

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: September 11, 2015

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

FROM: Sharon M. Tso *Sharon M. Tso* for Council File No.: 15-0002-S98  
Chief Legislative Analyst Assignment No.: 15-09-0721

SUBJECT: Minimum Legal Age to Purchase or Consume Tobacco Products

CLA RECOMMENDATION: That the City Council adopt the attached Resolution to include in its 2015-16 State Legislative Program SUPPORT for SBX2 7 (Hernandez) and ABX2 8 (Wood) which would increase the minimum legal age to purchase or consume tobacco products from 18 to 21.

## SUMMARY

The Resolution (Koretz – Ryu), introduced on September 1, 2015, states that it is well-established scientific fact that smoking is linked to many serious diseases and conditions and that the City has recently taken various steps to address health concerns related to the use of tobacco products.

The Resolution states that SB 151 (Hernandez) would increase the legal age to purchase or consume tobacco products from 18 to 21. The Resolution indicates that SB 151 was approved by the Senate but is pending in the Assembly Committee on Governmental Organization. The Resolution notes that the Governor has called two Extraordinary Sessions of the Legislature to address transportation and health care issues, including bills related to the use of tobacco products.

The Resolution states that before the Legislature are SBX2 7 (Hernandez) and ABX2 8 (Wood) which would increase the legal age to purchase or consume tobacco products from 18 to 21. According to the Resolution, these bills are substantially similar to SB 151 and will greatly decrease the numbers of young people who will become addicted to tobacco products at an early age as well as ensure continued progress in our efforts to reduce the rates of tobacco-related deaths and disease statewide.

The Resolution requests that the City support SBX2 7 and ABX2 8.

## BACKGROUND

On July 2, 2015, the City Council adopted Resolution (Parks – Koretz) to support SB 151 which would increase the minimum legal age to purchase or consume tobacco products from 18 to 21 (C.F. 15-0002-S44). SB 151 is currently pending before the Assembly Committee on Governmental Organization and is not expected to advance further at this time.

Subsequent to City Council adoption of Resolution (Parks – Koretz), the Governor called two Extraordinary Sessions of the Legislature to address transportation and health care issues, including bills related to tobacco use. This action was designed to allow lawmakers additional time to focus on critical health care issues outside of the constitutional budget deadlines. The special session will meet concurrently with the regular legislative session. Committees that review any special session proposals will have to be established under the organizational rules.

The regular legislative deadlines do not apply to the special session, with the exception of the September 11, 2015 deadline for the Legislature to pass bills.

Currently before the Legislature in the Second Extraordinary Session are SBX2 7 (Hernandez) and ABX2 8 (Wood) which would increase the minimum legal age to purchase or consume tobacco products from 18 to 21. According to the bill authors, reducing and eventually eliminating the illegal purchase and consumption of tobacco products by any person under 21 years of age is critical to ensuring the long-term health of State residents. 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 National Academy of Medicine states that increasing the minimum legal age to purchase or consume tobacco products to 21 will prevent or delay the use of these products by adolescents and young adults.

On August 21, 2013, Motion (Koretz – Bonin) was introduced which requests the City Attorney to prepare an ordinance to increase the minimum legal age to purchase tobacco products from age 18 to 21 (C.F. 13-1101). The City Attorney has advised that the City is not allowed to increase the minimum legal age to purchase these products inasmuch as it is preempted by State law. SBX2 7 and ABX2 8, if enacted, would address the preemption issue by increasing the minimum legal age to purchase or consume tobacco products to 21 on a statewide basis. In addition, under SBX2 7 and ABX2 8, local governments will be allowed to increase the minimum legal age beyond age 21.

Both SBX2 7 and ABX2 8 are consistent with City policies and practices regarding the use and sale of tobacco products.

