimum legal age to purchase or consume tobacco from 18 to 21.

SUMMARY

Resolution (Parks – Koretz), introduced on April 28, 2015, states that the dangers of smoking are widely-documented and have been established as a scientific fact. The Resolution advises that California has long exhibited leadership on the reduction of smoking rates by having some of the most wide-ranging anti-smoking laws in the nation. According to the Resolution, great progress has been made in reducing smoking rates statewide but more needs to be done to address this public health issue.

The Resolution further states that currently before the Legislature are various bills which address the use of tobacco cigarettes, including AB 48 (Stone) which would prohibit a person or entity from selling or giving another person a cigarette utilizing a single-use filter, and SB 151 (Hernandez) which would increase the minimum legal age to purchase or consume tobacco from 18 to 21. According to the Resolution, these bills would help ensure the health of residents statewide and protect the health of young people.

The Resolution requests that the City support AB 48 and SB 151.

BACKGROUND

Under existing State law, retailers are required to verify the identification of tobacco purchasers if the purchaser appears to be under 18 years of age. A person or entity who knowingly sells or gives a tobacco cigarette to persons under 18 years of age is subject to criminal and/or civil penalties. Consistent with federal law, the California Department of Public Health conducts random inspections at retail locations to verify that the statewide tobacco purchase rate for minors does not exceed 20 percent.

AB 48

AB 48, introduced on December 1, 2014, would prohibit a person or entity from selling, giving, or in any way furnishing to another person of any age a cigarette utilizing a single-use filter made of any material. In addition, AB 48 would authorize a city attorney, county counsel, or district attorney to assess a \$500 civil fine against an individual who violates these provisions. According to the author, banning single-use filters is necessary to keep toxic litter out of the environment and thereby promote the health and safety of State residents.

The Center for Tobacco Control Research and Education at the University of California, San Francisco stated that filters do not reduce the amount of toxins in cigarettes and that millions of such filters end up on shorelines and marine environments. The San Francisco Chronicle reported that cities and counties spend millions of dollars per year cleaning up litter associated with unfiltered cigarettes. The San Francisco Chronicle noted that smoking would not be prohibited if AB 48 becomes law, as smokers would be able to buy reusable filters. Phillip Morris USA, a cigarette manufacturer, states that AB 48 is inconsistent with federal law which provides the Food and Drug Administration the authority to set standards for the manufacture, distribution and marketing of tobacco products.

SB 151

SB 151, introduced on January 29, 2015, would raise the minimum legal age to purchase or consume tobacco products from 18 to 21. According to the author, the bill was introduced out of concern that people are more likely to become addicted to smoking cigarettes if they start at a young age. The American Lung Association in California states that 21,300 children in California start smoking per year, and smoking contributes to the deaths of more than 40,000 Californians per year. The Los Angeles Times reported that the tobacco firm Altria generally opposes any State effort to change the minimum smoking age inasmuch as the Food and Drug Administration is currently studying the effects of raising the minimum age. The Senate Committee on Appropriations anticipates that, if SB 151 becomes law, reduced tobacco and sales tax revenues may be offset by increased savings in health care costs.

We note that the Legislature is currently considering SB 24 (Hill) which would, among other provisions, require retailers to verify that electronic cigarette purchasers are at least 18 years of age and would require that such purchasers be at least 21 years of age if SB 151 becomes law. Our Office is currently preparing a report on SB 24 under separate cover (C.F. 15-0002-S8).

Conclusion

Both AB 48 and SB 151 are consistent with current City practices regarding the use of tobacco products. Therefore, we recommend that the City support AB 48 and SB 151.

Departments Notified

Bureau of Sanitation
City Attorney

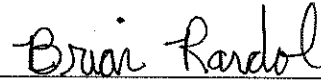
Bill Status

AB 48

January 22 Referred to Committees on Governmental Organization and Health.
February 13 From committee chair, with author's amendments: Amend, and re-refer to
Committee on Governmental Organization. Read second time and amended.
February 17 Re-referred to Committee on Governmental Organization.
May 15 Failed deadline pursuant to Rule 61(a)(3).

SB 151

April 9 From Committee on Health: Do pass and refer to Committee on Appropriations (9
Ayes, 0 Noes).
April 27 Placed in Committee on Appropriations suspense file.
May 28 From Committee: Do pass. (5 Ayes, 2 Noes)
June 2 Read third time. Passed. (29 Ayes, 9 Noes). Ordered to the Assembly.



