

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 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, ~~113978~~, 114332.3, 114371, 118910, 118925, ~~118930~~, ~~118935~~, 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 substances, vaporized liquids, and make furnishing such a tobacco product to a minor a misdemeanor.

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. Under existing law, a violation of this act is a misdemeanor.

This bill would change the that act’s definition of tobacco products to reflect the STAKE Act’s new definition of tobacco products.

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 new definition definitions of smoking and of 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:

1 (a) “Department” means the State Department of Public Health.

2 (b) “Enforcing agency” means the State Department of Public
3 Health, another state agency, including, but not limited to, the
4 office of the Attorney General, or a local law enforcement agency,
5 including, but not limited to, a city attorney, district attorney, or
6 county counsel.

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

15 (e)

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

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

23 (B) An electronic device that delivers nicotine or other
24 ~~substances~~ *vaporized liquids* to the person inhaling from the device,
25 including, but not limited to, an electronic cigarette, cigar, pipe,
26 or hookah.

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

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

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

36 22958. (a) An enforcing agency may assess civil penalties
37 against any person, firm, or corporation that sells, gives, or in any
38 way furnishes to another person who is under 18 years of age, any
39 tobacco, cigarette, cigarette papers, any other instrument or
40 paraphernalia that is designed for the smoking or ingestion of

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

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

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

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

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

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

33 (c) (1) For each suspension or revocation pursuant to
34 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)
35 assessed pursuant to that subdivision, notwithstanding Section
36 22953, shall be deposited into the Cigarette and Tobacco Products
37 Compliance Fund established pursuant to Section 22990. Moneys
38 from that civil penalty deposited into this fund shall be made
39 available to the State Board of Equalization, upon appropriation

1 by the Legislature, for the purposes of meeting its duties under
2 subdivision (b).

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

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

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

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

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

37 (h) (1) In the case of a corporation or business with more than
38 one retail location, to determine the number of accumulated
39 violations for purposes of the penalty schedule set forth in
40 subdivision (a), violations of this division by one retail location

1 shall not be accumulated against other retail locations of that same
2 corporation or business.

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

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

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

17 22962. (a) For purposes of this section, the following terms
18 have the following meanings:

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

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

28 (3) “Tobacco product” means a product or device as defined in
29 subdivision—(e) (d) of Section 22950.5 of the Business and
30 Professions Code.

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

33 (A) Primarily sells tobacco products.

34 (B) Generates more than 60 percent of its gross revenues
35 annually from the sale of tobacco products and tobacco
36 paraphernalia.

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

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

3 (b) (1) (A) Except as permitted in subdivision (b) of Section
4 22960, it is unlawful for a person engaged in the retail sale of
5 tobacco products to sell, offer for sale, or display for sale any
6 tobacco product or tobacco paraphernalia by self-service display.
7 A person who violates this section is subject to those civil penalties
8 specified in the schedule in subdivision (a) of Section 22958.

9 (B) A person who violates this section is subject to those civil
10 penalties specified in the schedule in subdivision (a) of Section
11 22958.

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

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

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

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

31 (e) This section does not preempt or otherwise prohibit the
32 adoption of a local standard that imposes greater restrictions on
33 the access to tobacco products than the restrictions imposed by
34 this section. To the extent that there is an inconsistency between
35 this section and a local standard that imposes greater restrictions
36 on the access to tobacco products, the greater restriction on the
37 access to tobacco products in the local standard shall prevail.

38 SEC. 4. Section 22971 of the Business and Professions Code
39 is amended to read:

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

(a) “Board” means the State Board of Equalization.

(b) “Brand family” has the same meaning as that term is defined in paragraph (2) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code.

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

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

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

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

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

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

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

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

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

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

3 (i) “Law enforcement agency” means a sheriff, a police
4 department, or a city, county, or city and county agency or
5 department designated by the governing body of that agency to
6 enforce this chapter or to enforce local smoking and tobacco
7 ordinances and regulations.

8 (j) “License” means a license issued by the board pursuant to
9 this division.

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

12 (l) “Manufacturer” means a manufacturer of cigarettes or
13 tobacco products sold in this state.