Department Notified  
City Attorney

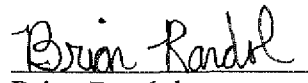
Bill Status

SBX2 7 (Hernandez)

July 16	Introduced. Read first time. Referred to Committee on Public Health and Developmental Services
August 13	Set for hearing August 19.
August 19	From committee: Do pass and re-refer to Committee on Appropriations (Ayes 9, Noes 3.) Re-referred to Committee on Appropriations.
August 24	From committee: Do pass. (Ayes 5, Noes 2)
August 25	Read second time. Ordered to third reading.
August 27	Read third time. Passed. (Ayes 25. Noes 11.) Ordered to the Assembly.

ABX2 8 (Wood)

- August 20 Referred to Committee on Public Health and Developmental Services  
August 26 From committee: Do pass and re-refer to Committee on Finance (Ayes 9, Noes 4.)  
September 4 From committee chair, with author's amendments: Amend, and re-refer to Committee on Finance.  
September 8 Re-referred to Committee on Finance.  
September 9 From committee: Do pass. (Ayes 5, Noes 3).



Brian Randol  
Brian Randol

Analyst

- Attachments: 1. Resolution  
2. Text of SBX2 7 (Hernandez)  
3. Text of ABX2 8 (Wood)

SMT:MF:PS:BMR

RESOLUTION  
RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

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, it is well-established scientific fact that smoking is linked to many serious diseases and conditions, such as cancer, heart disease, bronchitis, emphysema, and stroke; and

WHEREAS, the City has recently taken various steps to address health concerns related to the use of tobacco products, including the adoption of increased enforcement measures in the City's Tobacco Enforcement Program, approved by the City Council on August 21, 2015 (C.F. 13-1204-S3); and

WHEREAS, SB 151 (Hernandez), introduced on January 29, 2015, would increase the legal age to purchase or consume tobacco products from 18 to 21; and

WHEREAS, SB 151 was approved by the Senate but is now pending in the Assembly Committee on Governmental Organization and is not expected to advance further at this time; and

WHEREAS, the Governor has called two Extraordinary Sessions of the Legislature to address transportation and health care issues, including bills related to the use of tobacco products; and

WHEREAS, before the Legislature are SBX2 7 (Hernandez) and ABX2 8 (Wood) which would increase the legal age to purchase or consume tobacco products from 18 to 21; and

WHEREAS, SBX2 7 and ABX2 8 are substantially similar to SB 151 and will greatly decrease the numbers of young people who will become addicted to tobacco products at an early age; and

WHEREAS, these bills will ensure continued progress in our efforts to reduce the rates of tobacco-related deaths and disease statewide, and should be supported;


NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that upon adoption of this Resolution, the City of Los Angeles hereby includes in its 2015-16 State Legislative Program SUPPORT for SBX2 7 (Hernandez) and ABX2 8 (Wood) which would increase the minimum legal age to purchase or consume tobacco products from 18 to 21.

PRESENTED BY:

  
PAUL KORETZ

Councilmember, 5th District

SECONDED BY:



BMR  
SEP 1 2015



ORIGINAL

**SENATE BILL**

**No. 7**

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

July 16, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

CALIFORNIA LEGISLATURE—2015–16 SECOND EXTRAORDINARY SESSION

**ASSEMBLY BILL**

**No. 8**

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**Introduced by Assembly Member Wood  
(Coauthors: Assembly Members Bloom, Chiu, Levine, McCarty,  
and Rendon)**

July 16, 2015

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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

AB 8, as amended, Wood. 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.

*Existing law makes it a crime, punishable by a fine of \$75 or 30 hours of community service work, for a person under 18 years of age to purchase, receive, or possess certain tobacco products. Existing law requires 25% of certain fines to be paid to the city or county for the administration and cost of that community service work component. Existing law immunizes a person under 18 years of age from prosecution for those actions when they were taken while participating in specified enforcement activities.*

*This bill would delete those provisions.*

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 persons
- 8 under 21 years of age. Each promotional offer shall include in any
- 9 mail-in coupon a statement requesting purchasers to verify that
- 10 the purchaser is 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 21 years of age. For purposes of this subdivision, appropriate

1 efforts to ascertain the age of a purchaser includes, but is not  
2 limited to, requests for a purchaser's birth date.

