

AMENDED IN SENATE JUNE 1, 2015
AMENDED IN SENATE APRIL 13, 2015
AMENDED IN SENATE MARCH 10, 2015

SENATE BILL

No. 140

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

January 26, 2015

An act to amend Sections 22950.5, 22958, ~~22962, and 22971~~ of ~~and 22962 of, to amend, repeal, and add Sections 22973 and 22980.2 of, and to add Section 22971.7 to,~~ the Business and Professions Code, to amend Section 1947.5 of the Civil Code, to amend Section 48901 of the Education Code, to amend Section 7597 of the Government Code, to amend Sections 1234, 1286, 1530.7, 1596.795, 104495, 114332.3, 114371, 118910, 118925, and 118948 of, and to repeal Section 119405 of, the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Section 308 of the Penal Code, to amend Sections 561 and 99580 of the Public Utilities Code, and to amend Section 12523 of the Vehicle Code, relating to electronic cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

SB 140, as amended, Leno. Electronic cigarettes.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, prohibits a person from selling or otherwise furnishing tobacco products to minors. Existing law permits enforcing agencies to assess various civil penalties for violations of the STAKE Act. Existing law

makes it a crime to furnish tobacco products to minors. Existing law also prohibits a person from selling or otherwise furnishing an electronic cigarette to minors, and makes a violation punishable as an infraction.

This bill would define the term “smoking” for purposes of the STAKE Act. The bill would also change the STAKE Act’s definition of tobacco products to include electronic devices, such as electronic cigarettes, that deliver nicotine or other vaporized liquids, and make furnishing such a tobacco product to a minor a misdemeanor.

Existing law, the Cigarette and Tobacco Products Tax Law, imposes a tax on the distribution of cigarettes and tobacco products at specified rates, and defines tobacco products for those purposes. Existing law, the Cigarette and Tobacco Products Licensing Act of 2003, requires the State Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products, as defined. Under existing law, a violation of this act is a misdemeanor. Existing law requires a retailer to have in place and maintain a license to engage in the sale of cigarettes or tobacco products, as defined, and prescribes procedures for the issuance of and grounds for revocation or suspension of a license. Existing law requires a retailer who seeks to obtain a license to engage in the sale of cigarettes and tobacco products to pay a one-time license fee of \$100, as specified. Existing law authorizes the State Board of Equalization or a law enforcement agency that discovers that a retailer or other person possesses, stores, owns, or has made a retail sale of tobacco products on which a tax is due but has not been paid to seize those products, and deems those products forfeited, as specified.

This bill would change that act’s definition of tobacco products to reflect include in the definition of tobacco products for the purposes of those provisions relating to licenses for retailers the STAKE Act’s new definition of tobacco products. This bill would require a retailer that seeks to sell a tobacco product that is not subject to imposition of a tax under the Cigarette and Tobacco Products Tax Law to pay a one-time license fee to engage in the sale of that product, as specified. The bill would except the STAKE Act’s new definition of tobacco products from the provision authorizing seizure of tobacco products described above. The bill would make these provisions operative on October 1, 2016.

Existing law makes it a crime for a person or entity to engage in the business of selling cigarettes or tobacco products without a valid license or after a license has been suspended or revoked, as specified. Existing

law also makes it a crime for a person to continue selling or gifting cigarettes or tobacco products without a valid license or after a notification of suspension or revocation, as specified.

This bill would include in the definition of tobacco products for the purposes of those provisions the STAKE Act's new definition of tobacco products. The bill would make that provision operative on October 1, 2016.

Existing law prohibits the smoking of cigarettes and other tobacco products in a variety of specified areas. Under existing law, a violation of some of these prohibitions is punishable as an infraction.

This bill would change the location restrictions for smoking cigarettes and other tobacco products to reflect the STAKE Act's definitions of smoking and tobacco products. The bill would make the use of electronic cigarettes in some of these restricted locations a violation punishable as an infraction.

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

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

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

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

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

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

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

- 1 SECTION 1. Section 22950.5 of the Business and Professions
- 2 Code is amended to read:
- 3 22950.5. For purposes of this division, the following terms
- 4 have the following meanings:
- 5 (a) "Department" means the State Department of Public Health.
- 6 (b) "Enforcing agency" means the State Department of Public
- 7 Health, another state agency, including, but not limited to, the
- 8 office of the Attorney General, or a local law enforcement agency,

1 including, but not limited to, a city attorney, district attorney, or
2 county counsel.