14 (m) “Notice” or “notification” means, unless as otherwise
15 provided, the written notice or notification provided to a licensee
16 by the board by either actual delivery to the licensee or by
17 first-class mail addressed to the licensee at the address on the
18 license.

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

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

23 (p) “Retailer” means a person who engages in this state in the
24 sale of cigarettes or tobacco products directly to the public from
25 a retail location. Retailer includes a person who operates vending
26 machines from which cigarettes or tobacco products are sold in
27 this state.

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

29 (1) Any building from which cigarettes or tobacco products are
30 sold at retail.

31 (2) A vending machine.

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

34 (s) “Tobacco products” means a product or device as defined
35 in subdivision-(e) (d) of Section 22950.5.

36 (t) “Unstamped package of cigarettes” means a package of
37 cigarettes that does not bear a tax stamp as required under Part 13
38 (commencing with Section 30001) of Division 2 of the Revenue
39 and Taxation Code, including a package of cigarettes that bears a
40 tax stamp of another state or taxing jurisdiction, a package of

1 cigarettes that bears a counterfeit tax stamp, or a stamped or
2 unstamped package of cigarettes that is marked “Not for sale in
3 the United States.”

4 (u) “Wholesaler” means a wholesaler as defined in Section
5 30016 of the Revenue and Taxation Code.

6 SEC. 5. Section 1947.5 of the Civil Code is amended to read:

7 1947.5. (a) A landlord of a residential dwelling unit, as defined
8 in Section 1940, or his or her agent, may prohibit the smoking of
9 a cigarette, as defined in Section 104556 of the Health and Safety
10 Code, or other tobacco product on the property or in any building
11 or portion of the building, including any dwelling unit, other
12 interior or exterior area, or the premises on which it is located, in
13 accordance with this article.

14 (b) (1) Every lease or rental agreement entered into on or after
15 January 1, 2012, for a residential dwelling unit on property on any
16 portion of which the landlord has prohibited the smoking of
17 cigarettes or other tobacco products pursuant to this article shall
18 include a provision that specifies the areas on the property where
19 smoking is prohibited, if the lessee has not previously occupied
20 the dwelling unit.

21 (2) For a lease or rental agreement entered into before January
22 1, 2012, a prohibition against the smoking of cigarettes or other
23 tobacco products in any portion of the property in which smoking
24 was previously permitted shall constitute a change of the terms of
25 tenancy, requiring adequate notice in writing, to be provided in
26 the manner prescribed in Section 827.

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

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

37 (e) A limitation or prohibition of the use of any tobacco product
38 shall not affect any other term or condition of the tenancy, nor
39 shall this section be construed to require statutory authority to

1 establish or enforce any other lawful term or condition of the
2 tenancy.

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

6 ~~(f)~~

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

10 SEC. 6. Section 48901 of the Education Code is amended to
11 read:

12 48901. (a) No school shall permit the smoking or use of a
13 tobacco product by pupils of the school while the pupils are on
14 campus, or while attending school-sponsored activities or while
15 under the supervision and control of school district employees.

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

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

22 ~~(e)~~

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

26 SEC. 7. Section 7597 of the Government Code is amended to
27 read:

28 7597. (a) No public employee or member of the public shall
29 smoke a tobacco product inside a public building, or in an outdoor
30 area within 20 feet of a main exit, entrance, or operable window
31 of a public building, or in a passenger vehicle, as defined by
32 Section 465 of the Vehicle Code, owned by the state.

33 (b) This section shall not preempt the authority of any county,
34 city, city and county, California Community College campus,
35 campus of the California State University, or campus of the
36 University of California to adopt and enforce additional smoking
37 and tobacco control ordinances, regulations, or policies that are
38 more restrictive than the applicable standards required by this
39 chapter.

1 (c) 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 ~~(e)~~

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

8 SEC. 8. Section 1234 of the Health and Safety Code is amended
9 to read:

10 1234. (a) Smoking a tobacco product shall not be permitted
11 in patient areas of a clinic except those rooms designated for
12 occupancy exclusively by smokers.