3 (c) For any person by any means, as part of an advertising plan  
4 or program, to distribute free samples of smokeless tobacco  
5 products within a two block radius of any premises or facilities  
6 whose primary purpose is directed toward persons under 21 years  
7 of age including, but not limited to, schools, clubhouses, and youth  
8 centers, when those premises are being used for their primary  
9 purposes.

10 (d) For any person to distribute, as part of any advertising plan  
11 or program, unsolicited samples of smokeless tobacco products  
12 through a mail campaign.

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

15 22951. The Legislature finds and declares that reducing and  
16 eventually eliminating the illegal purchase and consumption of  
17 tobacco products by any person under 21 years of age is critical  
18 to ensuring the long-term health of our state's citizens.  
19 Accordingly, California must fully comply with federal regulations,  
20 particularly the "Synar Amendment," that restrict tobacco sales to  
21 minors and require states to vigorously enforce their laws  
22 prohibiting the sale and distribution of tobacco products to persons  
23 under 18 years of age. Full compliance and vigorous enforcement  
24 of the "Synar Amendment" requires the collaboration of multiple  
25 state and local agencies that license, inspect, or otherwise conduct  
26 business with retailers, distributors, or wholesalers that sell tobacco.

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

29 22952. The State Department of Public Health shall do all of  
30 the following:

31 (a) Establish and develop a program to reduce the availability  
32 of tobacco products to persons under 21 years of age through the  
33 enforcement activities authorized by this division.

34 (b) Establish requirements that retailers of tobacco products  
35 post conspicuously, at each point of purchase, a notice stating that  
36 selling tobacco products to anyone under 21 years of age is illegal  
37 and subject to penalties. The notice shall also state that the law  
38 requires that all persons selling tobacco products check the  
39 identification of a purchaser of tobacco products who reasonably  
40 appears to be under 21 years of age. The warning signs shall

1 include a toll-free telephone number to the department for persons  
2 to report unlawful sales of tobacco products to any person under  
3 21 years of age.

4 (c) Provide that primary responsibility for enforcement of this  
5 division shall be with the department. In carrying out its  
6 enforcement responsibilities, the department shall conduct random,  
7 onsite sting inspections at retail sites and shall enlist the assistance  
8 of persons that are under 21 years of age in conducting these  
9 enforcement activities. The department may conduct onsite sting  
10 inspections in response to public complaints or at retail sites where  
11 violations have previously occurred, and investigate illegal sales  
12 of tobacco products to any person under 21 years of age by  
13 telephone, mail, or the Internet. ~~Participation in these enforcement~~  
14 ~~activities by a person under 21 years of age does not constitute a~~  
15 ~~violation of subdivision (b) of Section 308 of the Penal Code for~~  
16 ~~the person under 21 years of age, and the A person under 21 years~~  
17 ~~of age who participates in these enforcement activities is immune~~  
18 ~~from prosecution thereunder, or under any other provision of law~~  
19 ~~prohibiting the purchase of these products by a person under 21~~  
20 ~~years of age.~~

21 (d) In accordance with Chapter 3.5 (commencing with Section  
22 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
23 the department shall adopt and publish guidelines for the use of  
24 persons under 21 years of age in inspections conducted pursuant  
25 to subdivision (c) that shall include, but not be limited to, all of  
26 the following:

27 (1) An enforcing agency may use persons under 21 years of age  
28 in random inspections to determine if sales of cigarettes or other  
29 tobacco products are being made to persons under 21 years of age.

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

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

37 (4) The person under 21 years of age, if questioned about his  
38 or her age, need not state his or her actual age but shall present a  
39 true and correct identification if verbally asked to present it. Any  
40 failure on the part of the person under 21 years of age to provide

1 true and correct identification, if verbally asked for it, shall be a  
2 defense to an action pursuant to this section.