3 (c) “Smoking” means inhaling, exhaling, burning, or carrying
4 any lighted or heated cigar, cigarette, or pipe, or any other lighted
5 or heated tobacco or plant product intended for inhalation, whether
6 natural or synthetic, in any manner or in any form. “Smoking”
7 includes the use of an electronic smoking device that creates an
8 aerosol or vapor, in any manner or in any form, or the use of any
9 oral smoking device for the purpose of circumventing the
10 prohibition of smoking.

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

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

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

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

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

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

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

1 thousand eight hundred dollars (\$1,800) for a third violation within
2 a five-year period, (4) a civil penalty of three thousand dollars
3 (\$3,000) to four thousand dollars (\$4,000) for a fourth violation
4 within a five-year period, or (5) a civil penalty of five thousand
5 dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth violation
6 within a five-year period.

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

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

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

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

23 (2) The provisions of Chapter 4 (commencing with Section
24 55121) of Part 30 of Division 2 of the Revenue and Taxation Code
25 apply with respect to the collection of the penalty imposed by the
26 State Board of Equalization pursuant to paragraph (1).

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

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

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

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

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

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

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

(2) In the case of a retail location that operates pursuant to a franchise as defined in Section 20001, violations of this division accumulated and assessed against a prior owner of a single franchise location shall not be accumulated against a new owner

1 of the same single franchise location for purposes of the penalty
2 schedule set forth in subdivision (a).

3 (i) Proceedings under this section shall be conducted pursuant
4 to Section 131071 of the Health and Safety Code, except in cases
5 where a civil penalty is assessed by an enforcing agency other than
6 the department, in which case proceedings shall be conducted
7 pursuant to the procedures of that agency that are consistent with
8 Section 131071 of the Health and Safety Code.

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

11 22962. (a) For purposes of this section, the following terms
12 have the following meanings:

13 (1) “Self-service display” means the open display of tobacco
14 products or tobacco paraphernalia in a manner that is accessible
15 to the general public without the assistance of the retailer or
16 employee of the retailer.

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

22 (3) “Tobacco product” means a product or device as defined in
23 subdivision (d) of Section 22950.5 of the Business and Professions
24 Code.

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

27 (A) Primarily sells tobacco products.

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

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

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

37 (b) (1) (A) Except as permitted in subdivision (b) of Section
38 22960, it is unlawful for a person engaged in the retail sale of
39 tobacco products to sell, offer for sale, or display for sale any
40 tobacco product or tobacco paraphernalia by self-service display.

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

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

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

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

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

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

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

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

34 ~~22971. For purposes of this division, the following terms shall~~
35 ~~have the following meanings:~~

36 ~~(a) "Board" means the State Board of Equalization.~~

37 ~~(b) "Brand family" has the same meaning as that term is defined~~
38 ~~in paragraph (2) of subdivision (a) of Section 30165.1 of the~~
39 ~~Revenue and Taxation Code.~~

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

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

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

7 ~~(B) To direct or cause the direction of the management and~~
8 ~~policies of a person, whether through the ownership of voting~~
9 ~~securities, by contract, other than a commercial contract for goods~~
10 ~~or nonmanagement services, or as otherwise provided; however,~~
11 ~~no individual shall be deemed to control a person solely on account~~
12 ~~of being a director, officer, or employee of that person.~~

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

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

20 ~~(e) “Display for sale” means the placement of cigarettes or~~
21 ~~tobacco products in a vending machine or in retail stock for the~~
22 ~~purpose of selling or gifting the cigarettes or tobacco products.~~
23 ~~For purposes of this definition, the clear and easily visible display~~
24 ~~of cigarettes or tobacco products shall create a rebuttable~~
25 ~~presumption that either were displayed for sale.~~

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

28 ~~(g) “Gifting” means any transfer of title or possession without~~
29 ~~consideration, exchange, or barter, in any manner or by any means,~~
30 ~~of cigarettes or tobacco products that have been purchased for~~
31 ~~resale under a license issued pursuant to this division if the transfer~~
32 ~~occurs while the license is suspended or after the effective date of~~
33 ~~its revocation.~~