Brian Randol
Analyst

Attachments: 1. Resolution (Parks – Koretz)
 2. Text of AB 48
 2. Text of SB 151

RECEIVED
APR 28 2015
BY: *pw*

RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS
RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the dangers of smoking are widely-documented and have been established as a scientific fact; and

WHEREAS, California has long exhibited leadership on addressing the issue of reducing smoking rates by having some of the most wide-ranging anti-smoking laws in the nation; and

WHEREAS, while great progress has been made in reducing smoking rates statewide, more needs to be done to address this critical public health issue; and

WHEREAS, currently pending before the Legislature are various bills which address the use of tobacco cigarettes; and

WHEREAS, AB 48 (Stone) would prohibit a person or entity from selling or giving another person a cigarette utilizing a single-use filter; and

WHEREAS, SB 151 (Hernandez) would increase the minimum legal age to purchase or consume tobacco from 18 to 21; and

WHEREAS, these bills would help ensure the health of our residents, protect the health of young people, and ensure continued progress in our efforts to reduce the rates of tobacco-related deaths and disease statewide; and

WHEREAS, support of these bills is consistent with existing City policies and Ordinances to reduce the negative health effects of smoking;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2015-16 State Legislative Program SUPPORT for AB 48 (Stone) which would prohibit a person or entity from selling or giving another person a cigarette utilizing a single-use filter, and for SB 151 (Hernandez) which would increase the minimum legal age to purchase or consume tobacco from 18 to 21.

PRESENTED BY: *Bernard C. Parks*
BERNARD C. PARKS
Councilmember, 8th District

SECONDED BY: *Paul Krutz*

APR 28 2015

BMP *[Signature]*

ORIGINAL

AMENDED IN ASSEMBLY FEBRUARY 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 48

Introduced by Assembly Member Mark Stone
*(Coauthors: Assembly Members Bloom, Gonzalez, Levine, Rendon,
and Williams)*
(Coauthor: Senator Allen)

December 1, 2014

An act to add Division 8.55 (commencing with Section 22964) to the Business and Professions Code, relating to cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

AB 48, as amended, Mark Stone. Cigarettes: single-use filters.

Existing law, the Stop Tobacco Access to Kids Enforcement Act, requires all persons engaging in the retail sale of tobacco products to check the identification of tobacco purchasers, to establish the age of the purchaser, if the purchaser reasonably appears to be under 18 years of age. Under existing law, an enforcing agency, as defined, may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under 18 years of age, any tobacco, cigarette, cigarette papers, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, or products prepared from tobacco. The existing civil penalties range from \$400 to \$600 for a first violation, up to \$5,000 to \$6,000 for a 5th violation within a 5-year period.

Existing law prohibits the sale, distribution, or nonsale distribution of tobacco products directly or indirectly to any person under 18 years of age through the United States Postal Service or through any other public or private postal or package delivery service at locations,

including, but not limited to, public mailboxes and mailbox stores. Under existing law, a district attorney, city attorney, or the Attorney General may assess civil penalties against a violator of that provision of not less than \$1,000 or more than \$2,000 for the first violation and up to \$10,000 for a 5th violation within a 5-year period.

Under existing law, every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under 18 years of age any cigarette, among other specified items, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of \$200 for the first offense, \$500 for the 2nd offense, and \$1,000 for the 3rd offense.

This bill would state findings and declarations of the Legislature regarding the health and safety hazards to residents of the state related to cigarettes utilizing single-use filters. The bill would prohibit a person or entity from selling, giving, or in any way furnishing to another person of any age in this state a cigarette utilizing a single-use filter made of any material, including cellulose acetate, or other fibrous plastic material, and any organic or biodegradable material. The bill would prohibit that selling, giving, or furnishing, whether conducted directly or indirectly through an in-person transaction or by means of any public or private method of shipment or delivery to an address in this state.

This bill would authorize a city attorney, county counsel, or district attorney to assess a \$500 civil fine against each person determined to have violated those prohibitions in a proceeding conducted pursuant to the procedures of the enforcing agency, as specified.

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

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

- 1 SECTION 1. Division 8.55 (commencing with Section 22964)
- 2 is added to the Business and Professions Code, immediately
- 3 following Section 22963, to read:

1 DIVISION 8.55. PROHIBITION ON CIGARETTES
2 UTILIZING SINGLE-USE FILTERS
3

4 22964. (a) Studies published in the peer-reviewed journal
5 Tobacco Control estimate the percentage of smokers who litter to
6 range from 75 percent to 92 percent, for smokers between 21 and
7 25 years of age. It is estimated that 845,500 tons of cigarette butts
8 become litter around the globe each year.

9 (b) Cigarette butts have consistently been the single
10 most-recovered item since collections began among volunteer
11 groups, including the Ocean Conservancy and its International
12 Coastal Cleanup event, which cleans litter in waterways, beaches,
13 and parks in this state.

14 (c) Although the citation rate for littering cigarette waste is
15 annually about five times that of general litter from vehicles, as
16 reported in the Department of Motor Vehicles' citation statistics,
17 cigarette butts remain at the top of the list for litter on our
18 highways.

19 (d) The Department of Transportation has estimated the costs
20 to clean up cigarette butts at forty-one million dollars (\$41,000,000)
21 annually.