3 (5) The person under 21 years of age shall be under the  
4 supervision of a regularly employed peace officer during the  
5 inspection.

6 (6) All persons under 21 years of age used in this manner by an  
7 enforcing agency shall display the appearance of a person under  
8 21 years of age. It shall be a defense to an action under this division  
9 that the person's appearance was not that which could be generally  
10 expected of a person under 21 years of age, under the actual  
11 circumstances presented to the seller of the cigarettes or other  
12 tobacco products at the time of the alleged offense.

13 (7) Following the completion of the sale, the peace officer  
14 accompanying the person under 21 years of age shall reenter the  
15 retail establishment and shall inform the seller of the random  
16 inspection. Following an attempted sale, the enforcing agency shall  
17 notify the retail establishment of the inspection.

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

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

27 (f) Provide that any civil penalties imposed pursuant to Section  
28 22958 shall be enforced against the owner or owners of the retail  
29 business and not the employees of the business.

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

32 22956. All persons engaging in the retail sale of tobacco  
33 products shall check the identification of tobacco purchasers, to  
34 establish the age of the purchaser, if the purchaser reasonably  
35 appears to be under 21 years of age.

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

38 22958. (a) An enforcing agency may assess civil penalties  
39 against any person, firm, or corporation that sells, gives, or in any  
40 way furnishes to another person who is under 21 years of age, any

1 tobacco, cigarette, cigarette papers, any other instrument or  
2 paraphernalia that is designed for the smoking or ingestion of  
3 tobacco, products prepared from tobacco, or any controlled  
4 substance, according to the following schedule: (1) a civil penalty  
5 of from four hundred dollars (\$400) to six hundred dollars (\$600)  
6 for the first violation, (2) a civil penalty of from nine hundred  
7 dollars (\$900) to one thousand dollars (\$1,000) for the second  
8 violation within a five-year period, (3) a civil penalty of from one  
9 thousand two hundred dollars (\$1,200) to one thousand eight  
10 hundred dollars (\$1,800) for a third violation within a five-year  
11 period, (4) a civil penalty of from three thousand dollars (\$3,000)  
12 to four thousand dollars (\$4,000) for a fourth violation within a  
13 five-year period, or (5) a civil penalty of from five thousand dollars  
14 (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within  
15 a five-year period.

16 (b) (1) In addition to the civil penalties described in subdivision  
17 (a), upon the assessment of a civil penalty for the third, fourth, or  
18 fifth violation, the department, within 60 days of the date of service  
19 of the final administrative adjudication on the parties or payment  
20 of the civil penalty for an uncontested violation, shall notify the  
21 State Board of Equalization of the violation. The State Board of  
22 Equalization shall then assess a civil penalty of two hundred fifty  
23 dollars (\$250) and suspend or revoke a license issued pursuant to  
24 Chapter 2 (commencing with Section 22972) of Division 8.6 in  
25 accordance with the following schedule:

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

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

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

32 (2) The provisions of Chapter 4 (commencing with Section  
33 55121) of Part 30 of Division 2 of the Revenue and Taxation Code  
34 apply with respect to the collection of the penalty imposed by the  
35 State Board of Equalization pursuant to paragraph (1).

36 (c) (1) For each suspension or revocation pursuant to  
37 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)  
38 assessed pursuant to that subdivision, notwithstanding Section  
39 22953, shall be deposited into the Cigarette and Tobacco Products  
40 Compliance Fund established pursuant to Section 22990. Moneys

1 from that civil penalty deposited into this fund shall be made  
2 available to the State Board of Equalization, upon appropriation  
3 by the Legislature, for the purposes of meeting its duties under  
4 subdivision (b).

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

10 (d) The enforcing agency shall assess penalties pursuant to the  
11 schedule set forth in subdivision (a) against a person, firm, or  
12 corporation that sells, offers for sale, or distributes tobacco products  
13 from a cigarette or tobacco products vending machine, or a person,  
14 firm, or corporation that leases, furnishes, or services these  
15 machines in violation of Section 22960.