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

36 ~~(i) “Law enforcement agency” means a sheriff, a police~~
37 ~~department, or a city, county, or city and county agency or~~
38 ~~department designated by the governing body of that agency to~~
39 ~~enforce this chapter or to enforce local smoking and tobacco~~
40 ~~ordinances and regulations.~~

1 (j) ~~“License” means a license issued by the board pursuant to~~
2 ~~this division.~~

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

5 (l) ~~“Manufacturer” means a manufacturer of cigarettes or~~
6 ~~tobacco products sold in this state.~~

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

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

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

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

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

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

24 (2) ~~A vending machine.~~

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

27 (s) ~~“Tobacco products” means a product or device as defined~~
28 ~~in subdivision (d) of Section 22950.5.~~

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

37 (u) ~~“Wholesaler” means a wholesaler as defined in Section~~
38 ~~30016 of the Revenue and Taxation Code.~~

39 SEC. 4. *Section 22971.7 is added to the Business and*
40 *Professions Code, immediately preceding Section 22972, to read:*

1 22971.7. (a) For the purposes of this chapter, except as
2 provided in subdivision (b), and notwithstanding subdivision (s)
3 of Section 22971, a “tobacco product” includes a product or device
4 as defined in subdivision (d) of Section 22950.5.

5 (b) This section does not apply to subdivision (b) of Section
6 22974.3.

7 (c) This section shall be operative on October 1, 2016.

8 SEC. 5. Section 22973 of the Business and Professions Code
9 is amended to read:

10 22973. (a) An application for a license shall be filed on or
11 before April 15, 2004, on a form prescribed by the board and shall
12 include the following:

13 (1) The name, address, and telephone number of the applicant.

14 (2) The business name, address, and telephone number of each
15 retail location. For applicants who control more than one retail
16 location, an address for receipt of correspondence or notices from
17 the board, such as a headquarters or corporate office of the retailer,
18 shall also be included on the application and listed on the license.
19 Citations issued to licensees shall be forwarded to all addressees
20 on the license.

21 (3) A statement by the applicant affirming that the applicant
22 has not been convicted of a felony and has not violated and will
23 not violate or cause or permit to be violated any of the provisions
24 of this division or any rule of the board applicable to the applicant
25 or pertaining to the manufacture, sale, or distribution of cigarettes
26 or tobacco products. If the applicant is unable to affirm this
27 statement, the application shall contain a statement by the applicant
28 of the nature of any violation or the reasons that will prevent the
29 applicant from complying with the requirements with respect to
30 the statement.

31 (4) If any other licenses or permits have been issued by the
32 board or the Department of Alcoholic Beverage Control to the
33 applicant, the license or permit number of those licenses or permits
34 then in effect.

35 (5) A statement by the applicant that the contents of the
36 application are complete, true, and correct. Any person who signs
37 a statement pursuant to this subdivision that asserts the truth of
38 any material matter that he or she knows to be false is guilty of a
39 misdemeanor punishable by imprisonment of up to one year in the

1 county jail, or a fine of not more than one thousand dollars
2 (\$1,000), or both the imprisonment and the fine.

3 (6) The signature of the applicant.

4 (7) Any other information the board may require.

5 (b) The board may investigate to determine the truthfulness and
6 completeness of the information provided in the application. The
7 board may issue a license without further investigation to an
8 applicant for a retail location if the applicant holds a valid license
9 from the Department of Alcoholic Beverage Control for that same
10 location.

11 (c) The board shall provide electronic means for applicants to
12 download and submit applications.

13 (d) (1) A one-time license fee of one hundred dollars (\$100)
14 shall be submitted with each application. An applicant that owns
15 or controls more than one retail location shall obtain a separate
16 license for each retail location, but may submit a single application
17 for those licenses with a one-time license fee of one hundred dollars
18 (\$100) per location.

19 (2) The one-time fee required by this subdivision does not apply
20 to an application for renewal of a license for a retail location for
21 which the one-time license fee has already been paid. If a license
22 is reinstated after its expiration, the retailer, as a condition
23 precedent to its reinstatement, shall pay a reinstatement fee of one
24 hundred dollars (\$100).