13 (b) Clearly legible signs shall either:

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

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

20 If “smoking permitted” signs are posted, there shall also be
21 conspicuously posted, near all major entrances, clearly legible
22 signs stating that smoking is unlawful except in areas designated
23 “smoking permitted.”

24 (c) This section shall not apply to skilled nursing facilities,
25 intermediate care facilities, and intermediate care facilities for the
26 developmentally disabled.

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

30 ~~(e)~~

31 (e) For purposes of this section, “tobacco product” means a
32 product or device as defined in subdivision ~~(e)~~ (d) of Section
33 22950.5 of the Business and Professions Code.

34 SEC. 9. Section 1286 of the Health and Safety Code is amended
35 to read:

36 1286. (a) Smoking a tobacco product shall be prohibited in
37 patient care areas, waiting rooms, and visiting rooms of a health
38 facility, except those areas specifically designated as smoking
39 areas, and in patient rooms as specified in subdivision (b).

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

6 (c) Clearly legible signs shall either:

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

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

13 If “smoking permitted” signs are posted, there shall also be
14 conspicuously posted, near all major entrances, clearly legible
15 signs stating that smoking is unlawful except in areas designated
16 “smoking permitted.”

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

19 (e) This section shall not apply to skilled nursing facilities,
20 intermediate care facilities, and intermediate care facilities for the
21 developmentally disabled.

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

25 (f)

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

29 SEC. 10. Section 1530.7 of the Health and Safety Code is
30 amended to read:

31 1530.7. (a) Group homes, foster family agencies, small family
32 homes, transitional housing placement providers, and crisis
33 nurseries licensed pursuant to this chapter shall maintain a
34 smoke-free environment in the facility.

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

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

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

~~(d)~~

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

SEC. 11. Section 1596.795 of the Health and Safety Code is amended to read:

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

~~(e)~~

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

SEC. 12. 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

1 of safety material, such as concrete or wood, or any other material
2 surrounding the tot lot sandbox area.

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

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

7 ~~(4) “Smoke or smoking” means the carrying of a lighted pipe,~~
8 ~~lighted cigar, or lighted cigarette of any kind, or the lighting of a~~
9 ~~pipe, cigar, or cigarette of any kind, including, but not limited to,~~
10 ~~tobacco, or any other weed or plant.~~

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

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

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

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

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

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

24 (e) Any person who violates this section is guilty of an
25 infraction and shall be punished by a fine of two hundred fifty
26 dollars (\$250) for each violation of this section. Punishment under
27 this section shall not preclude punishment pursuant to Section
28 13002, Section 374.4 of the Penal Code, or any other provision of
29 law proscribing the act of littering.

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

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

35 (h) This section shall not preempt the authority of any county,
36 city, or city and county to regulate smoking around playgrounds
37 or tot lot sandbox areas. Any county, city, or city and county may
38 enforce any ordinance adopted prior to January 1, 2002, or may
39 adopt and enforce new regulations that are more restrictive than
40 this section, on and after January 1, 2002.

1 ~~SEC. 13. Section 113978 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~113978. (a) Food facilities shall have a “no smoking tobacco~~
4 ~~products” sign posted in the food preparation, food storage, and~~
5 ~~warewashing areas.~~

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

9 ~~SEC. 14.~~

10 ~~SEC. 13.~~ Section 114332.3 of the Health and Safety Code is
11 ~~amended to read:~~

12 ~~114332.3. (a) No potentially hazardous food or beverage stored~~
13 ~~or prepared in a private home may be offered for sale, sold, or~~
14 ~~given away from a nonprofit charitable temporary food facility.~~
15 ~~Potentially hazardous food shall be prepared in a food~~
16 ~~establishment or on the premises of a nonprofit charitable~~
17 ~~temporary food facility.~~

18 ~~(b) All food and beverages shall be protected at all times from~~
19 ~~unnecessary handling and shall be stored, displayed, and served~~
20 ~~so as to be protected from contamination.~~

21 ~~(c) Potentially hazardous food and beverages shall be maintained~~
22 ~~at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or~~
23 ~~above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times.~~