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

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

28 (g) If a civil penalty has been assessed pursuant to this section  
29 against a person, firm, or corporation for a single, specific violation  
30 of this division, the person, firm, or corporation shall not be  
31 prosecuted under Section 308 of the Penal Code for a violation  
32 based on the same facts or specific incident for which the civil  
33 penalty was assessed. If a person, firm, or corporation has been  
34 prosecuted for a single, specific violation of Section 308 of the  
35 Penal Code, the person, firm, or corporation shall not be assessed  
36 a civil penalty under this section based on the same facts or specific  
37 incident upon which the prosecution under Section 308 of the Penal  
38 Code was based.

39 (h) (1) In the case of a corporation or business with more than  
40 one retail location, to determine the number of accumulated



1 violations for purposes of the penalty schedule set forth in  
2 subdivision (a), violations of this division by one retail location  
3 shall not be accumulated against other retail locations of that same  
4 corporation or business.

5 (2) In the case of a retail location that operates pursuant to a  
6 franchise as defined in Section 20001, violations of this division  
7 accumulated and assessed against a prior owner of a single  
8 franchise location shall not be accumulated against a new owner  
9 of the same single franchise location for purposes of the penalty  
10 schedule set forth in subdivision (a).

11 (i) Proceedings under this section shall be conducted pursuant  
12 to Section 131071 of the Health and Safety Code, except in cases  
13 where a civil penalty is assessed by an enforcing agency other than  
14 the department, in which case proceedings shall be conducted  
15 pursuant to the procedures of that agency that are consistent with  
16 Section 131071 of the Health and Safety Code.

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

19 22963. (a) The sale, distribution, or nonsale distribution of  
20 tobacco products directly or indirectly to any person under 21 years  
21 of age through the United States Postal Service or through any  
22 other public or private postal or package delivery service at  
23 locations, including, but not limited to, public mailboxes and  
24 mailbox stores, is prohibited.

25 (b) Any person selling or distributing, or engaging in the nonsale  
26 distribution of, tobacco products directly to a consumer in the state  
27 through the United States Postal Service or by any other public or  
28 private postal or package delivery service, including orders placed  
29 by mail, telephone, facsimile transmission, or the Internet, shall  
30 comply with the following provisions:

31 (1) (A) Before enrolling a person as a customer, or distributing  
32 or selling, or engaging in the nonsale distribution of, the tobacco  
33 product through any of these means, the distributor or seller shall  
34 verify that the purchaser or recipient of the product is 21 years of  
35 age or older. The distributor or seller shall attempt to match the  
36 name, address, and date of birth provided by the customer to  
37 information contained in records in a database of individuals whose  
38 age has been verified to be 21 years or older by reference to an  
39 appropriate database of government records kept by the distributor,  
40 a direct marketing firm, or any other entity. In the case of a sale,

1 the distributor or seller shall also verify that the billing address on  
2 the check or credit card offered for payment by the purchaser  
3 matches the address listed in the database.

4 (B) If the seller, distributor, or nonsale distributor, is unable to  
5 verify that the purchaser or recipient is 21 years of age or older  
6 pursuant to subparagraph (A), he or she shall require the customer  
7 or recipient to submit an age-verification kit consisting of an  
8 attestation signed by the customer or recipient that he or she is 21  
9 years of age or older and a copy of a valid form of government  
10 identification. For the purposes of this section, a valid form of  
11 government identification includes a driver's license, state  
12 identification card, passport, an official naturalization or  
13 immigration document, such as an alien registration receipt card  
14 (commonly known as a "green card") or an immigrant visa, or  
15 military identification. In the case of a sale, the distributor or seller  
16 shall also verify that the billing address on the check or credit card  
17 provided by the consumer matches the address listed in the form  
18 of government identification.