25 (e) *This section shall become inoperative on October 1, 2016,*
26 *and, as of January 1, 2017, is repealed.*

27 SEC. 6. *Section 22973 is added to the Business and Professions*
28 *Code, to read:*

29 22973. (a) *An application for a license shall be filed on or*
30 *before April 15, 2004, on a form prescribed by the board and shall*
31 *include the following:*

32 (1) *The name, address, and telephone number of the applicant.*

33 (2) *The business name, address, and telephone number of each*
34 *retail location. For applicants who control more than one retail*
35 *location, an address for receipt of correspondence or notices from*
36 *the board, such as a headquarters or corporate office of the*
37 *retailer, shall also be included on the application and listed on*
38 *the license. Citations issued to licensees shall be forwarded to all*
39 *addressees on the license.*

1 (3) A statement by the applicant affirming that the applicant
2 has not been convicted of a felony and has not violated and will
3 not violate or cause or permit to be violated any of the provisions
4 of this division or any rule of the board applicable to the applicant
5 or pertaining to the manufacture, sale, or distribution of cigarettes
6 or tobacco products. If the applicant is unable to affirm this
7 statement, the application shall contain a statement by the
8 applicant of the nature of any violation or the reasons that will
9 prevent the applicant from complying with the requirements with
10 respect to the statement.

11 (4) If any other licenses or permits have been issued by the
12 board or the Department of Alcoholic Beverage Control to the
13 applicant, the license or permit number of those licenses or permits
14 then in effect.

15 (5) A statement by the applicant that the contents of the
16 application are complete, true, and correct. Any person who signs
17 a statement pursuant to this subdivision that asserts the truth of
18 any material matter that he or she knows to be false is guilty of a
19 misdemeanor punishable by imprisonment of up to one year in the
20 county jail, or a fine of not more than one thousand dollars
21 (\$1,000), or both the imprisonment and the fine.

22 (6) The signature of the applicant.

23 (7) Any other information the board may require.

24 (b) The board may investigate to determine the truthfulness and
25 completeness of the information provided in the application. The
26 board may issue a license without further investigation to an
27 applicant for a retail location if the applicant holds a valid license
28 from the Department of Alcoholic Beverage Control for that same
29 location.

30 (c) The board shall provide electronic means for applicants to
31 download and submit applications.

32 (d) (1) A one-time license fee of one hundred dollars (\$100)
33 shall be submitted with each application to obtain a license to
34 engage in the sale of a tobacco product, as defined in subdivision
35 (b) of Section 30121 and subdivision (b) of Section 30131.1. An
36 applicant that owns or controls more than one retail location shall
37 obtain a separate license for each retail location, but may submit
38 a single application for those licenses with a one-time license fee
39 of one hundred dollars (\$100) per location.

(2) A one-time license fee in an amount determined by the Board of Equalization shall be submitted with each application to obtain a license to engage in the sale of a tobacco product, as defined in subdivision (d) of Section 22950.5, that is not subject to a tax imposed by the Cigarette and Tobacco Products Tax Law pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code. The fee collected pursuant to this paragraph shall not exceed the total cost associated with the administration and enforcement of the license.

(3) The one-time fee required by paragraph (1) of this subdivision does not apply to an application for renewal of a license for a retail location for which the one-time license fee has already been paid. If a license is reinstated after its expiration, the retailer, as a condition precedent to its reinstatement, shall pay a reinstatement fee of one hundred dollars (\$100).

(e) This section shall be operative on October 1, 2016.

SEC. 7. Section 22980.2 of the Business and Professions Code is amended to read:

22980.2. (a) A person or entity that engages in the business of selling cigarettes or tobacco products in this state either without a valid license or after a license has been suspended or revoked, and each officer of any corporation that so engages in this business, is guilty of a misdemeanor punishable as provided in Section 22981.

(b) Each day after notification by the board or by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed under this division offers cigarette and tobacco products for sale or exchange without a valid license for the location from which they are offered for sale shall constitute a separate violation.

(c) Continued sales or gifting of cigarettes and tobacco products either without a valid license or after a notification of suspension or revocation shall constitute a violation punishable as provided in Section 22981, and shall result in the seizure of all cigarettes and tobacco products in the possession of the person by the board or a law enforcement agency. Any cigarettes and tobacco products seized by the board or by a law enforcement agency shall be deemed forfeited.

(d) This section shall become inoperative on October 1, 2016, and, as of January 1, 2017, is repealed.