24 ~~(d) Ice used in beverages shall be protected from contamination~~
25 ~~and shall be maintained separate from ice used for refrigeration~~
26 ~~purposes.~~

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

29 ~~(f) Smoking a tobacco product is prohibited in nonprofit~~
30 ~~charitable temporary food facilities.~~

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

34 ~~(2) Paragraph (1) does not prohibit the presence, in any room~~
35 ~~where food is served to the public, guests, or patrons, of a guide~~
36 ~~dog, signal dog, or service dog, as defined by Section 54.1 of the~~
37 ~~Civil Code, accompanied by a totally or partially blind person,~~
38 ~~deaf person, person whose hearing is impaired, or handicapped~~
39 ~~person, or dogs accompanied by persons licensed to train guide~~

1 dogs for the blind pursuant to Chapter 9.5 (commencing with
2 Section 7200) of Division 3 of the Business and Professions Code.

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

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

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

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

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

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

23 (j)

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

27 ~~SEC. 15.~~

28 *SEC. 14.* Section 114371 of the Health and Safety Code is
29 amended to read:

30 114371. Certified farmers’ markets shall meet all of the
31 following requirements:

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

1 Section 113735 and the applicable provisions of Section 110460,
2 114365, or 114365.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (g) Notwithstanding Chapter 10 (commencing with Section
23 114294) vendors selling food adjacent to, and under the jurisdiction
24 and management of, a certified farmers' market may store, display,
25 and sell from a table or display fixture apart from the mobile
26 facility in a manner approved by the enforcement agency.

27 (h) Temporary food facilities may be operated at a separate
28 community event adjacent to, and in conjunction with, certified
29 farmers' markets. The organization in control of the community
30 event at which these temporary food facilities operate shall comply
31 with Section 114381.1.

32 (i) All harvested, cut, wrapped, or otherwise processed meat,
33 poultry, and fish products shall be from approved sources as set
34 forth in Section 113735, and shall be properly labeled or have
35 documentation present at the point of sale that demonstrates
36 compliance with this requirement. All harvested, cut, wrapped, or
37 otherwise processed meat, poultry, and fish products offered for
38 sale shall be transported, stored, displayed, and maintained at a
39 temperature of 41 degrees Fahrenheit or colder. The temperature
40 holding capabilities of the storage containers used shall be

1 sufficient to maintain safe product temperatures. Storage containers
2 for meat, poultry, and fish products shall be insulated and have
3 interior surfaces that are smooth, nonabsorbent, and easily
4 cleanable. All meat, poultry, and fish products shall be stored in
5 a manner that reduces the risk of cross-contamination.

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

9 ~~(j)~~

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

13 ~~SEC. 16.~~

14 *SEC. 15.* Section 118910 of the Health and Safety Code is
15 amended to read:

16 118910. (a) The Legislature declares its intent not to preempt
17 the field of regulation of the smoking of tobacco products. A local
18 governing body may ban completely the smoking of tobacco
19 products, or may regulate smoking of tobacco products in any
20 manner not inconsistent with this article and Article 3 (commencing
21 with Section 118920) or any other provision of state law.

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

25 ~~(b)~~

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

29 ~~SEC. 17.~~

30 *SEC. 16.* Section 118925 of the Health and Safety Code is
31 amended to read:

32 118925. (a) *(1)* It is unlawful for any person to smoke a
33 tobacco product ~~or any other plant product~~ in any vehicle of a
34 passenger stage corporation, the National Railroad Passenger
35 Corporation (Amtrak) except to the extent permitted by federal
36 law, in any aircraft except to the extent permitted by federal law,
37 on a public transportation system, as defined by Section 99211 of
38 the Public Utilities Code, or in any vehicle of an entity receiving
39 any transit assistance from the state.

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

4 (b)

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

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

16 SEC. 18. Section 118930 of the Health and Safety Code is
17 amended to read:

18 118930. (a) A notice prohibiting smoking tobacco products,
19 displayed as a symbol and in English, shall be posted in each
20 vehicle or aircraft subject to this article.