22 (e) The City and County of San Francisco has estimated costs
23 for city abatement of cigarette butts at over six million dollars
24 (\$6,000,000) annually.

25 (f) From 2006 to 2008, the American Association of Poison
26 Control Centers reported approximately 12,600 cases of children
27 ingesting cigarettes or cigarette butts. Children under six years of
28 age are especially prone to cigarette butt ingestion.

29 (g) The well-documented and common occurrence of cigarette
30 butt ingestion by domestic animals points to the larger impact that
31 improperly discarded cigarette butts have on our environment and
32 wildlife.

33 (h) As early as the mid-1960s, the Surgeon General of the United
34 States judged cigarette filters to be useless in reducing harm to the
35 average smoker.

36 (i) Banning the sale, gift, or other furnishing of cigarettes
37 utilizing single-use filters is necessary to keep toxic litter out of
38 our state's environment and promote the health and safety of our
39 state's residents.

1 (j) In its cigarette and tobacco products tax evasion report for
2 2012–13, the State Board of Equalization noted that 90.6 percent
3 of cigarette contraband and excise tax evasion was driven by
4 retailer evasion and 9.4 percent by individual consumer evasion.
5 Strong safeguards, including retail inspections, have proven
6 effective in preventing further black market evasion.

7 22965. (a) No person or entity shall sell, give, or in any way
8 furnish to another person, of any age, in this state, a cigarette
9 utilizing a single-use filter made of any material including, but not
10 limited to, cellulose acetate, or other fibrous plastic material, or
11 any organic or biodegradable material. The prohibition under this
12 subdivision applies to any direct or indirect transaction, whether
13 made in-person in this state or by means of any public or private
14 method of shipment or delivery to an address in this state.

15 (b) The sale, gift, or other furnishing of one to 20 cigarettes
16 constitutes a single violation of this section.

17 22966. (a) (1) A city attorney, county counsel, or district
18 attorney may assess a civil fine of five hundred dollars (\$500) for
19 each violation of Section 22965. Only a city attorney, county
20 counsel, or district attorney may assess the civil fine against each
21 person determined to be in violation of Section 22965.

22 (2) Proceedings under this section shall be conducted pursuant
23 to the procedures of the enforcing agency that are consistent with
24 Section 131071 of the Health and Safety Code and in accordance
25 with Article 6 (commencing with Section 11425.10) of Chapter
26 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

27 (b) Fine moneys assessed pursuant to this section shall be
28 deposited in the treasury of the city or county, respectively, of the
29 city attorney, county counsel, or district attorney who assessed the
30 fine.

31 22967. A city attorney, county counsel, or district attorney
32 acting as an enforcement agency, as defined in subdivision (b) of
33 Section 22950.5, is encouraged, but not required, to develop
34 guidelines for its agency to conduct tobacco control investigations
35 of violations of subdivision (a) of Section 22965 concurrent with
36 investigations of violations of Section 308 of the Penal Code or
37 Division 8.5 (commencing with Section 22950), conducted in
38 accordance with Section 22952, or concurrent with investigations

1 of violations of any tobacco control provisions created by local
2 ordinance in its jurisdiction.

O

Introduced by Senator Hernandez
(Principal coauthor: Assembly Member Wood)
(Coauthor: Senator Leno)

January 29, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 151, as introduced, Hernandez. Tobacco products: minimum legal age.

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

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

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

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

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

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

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

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

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

- 1 SECTION 1. Section 17537.3 of the Business and Professions
2 Code is amended to read:
3 17537.3. The following acts are prohibited:
4 (a) For any person to offer as part of an advertising plan or
5 program, promotional offers of smokeless tobacco products which
6 require proof of purchase of a smokeless tobacco product unless
7 it carries a designation that the offer is not available to ~~minors~~
8 *persons under 21 years of age*. Each promotional offer shall include
9 in any mail-in coupon a statement requesting purchasers to verify
10 that the purchaser is ~~18~~ 21 years of age or older.
11 (b) For any person to honor mail-in and telephone requests for
12 promotional offers of smokeless tobacco products unless
13 appropriate efforts are made to ascertain that a purchaser is over
14 ~~18~~ 21 years of age. For purposes of this subdivision, appropriate
15 efforts to ascertain the age of a purchaser includes, but is not
16 limited to, requests for a purchaser's birth date.
17 (c) For any person by any means, as part of an advertising plan
18 or program, to distribute free samples of smokeless tobacco
19 products within a two block radius of any premises or facilities
20 whose primary purpose is directed toward persons under the age
21 of ~~18~~ 21 years including, but not limited to, schools, clubhouses,
22 and youth centers, when those premises are being used for their
23 primary purposes.
24 (d) For any person to distribute, as part of any advertising plan
25 or program, unsolicited samples of smokeless tobacco products
26 through a mail campaign.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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