1 SEC. 8. Section 22980.2 is added to the Business and
2 Professions Code, to read:

3 22980.2. (a) A person or entity that engages in the business
4 of selling cigarettes or tobacco products in this state either without
5 a valid license or after a license has been suspended or revoked,
6 and each officer of any corporation that so engages in this
7 business, is guilty of a misdemeanor punishable as provided in
8 Section 22981.

9 (b) Each day after notification by the board or by a law
10 enforcement agency that a manufacturer, wholesaler, distributor,
11 importer, retailer, or any other person required to be licensed
12 under this division offers cigarette and tobacco products for sale
13 or exchange without a valid license for the location from which
14 they are offered for sale shall constitute a separate violation.

15 (c) Continued sales or gifting of cigarettes and tobacco products
16 either without a valid license or after a notification of suspension
17 or revocation shall constitute a violation punishable as provided
18 in Section 22981, and shall result in the seizure of all cigarettes
19 and tobacco products in the possession of the person by the board
20 or a law enforcement agency. Any cigarettes and tobacco products
21 seized by the board or by a law enforcement agency shall be
22 deemed forfeited.

23 (d) For the purposes of this section, notwithstanding subdivision
24 (s) of Section 22971, "tobacco products" includes a product or
25 device as defined in subdivision (d) of Section 22950.5.

26 (e) This section shall be operative on October 1, 2016.

27 ~~SEC. 5.~~

28 SEC. 9. Section 1947.5 of the Civil Code is amended to read:

29 1947.5. (a) A landlord of a residential dwelling unit, as defined
30 in Section 1940, or his or her agent, may prohibit the smoking of
31 a cigarette, as defined in Section 104556 of the Health and Safety
32 Code, or other tobacco product on the property or in any building
33 or portion of the building, including any dwelling unit, other
34 interior or exterior area, or the premises on which it is located, in
35 accordance with this article.

36 (b) (1) Every lease or rental agreement entered into on or after
37 January 1, 2012, for a residential dwelling unit on property on any
38 portion of which the landlord has prohibited the smoking of
39 cigarettes or other tobacco products pursuant to this article shall
40 include a provision that specifies the areas on the property where

1 smoking is prohibited, if the lessee has not previously occupied
2 the dwelling unit.

3 (2) For a lease or rental agreement entered into before January
4 1, 2012, a prohibition against the smoking of cigarettes or other
5 tobacco products in any portion of the property in which smoking
6 was previously permitted shall constitute a change of the terms of
7 tenancy, requiring adequate notice in writing, to be provided in
8 the manner prescribed in Section 827.

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

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

19 (e) A limitation or prohibition of the use of any tobacco product
20 shall not affect any other term or condition of the tenancy, nor
21 shall this section be construed to require statutory authority to
22 establish or enforce any other lawful term or condition of the
23 tenancy.

24 (f) For purposes of this section, “smoking” has the meaning of
25 the definition in subdivision (c) of Section 22950.5 of the Business
26 and Professions Code.

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

30 ~~SEC. 6.~~

31 *SEC. 10.* Section 48901 of the Education Code is amended to
32 read:

33 48901. (a) No school shall permit the smoking or use of a
34 tobacco product by pupils of the school while the pupils are on
35 campus, or while attending school-sponsored activities or while
36 under the supervision and control of school district employees.

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

1 (c) For purposes of this section, “smoking” has the meaning of
2 the definition in subdivision (c) of Section 22950.5 of the Business
3 and Professions Code.

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

7 ~~SEC. 7.~~

8 *SEC. 11.* Section 7597 of the Government Code is amended
9 to read:

10 7597. (a) No public employee or member of the public shall
11 smoke a tobacco product inside a public building, or in an outdoor
12 area within 20 feet of a main exit, entrance, or operable window
13 of a public building, or in a passenger vehicle, as defined by
14 Section 465 of the Vehicle Code, owned by the state.

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

22 (c) For purposes of this section, “smoke” and “smoking” have
23 the meaning of the definition in subdivision (c) of Section 22950.5
24 of the Business and Professions Code.

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

28 ~~SEC. 8.~~

29 *SEC. 12.* Section 1234 of the Health and Safety Code is
30 amended to read:

31 1234. (a) Smoking a tobacco product shall not be permitted
32 in patient areas of a clinic except those rooms designated for
33 occupancy exclusively by smokers.