19 (2) In the case of a sale, the distributor or seller shall impose a  
20 two-carton minimum on each order of cigarettes, and shall require  
21 payment for the purchase of any tobacco product to be made by  
22 personal check of the purchaser or the purchaser's credit card. No  
23 money order or cash payment shall be received or permitted. The  
24 distributor or seller shall submit to each credit card acquiring  
25 company with which it has credit card sales identification  
26 information in an appropriate form and format so that the words  
27 "tobacco product" may be printed in the purchaser's credit card  
28 statement when a purchase of a tobacco product is made by credit  
29 card payment.

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

36 (4) The nonsale distributor shall deliver the tobacco product to  
37 the recipient's verified mailing address, or in the case of a sale,  
38 the seller or distributor shall deliver the tobacco product to the  
39 purchaser's verified billing address on the check or credit card

1 used for payment. No delivery described under this section shall  
2 be permitted to any post office box.

3 (c) Notwithstanding subdivisions (a) and (b), if a seller,  
4 distributor, or nonsale distributor, complies with all of the  
5 requirements of this section and a person under 21 years of age  
6 obtains a tobacco product by any of the means described in  
7 subdivision (b), the seller, distributor, or nonsale distributor is not  
8 in violation of this section.

9 (d) For the purposes of the enforcement of this section pursuant  
10 to Section 22958, the acts of the United States Postal Service or  
11 other common carrier when engaged in the business of transporting  
12 and delivering packages for others, and the acts of a person,  
13 whether compensated or not, who transports or delivers a package  
14 for another person without any reason to know of the package's  
15 contents, are not unlawful and are not subject to civil penalties.

16 (e) (1) (A) For the purposes of this section, a "distributor" is  
17 any person or entity, within or outside the state, who agrees to  
18 distribute tobacco products to a customer or recipient within the  
19 state. The United States Postal Service or any other public or  
20 private postal or package delivery service are not distributors within  
21 the meaning of this section.

22 (B) A "nonsale distributor" is any person inside or outside of  
23 this state who, directly or indirectly, knowingly provides tobacco  
24 products to any person in this state as part of a nonsale transaction.  
25 "Nonsale distributor" includes the person or entity who provides  
26 the tobacco product for delivery and the person or entity who  
27 delivers the product to the recipient as part of a nonsale transaction.

28 (C) "Nonsale distribution" means to give smokeless tobacco or  
29 cigarettes to the general public at no cost, or at nominal cost, or  
30 to give coupons, coupon offers, gift certificates, gift cards, or other  
31 similar offers, or rebate offers for smokeless tobacco or cigarettes  
32 to the general public at no cost or at nominal cost. Distribution of  
33 tobacco products, coupons, coupon offers, gift certificates, gift  
34 cards, or other similar offers, or rebate offers in connection with  
35 the sale of another item, including tobacco products, cigarette  
36 lighters, magazines, or newspapers shall not constitute nonsale  
37 distribution.

38 (2) For the purpose of this section, a "seller" is any person or  
39 entity, within or outside the state, who agrees to sell tobacco  
40 products to a customer within the state. The United States Postal

1 Service or any other public or private postal or package delivery  
2 service are not sellers within the meaning of this section.

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

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

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

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

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

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

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

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

25 22964. This division sets forth minimum state restrictions with  
26 respect to the legal age to purchase or possess tobacco products  
27 and does not preempt or otherwise prohibit the adoption of a local  
28 standard that imposes a more restrictive legal age to purchase or  
29 possess tobacco products. A local standard that imposes a more  
30 restrictive legal age to purchase or possess tobacco products shall  
31 control in the event of any inconsistency between this division and  
32 a local standard.

