

## Senate Bill No. 882

### CHAPTER 312

An act to add Chapter 9 (commencing with Section 119405) to Part 15 of Division 104 of the Health and Safety Code, relating to electronic cigarettes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2010. Filed with  
Secretary of State September 27, 2010.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 882, Corbett. Electronic cigarettes.

Existing law contains various provisions governing cigarettes and tobacco products.

This bill would make it unlawful for a person to sell or otherwise furnish an electronic cigarette, as defined, to a person under 18 years of age and would make a violation punishable as an infraction, as specified. By creating a new infraction, this bill would impose a state-mandated local program.

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

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

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Electronic cigarettes are not yet actively regulated by the United States Food and Drug Administration (FDA) and are available for purchase in this state.

(b) Initial FDA studies found that electronic cigarettes contain known carcinogens and misrepresent nicotine content on their labels. As a result, the FDA has warned the public about the potential health risks of using electronic cigarettes.

(c) The FDA has asserted that electronic cigarettes should be regulated as drug delivery devices.

(d) There is no scientific evidence that electronic cigarettes can help smokers to quit smoking. Electronic cigarette manufacturers and retailers are making unproven health claims about their products by asserting that they are safe or safer than traditional cigarettes.

(e) Electronic cigarettes offered for sale in this state are produced overseas and not currently subject to state and federal quality control protections.

(f) Since electronic cigarettes are not yet regulated at the federal, state, or local level, they can be legally sold to minors.

(g) County tobacco control programs have reported the attempted sale of electronic cigarettes to minors at shopping malls. Throughout the state, retailers have established shopping mall kiosks near food courts and stores frequented by adolescents. At these kiosks, retailers target teens with pitches for electronic cigarettes with flavored cartridges.

(h) A 2008 report prepared for the State Department of Public Health found, with regard to the California Tobacco Control Program, that law enforcement agencies continue to rank policies and procedures, such as suspension or revocation of business licenses and civil and criminal penalties for owners and clerks who sell tobacco to minors, as effective strategies to reduce youth access to tobacco.

SEC. 2. Chapter 9 (commencing with Section 119405) is added to Part 15 of Division 104 of the Health and Safety Code, to read:

#### CHAPTER 9. ELECTRONIC CIGARETTES

119405. (a) To the extent not preempted by federal law, including, but not limited to, the regulation of electronic cigarettes by the United States Food and Drug Administration, it shall be unlawful for a person to sell or otherwise furnish an electronic cigarette, as defined in subdivision (b), to a person under 18 years of age.

(b) "Electronic cigarette" means a device that can provide an inhalable dose of nicotine by delivering a vaporized solution.

(c) A violation of this section shall be an infraction punishable by a fine not exceeding two hundred dollars (\$200) for the first violation, by a fine not exceeding five hundred dollars (\$500) for the second violation, or by a fine not exceeding one thousand dollars (\$1,000) for a third or subsequent violation.

(d) Nothing in this section nor any other law shall be construed to invalidate an existing ordinance of, or prohibit the adoption of an ordinance by, a city or county that regulates the distribution of electronic cigarettes in a manner that is more restrictive than this section, to the extent that the ordinance is not otherwise prohibited by federal law.

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

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the health of minors from a product with contents that have not been comprehensively studied and are unregulated on the market, it is necessary for this bill to go into immediate effect.