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

24 SEC. 19. Section 118935 of the Health and Safety Code is
25 amended to read:

26 118935. (a) Every person and public agency providing
27 transportation services for compensation, including, but not limited
28 to, the National Railroad Passenger Corporation (Amtrak) to the
29 extent permitted by federal law, passenger stage corporations, and
30 local agencies that own or operate airports, shall designate and
31 post, by signs of sufficient number and posted in locations that
32 may be readily seen by persons within the area, a contiguous area
33 of not less than 75 percent of any area made available by the person
34 or public agency as a waiting room for these passengers where the
35 smoking of tobacco products is prohibited. Not more than 25
36 percent of any given area may be set aside for smokers of tobacco
37 products.

38 (b) Every person or public agency subject to subdivision (a)
39 shall also post, by sign of sufficient number and posted in locations
40 as to be readily seen by persons within the area of any building

1 where tickets, tokens, or other evidences that a fare has been paid
2 for transportation services that are provided by the person or public
3 agency, a notice that the smoking of tobacco products by persons
4 waiting in line to purchase the tickets, tokens, or other evidences
5 that a fare has been paid is prohibited.

6 (e) ~~It is unlawful for any person to smoke tobacco products in~~
7 ~~an area posted pursuant to this section.~~

8 (d)

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

12 ~~SEC. 20.~~

13 *SEC. 17.* Section 118948 of the Health and Safety Code is
14 amended to read:

15 118948. (a) It is unlawful for a person to smoke a tobacco
16 product in a motor vehicle, whether in motion or at rest, in which
17 there is a minor.

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

21 (b) ~~For purposes of this section, “to smoke” means to have in~~
22 ~~one’s immediate possession a lighted pipe, cigar, or cigarette~~
23 ~~containing tobacco or any other plant.~~

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

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

29 ~~SEC. 21.~~

30 *SEC. 18.* Section 119405 of the Health and Safety Code is
31 repealed.

32 ~~SEC. 22.~~

33 *SEC. 19.* Section 6404.5 of the Labor Code is amended to read:

34 6404.5. (a) The Legislature finds and declares that regulation
35 of smoking in the workplace is a matter of statewide interest and
36 concern. It is the intent of the Legislature in enacting this section
37 to prohibit the smoking of tobacco products in all (100 percent of)
38 enclosed places of employment in this state, as covered by this
39 section, thereby eliminating the need of local governments to enact
40 workplace smoking restrictions within their respective jurisdictions.

1 It is further the intent of the Legislature to create a uniform
2 statewide standard to restrict and prohibit the smoking of tobacco
3 products in enclosed places of employment, as specified in this
4 section, in order to reduce employee exposure to environmental
5 tobacco smoke to a level that will prevent anything other than
6 insignificantly harmful effects to exposed employees, and also to
7 eliminate the confusion and hardship that can result from enactment
8 or enforcement of disparate local workplace smoking restrictions.
9 Notwithstanding any other provision of this section, it is the intent
10 of the Legislature that any area not defined as a “place of
11 employment” pursuant to subdivision (d) or in which the smoking
12 of tobacco products is not regulated pursuant to subdivision (e)
13 shall be subject to local regulation of smoking of tobacco products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Warehouse facilities. For purposes of this paragraph, “warehouse facility” means a warehouse facility with more than

1 100,000 square feet of total floorspace, and 20 or fewer full-time
2 employees working at the facility, but does not include any area
3 within a facility that is utilized as office space.

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

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

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

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

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

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

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

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

36 (B) The employer shall comply with any ventilation standard
37 or other standard utilizing appropriate technology, including, but
38 not limited to, mechanical, electronic, and biotechnical systems,
39 adopted by the Occupational Safety and Health Standards Board
40 or the federal Environmental Protection Agency. If both adopt

1 inconsistent standards, the ventilation standards of the Occupational
2 Safety and Health Standards Board shall be no less stringent than
3 the standards adopted by the federal Environmental Protection
4 Agency.