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

34 308. (a) (1) (A) Every person, firm, or corporation that  
35 knowingly or under circumstances in which it has knowledge, or  
36 should otherwise have grounds for knowledge, sells, gives, or in  
37 any way furnishes to another person who is under 21 years of age  
38 any tobacco, cigarette, or cigarette papers, or blunt wraps, or any  
39 other preparation of tobacco, or any other instrument or  
40 paraphernalia that is designed for the smoking or ingestion of

1 tobacco, products prepared from tobacco, or any controlled  
2 substance, is subject to either a criminal action for a misdemeanor  
3 or to a civil action brought by a city attorney, a county counsel, or  
4 a district attorney, punishable by a fine of two hundred dollars  
5 (\$200) for the first offense, five hundred dollars (\$500) for the  
6 second offense, and one thousand dollars (\$1,000) for the third  
7 offense.

8 **Notwithstanding**

9 (B) *Notwithstanding* Section 1464 or any other law, 25 percent  
10 of each civil and criminal penalty collected pursuant to this  
11 subdivision shall be paid to the office of the city attorney, county  
12 counsel, or district attorney, whoever is responsible for bringing  
13 the successful action; ~~and 25 percent of each civil and criminal~~  
14 ~~penalty collected pursuant to this subdivision shall be paid to the~~  
15 ~~city or county for the administration and cost of the community~~  
16 ~~service work component provided in subdivision (b):~~ *action.*

17 **Proof**

18 (C) *Proof* that a defendant, or his or her employee or agent,  
19 demanded, was shown, and reasonably relied upon evidence of  
20 majority shall be defense to any action brought pursuant to this  
21 subdivision. Evidence of majority of a person is a facsimile of or  
22 a reasonable likeness of a document issued by a federal, state,  
23 county, or municipal government, or subdivision or agency thereof,  
24 including, but not limited to, a motor vehicle operator's license, a  
25 registration certificate issued under the federal Selective Service  
26 Act, or an identification card issued to a member of the Armed  
27 Forces.

28 **For**

29 (D) *For* purposes of this section, the person liable for selling  
30 or furnishing tobacco products to persons under 21 years of age  
31 by a tobacco vending machine shall be the person authorizing the  
32 installation or placement of the tobacco vending machine upon  
33 premises he or she manages or otherwise controls and under  
34 circumstances in which he or she has knowledge, or should  
35 otherwise have grounds for knowledge, that the tobacco vending  
36 machine will be utilized by persons under 21 years of age.

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

1 ~~(b) Every person under 21 years of age who purchases, receives,~~  
2 ~~or possesses any tobacco, cigarette, or cigarette papers, or any~~  
3 ~~other preparation of tobacco, or any other instrument or~~  
4 ~~paraphernalia that is designed for the smoking of tobacco, products~~  
5 ~~prepared from tobacco, or any controlled substance shall, upon~~  
6 ~~conviction, be punished by a fine of seventy-five dollars (\$75) or~~  
7 ~~30 hours of community service work.~~

8 (e)

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

20 (d)

21 (c) For purposes of determining the liability of persons, firms,  
22 or corporations controlling franchises or business operations in  
23 multiple locations for the second and subsequent violations of this  
24 section, each individual franchise or business location shall be  
25 deemed a separate entity.

26 ~~(e) Notwithstanding subdivision (b), any person under 21 years~~  
27 ~~of age who purchases, receives, or possesses any tobacco, cigarette,~~  
28 ~~or cigarette papers, or any other preparation of tobacco, any other~~  
29 ~~instrument or paraphernalia that is designed for the smoking of~~  
30 ~~tobacco, or products prepared from tobacco is immune from~~  
31 ~~prosecution for that purchase, receipt, or possession while~~  
32 ~~participating in either of the following:~~

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

36 ~~(2) An activity conducted by the State Department of Public~~  
37 ~~Health, a local health department, or a law enforcement agency~~  
38 ~~for the purpose of determining or evaluating youth tobacco~~  
39 ~~purchase rates.~~

40 (f)

1 (d) It is the Legislature's intent to regulate the subject matter  
2 of this section. As a result, a city, county, or city and county shall  
3 not adopt any ordinance or regulation inconsistent with this section.  
4 SEC. 9. 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.

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