34 (b) Clearly legible signs shall either:

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

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

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

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

8 (d) For purposes of this section, “smoking” has the meaning of
9 the definition in subdivision (c) of Section 22950.5 of the Business
10 and Professions Code.

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

14 ~~SEC. 9.~~

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

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

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

26 (c) Clearly legible signs shall either:

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

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

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

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

1 (e) This section shall not apply to skilled nursing facilities,
2 intermediate care facilities, and intermediate care facilities for the
3 developmentally disabled.

4 (f) For purposes of this section, “smoking” has the meaning of
5 the definition in subdivision (c) of Section 22950.5 of the Business
6 and Professions Code.

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

10 ~~SEC. 10.~~

11 *SEC. 14.* Section 1530.7 of the Health and Safety Code is
12 amended to read:

13 1530.7. (a) Group homes, foster family agencies, small family
14 homes, transitional housing placement providers, and crisis
15 nurseries licensed pursuant to this chapter shall maintain a
16 smoke-free environment in the facility.

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

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

25 (d) For purposes of this section, “smoke” has the meaning of
26 the definition in subdivision (c) of Section 22950.5 of the Business
27 and Professions Code.

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

31 ~~SEC. 11.~~

32 *SEC. 15.* Section 1596.795 of the Health and Safety Code is
33 amended to read:

34 1596.795. (a) The smoking of a tobacco product in a private
35 residence that is licensed as a family day care home shall be
36 prohibited in the home and in those areas of the family day care
37 home where children are present. Nothing in this section shall
38 prohibit a city or county from enacting or enforcing an ordinance
39 relating to smoking in a family day care home if the ordinance is
40 more stringent than this section.

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

(c) For purposes of this section, “smoking” has the meaning of the definition in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

~~SEC. 12.~~

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

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

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

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

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

(4) “Smoke” and “smoking” have the meaning of the definition in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

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

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

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

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

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

1 (e) Any person who violates this section is guilty of an
2 infraction and shall be punished by a fine of two hundred fifty
3 dollars (\$250) for each violation of this section. Punishment under
4 this section shall not preclude punishment pursuant to Section
5 13002, Section 374.4 of the Penal Code, or any other provision of
6 law proscribing the act of littering.

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

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

12 (h) This section shall not preempt the authority of any county,
13 city, or city and county to regulate smoking around playgrounds
14 or tot lot sandbox areas. Any county, city, or city and county may
15 enforce any ordinance adopted prior to January 1, 2002, or may
16 adopt and enforce new regulations that are more restrictive than
17 this section, on and after January 1, 2002.

18 ~~SEC. 13.~~

19 *SEC. 17.* Section 114332.3 of the Health and Safety Code is
20 amended to read:

21 114332.3. (a) No potentially hazardous food or beverage stored
22 or prepared in a private home may be offered for sale, sold, or
23 given away from a nonprofit charitable temporary food facility.
24 Potentially hazardous food shall be prepared in a food
25 establishment or on the premises of a nonprofit charitable
26 temporary food facility.

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

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

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

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

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

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

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

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

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

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

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

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

(j) For purposes of this section, “smoking” has the meaning of the definition in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

~~SEC. 14.~~

SEC. 18. Section 114371 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) For purposes of this section, “smoking” has the meaning of the definition in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

~~SEC. 15.~~

SEC. 19. Section 118910 of the Health and Safety Code is amended to read:

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

(b) For purposes of this section, “smoking” has the meaning of the definition in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

~~SEC. 16.~~

SEC. 20. Section 118925 of the Health and Safety Code is amended to read:

118925. (a) (1) It is unlawful for any person to smoke a tobacco product in any vehicle of a passenger stage corporation,

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

6 (2) (A) For purposes of this subdivision, “smoke” has the
7 meaning of the definition in subdivision (c) of Section 22950.5 of
8 the Business and Professions Code.

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

12 (b) It is unlawful for any person to smoke any plant product
13 other than a tobacco product in any vehicle of a passenger stage
14 corporation, the National Railroad Passenger Corporation (Amtrak)
15 except to the extent permitted by federal law, in any aircraft except
16 to the extent permitted by federal law, on a public transportation
17 system, as defined by Section 99211 of the Public Utilities Code,
18 or in any vehicle of an entity receiving any transit assistance from
19 the state.