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

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

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

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

16 (B) All employees who enter the smoking area consent to permit
17 smoking. No one, as part of his or her work responsibilities, shall
18 be required to work in an area where smoking is permitted. An
19 employer who is determined by the division to have used coercion
20 to obtain consent or who has required an employee to work in the
21 smoking area shall be subject to the penalty provisions of Section
22 6427.

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

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

35 This paragraph shall not be construed to (i) supersede or render
36 inapplicable any condition or limitation on smoking areas made
37 applicable to specific types of business establishments by any other
38 paragraph of this subdivision or (ii) apply in lieu of any otherwise
39 applicable paragraph of this subdivision that has become
40 inoperative.

1 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
2 construed to require employers to provide reasonable
3 accommodation to smokers, or to provide breakrooms for smokers
4 or nonsmokers.

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

9 (A) January 1, 1998.

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

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

34 (3) If a regulation specified in subparagraph (B) of paragraph
35 (1) is not adopted on or before January 1, 1998, the exemptions
36 specified in paragraphs (7) and (8) of subdivision (d) shall become
37 inoperative on and after January 1, 1998, until a regulation is
38 adopted. Upon adoption of such a regulation on or after January
39 1, 1998, smoking may thereafter be permitted in gaming clubs and
40 in bars and taverns, subject to full compliance with, or conformity

1 to, the standard in the regulation within two years following the
2 date of adoption of the regulation. An employer failing to achieve
3 compliance with, or conformity to, the regulation within this
4 two-year period shall prohibit smoking in the gaming club, bar,
5 or tavern until compliance or conformity is achieved. If the
6 Occupational Safety and Health Standards Board and the federal
7 Environmental Protection Agency both adopt regulations specified
8 in subparagraph (B) of paragraph (1) that are inconsistent, the
9 regulations of the Occupational Safety and Health Standards Board
10 shall be no less stringent than the regulations of the federal
11 Environmental Protection Agency.

12 (4) From January 1, 1997, to December 31, 1997, inclusive,
13 smoking may be permitted in gaming clubs, as defined in paragraph
14 (7) of subdivision (d), and in bars and taverns, as defined in
15 paragraph (8) of subdivision (d), subject to both of the following
16 conditions:

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

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

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

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

36 (i) The enactment of local regulation of smoking of tobacco
37 products in enclosed places of employment by local governments
38 shall be suspended only for as long as, and to the extent that, the
39 (100-percent) smoking prohibition provided for in this section
40 remains in effect. In the event this section is repealed or modified

1 by subsequent legislative or judicial action so that the (100-percent)
2 smoking prohibition is no longer applicable to all enclosed places
3 of employment in California, local governments shall have the full
4 right and authority to enforce previously enacted, and to enact and
5 enforce new, restrictions on the smoking of tobacco products in
6 enclosed places of employment within their jurisdictions, including
7 a complete prohibition of smoking. Notwithstanding any other
8 provision of this section, any area not defined as a “place of
9 employment” or in which smoking is not regulated pursuant to
10 subdivision (d) or (e), shall be subject to local regulation of
11 smoking of tobacco products.

12 (j) Any violation of the prohibition set forth in subdivision (b)
13 is an infraction, punishable by a fine not to exceed one hundred
14 dollars (\$100) for a first violation, two hundred dollars (\$200) for
15 a second violation within one year, and five hundred dollars (\$500)
16 for a third and for each subsequent violation within one year. This
17 subdivision shall be enforced by local law enforcement agencies,
18 including, but not limited to, local health departments, as
19 determined by the local governing body.

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

25 (l) If any provision of this act or the application thereof to any
26 person or circumstances is held invalid, that invalidity shall not
27 affect other provisions or applications of the act that can be given
28 effect without the invalid provision or application, and to this end
29 the provisions of this act are severable.

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

33 ~~(m)~~

34 (n) For purposes of this section, “tobacco product” means a
35 product or device as defined in subdivision ~~(e)~~ (d) of Section
36 22950.5 of the Business and Professions Code.