20 ~~SEC. 17.~~

21 *SEC. 21.* Section 118948 of the Health and Safety Code is
22 amended to read:

23 118948. (a) It is unlawful for a person to smoke a tobacco
24 product in a motor vehicle, whether in motion or at rest, in which
25 there is a minor.

26 (b) For purposes of this section, “smoke” has the meaning of
27 the definition in subdivision (c) of Section 22950.5 of the Business
28 and Professions Code.

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

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

34 ~~SEC. 18.~~

35 *SEC. 22.* Section 119405 of the Health and Safety Code is
36 repealed.

37 ~~SEC. 19.~~

38 *SEC. 23.* Section 6404.5 of the Labor Code is amended to read:

39 6404.5. (a) The Legislature finds and declares that regulation
40 of smoking in the workplace is a matter of statewide interest and

concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a “place of employment” pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (B) “Retail or wholesale tobacco shop” means any business
38 establishment the main purpose of which is the sale of tobacco
39 products, including, but not limited to, cigars, pipe tobacco, and
40 smoking accessories.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (A) January 1, 1998.

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

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

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

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

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

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

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

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

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

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

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

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

38 (m) For purposes of this section, “smoking” has the meaning
39 of the definition in subdivision (c) of Section 22950.5 of the
40 Business and Professions Code.

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

~~SEC. 20.~~

SEC. 24. Section 308 of the Penal Code is amended to read:

308. (a) (1) 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 tobacco, cigarette, or cigarette papers, or blunts wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance, 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 two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

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

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

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

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

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

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

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

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

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

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

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

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

11 (g) For purposes of this section, "smoking" has the meaning of
12 the definition in subdivision (c) of Section 22950.5 of the Business
13 and Professions Code.

14 (h) For purposes of this section, "tobacco product" means a
15 product or device as defined in subdivision (d) of Section 22950.5
16 of the Business and Professions Code.

17 ~~SEC. 24.~~

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

20 561. (a) Every railroad corporation, passenger stage
21 corporation, passenger air carrier, and street railroad corporation
22 providing departures originating in this state shall prohibit the
23 smoking of a tobacco product in the passenger seating area of
24 every passenger car, passenger stage, aircraft, or other vehicle.

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

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

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

1 (e) For purposes of this section, “smoke” and “smoking” have
2 the meaning of the definition in subdivision (c) of Section 22950.5
3 of the Business and Professions Code.

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

7 ~~SEC. 22.~~

8 SEC. 26. Section 99580 of the Public Utilities Code is amended
9 to read:

10 99580. (a) Pursuant to subdivision (e) of Section 640 of the
11 Penal Code, a public transportation agency may enact and enforce
12 an ordinance to impose and enforce an administrative penalty for
13 any of the acts described in subdivision (b). The ordinance shall
14 include the provisions of this chapter and shall not apply to minors.

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

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

18 (3) Playing sound equipment on or in a system facility or
19 vehicle.

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

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

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

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

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

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

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

39 (10) Skateboarding, roller skating, bicycle riding, or roller
40 blading in a system facility, including a parking structure, or in a

1 system vehicle. This paragraph does not apply to an activity that
2 is necessary for utilization of a system facility by a bicyclist,
3 including, but not limited to, an activity that is necessary for
4 parking a bicycle or transporting a bicycle aboard a system vehicle,
5 if that activity is conducted with the permission of the agency of
6 the system in a manner that does not interfere with the safety of
7 the bicyclist or other patrons of the system facility.

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

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

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

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

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

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

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

39 (3) For the purpose of this chapter, “fare evasion or passenger
40 conduct violation penalty” includes, but is not limited to, a late

1 payment penalty, administrative fee, fine, assessment, and costs
2 of collection as provided for in the ordinance.

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

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

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

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

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

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

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

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

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

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

(2) The amount of the administrative penalties.

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

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

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

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

(h) For purposes of this section, “smoking” has the meaning of the definition in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

~~SEC. 23.~~

SEC. 27. Section 12523 of the Vehicle Code is amended to read:

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

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

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

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

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

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

37 (f) For purposes of this section, "smoking" has the meaning of
38 the definition in subdivision (c) of Section 22950.5 of the Business
39 and Professions Code.

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

4 ~~SEC. 24.~~

5 *SEC. 28.* This act does not affect any laws or regulations
6 regarding medical cannabis.

7 ~~SEC. 25.~~

8 *SEC. 29.* No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.