37 ~~SEC. 23.~~

38 *SEC. 20.* Section 308 of the Penal Code is amended to read:

39 308. (a) (1) Every person, firm, or corporation that knowingly
40 or under circumstances in which it has knowledge, or should

1 otherwise have grounds for knowledge, sells, gives, or in any way
2 furnishes to another person who is under 18 years of age any
3 tobacco, cigarette, or cigarette papers, or blunts wraps, or any other
4 preparation of tobacco, or any other instrument or paraphernalia
5 that is designed for the smoking or ingestion of tobacco, tobacco
6 products, or any controlled substance, is subject to either a criminal
7 action for a misdemeanor or to a civil action brought by a city
8 attorney, a county counsel, or a district attorney, punishable by a
9 fine of two hundred dollars (\$200) for the first offense, five
10 hundred dollars (\$500) for the second offense, and one thousand
11 dollars (\$1,000) for the third offense.

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

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

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

38 (2) For purposes of this section, "blunt wraps" means cigar
39 papers or cigar wrappers of all types that are designed for smoking

1 or ingestion of tobacco products and contain less than 50 percent
2 tobacco.

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

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

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

26 (e) Notwithstanding subdivision (b), any person under 18 years
27 of age who purchases, receives, or possesses any tobacco, cigarette,
28 or cigarette papers, or any other preparation of tobacco, any other
29 instrument or paraphernalia that is designed for the smoking of
30 tobacco, or tobacco products is immune from prosecution for that
31 purchase, receipt, or possession while participating in either of the
32 following:

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

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

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

(g) *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.*

~~(g)~~

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

~~SEC. 24.~~

SEC. 21. Section 561 of the Public Utilities Code is amended to read:

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

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

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

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

(e) *For purposes of this section, "smoke" and "smoking" have the meaning of the definition in subdivision (c) of Section 22950.5 of the Business and Professions Code.*

~~(e)~~

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

~~SEC. 25.~~

SEC. 22. Section 99580 of the Public Utilities Code is amended to read:

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

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

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

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

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

(5) Expectorating upon a system facility or vehicle.

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

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

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

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

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

(10) Skateboarding, roller skating, bicycle riding, or roller blading in a system facility, including a parking structure, or in a system vehicle. This paragraph does not apply to an activity that is necessary for utilization of a system facility by a bicyclist, including, but not limited to, an activity that is necessary for parking a bicycle or transporting a bicycle aboard a system vehicle, if that activity is conducted with the permission of the agency of

1 the system in a manner that does not interfere with the safety of
2 the bicyclist or other patrons of the system facility.

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

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

16 (12) Sale or peddling of any goods, merchandise, property, or
17 services of any kind whatsoever on the facilities, vehicles, or
18 property of the public transportation system without the express
19 written consent of the public transportation system or its duly
20 authorized representatives.

21 (c) (1) The public transportation agency may contract with a
22 private vendor or governmental agency for the processing of notices
23 of fare evasion or passenger conduct violation, and notices of
24 delinquent fare evasion or passenger conduct violation pursuant
25 to Section 99581.

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

28 (A) The agency issuing the notice of fare evasion or passenger
29 conduct violation and the notice of delinquent fare evasion or
30 passenger conduct violation.

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

34 (3) For the purpose of this chapter, “fare evasion or passenger
35 conduct violation penalty” includes, but is not limited to, a late
36 payment penalty, administrative fee, fine, assessment, and costs
37 of collection as provided for in the ordinance.

38 (4) For the purpose of this chapter, “public transportation
39 agency” shall mean a public agency that provides public

1 transportation as defined in paragraph (1) of subdivision (f) of
2 Section 1 of Article XIX A of the California Constitution.

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

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

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

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

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

37 (e) In setting the amounts of administrative penalties for the
38 violations listed in subdivision (b), the public transportation agency
39 shall not establish penalty amounts that exceed the maximum fine
40 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.

~~(h)~~

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

~~SEC. 26.~~

SEC. 23. Section 12523 of the Vehicle Code is amended to read:

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

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

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

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

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

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

(f) *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.*

~~(f)~~

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

1 ~~SEC. 27.~~

2 ~~SEC. 24.~~ This act does not affect any laws or regulations
3 regarding medical cannabis.

4 ~~SEC. 28.~~

5 ~~SEC. 25.~~ No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.