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AMENDED IN SENATE JUNE 3, 2002  
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AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1453**

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**Introduced by Assembly Member Koretz**  
(Principal coauthor: Senator Dunn)  
*(Coauthors: Assembly Members Aroner, Chan, and Nation)*  
(Coauthors: Senators Kuehl, Ortiz, and Romero)

February 23, 2001

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An act to amend Sections 17537.3, 22952, 22956, and 22958 of, and to add Sections 22963.5, 22964, ~~22965~~, and ~~22966~~ and 22964.5 to, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to tobacco products.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1453, as amended, Koretz. Tobacco: minimum legal age: display ~~an~~ and distribution limitations.

Existing law prohibits the furnishing of tobacco products to, and the purchase of those products by, a person under the age of 18 years and makes the violation of these provisions a criminal offense. Existing law also provides for the establishment of programs relating to the prevention of tobacco use.

This bill would change this minimum age requirement to apply to a person under the age of 21 years with an exception provided for a person born before January 1, 1985. The bill would require that tobacco use prevention programs be revised to discourage the use of tobacco products by any person under that age. The bill would prohibit, with specified exceptions, any person, firm, or corporation from displaying or making available any ashtrays or other receptacles designed for tobacco-related waste for use on the premises where smoking is prohibited and would ~~impose either a civil penalty or~~ subject the person, firm, or corporation to a citation for an infraction with escalating fines for subsequent violations. By creating new infractions and enlarging the scope of an existing crime by changing the minimum age requirement for furnishing and purchasing tobacco products, the bill would impose additional duties on local law enforcement agencies, thus imposing a state-mandated local program.

~~This bill would also prohibit the distribution of free samples of tobacco products by mail to anyone who has not been previously identified as a consumer of tobacco products who is 21 years of age or older or was born before January 1, 1985 and would authorize the imposition of a civil penalty for each violation of this provision.~~

This bill would require any person, firm, or corporation that maintains an area where smoking is permitted under state law to provide one or more receptacles for tobacco-related waste for use on the premises.

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. The Legislature finds and declares the  
2 following:

3 (a) Tobacco kills 480,000 Americans every year, causing more  
4 deaths than AIDS, alcohol abuse, illegal drug use, auto accidents,  
5 firearms accidents, fires, homicides, and suicides combined.

6 (b) Youth smoking has been identified as one of the most  
7 important health care problems, and beginning to smoke as an  
8 adolescent is the most important cause of a lifetime smoking  
9 addiction.

10 (c) Three states, Alabama, Alaska, and Utah, have raised the  
11 minimum legal age for smoking above that required by California.

12 (d) Increasing the legal minimum sale age for tobacco will  
13 reduce the number of older youth who smoke and will help reduce  
14 sales of tobacco to younger children.

15 (e) Studies and surveys have shown that when states ~~increase~~  
16 *increased* the legal minimum sale age for alcohol, drinking by high  
17 school seniors fell by over a third and daily drinking in the same  
18 group fell more than 50 percent.

19 (f) According to a United States Surgeon General's report,  
20 smokers usually have sampled cigarettes at the median age of 14  
21 years but did not begin to smoke daily until the age of 18 years, and  
22 a small percentage began smoking after the age of 21 years.

23 (g) According to the American Lung Association,  
24 approximately 90 percent of smokers begin smoking before the  
25 age of 21 years, and those who begin smoking at an early age are  
26 more likely to develop a severe level of addiction to nicotine than  
27 those who start at a later age.

28 (h) The legal minimum sale age for alcohol in California is 21  
29 years of age and those under 21 have a visibly different driver's  
30 license. Raising the legal minimum sale age for tobacco would  
31 ease the ability of merchants and vendors to check identification  
32 and would establish a uniform age for the purchase of these legal  
33 drugs.

34 (i) The state should continue its commitment to vigorous  
35 antitobacco education efforts and strict enforcement of existing  
36 laws limiting access by youth to these products.



1 (j) It is in the interest of the public health to prevent adolescents  
2 from taking up the deadly habit of smoking in order to avert their  
3 addiction to nicotine later in life.

4 SEC. 2. Section 17537.3 of the Business and Professions  
5 Code is amended to read:

6 17537.3. The following acts are prohibited:

7 (a) For any person to offer as part of an advertising plan or  
8 program, promotional offers of smokeless tobacco products that  
9 require proof of purchase of a smokeless tobacco product unless  
10 it carries a designation that the offer is not available to a person  
11 under the age of 21 years. Each promotional offer shall include in  
12 any mail-in coupon a statement requesting purchasers to verify  
13 that the purchaser is 21 years of age or older.

14 (b) For any person to honor mail-in and telephone requests for  
15 promotional offers of smokeless tobacco products unless  
16 appropriate efforts are made to ascertain that a purchaser is over  
17 21 years of age. For purposes of this subdivision, appropriate  
18 efforts to ascertain the age of a purchaser includes, but is not  
19 limited to, requests for a purchaser's birth date.

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

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

30 (e) The provisions of this section shall not prohibit promotional  
31 offers of smokeless tobacco products, the honoring of those  
32 promotional offers, or the distribution of samples, to any person  
33 who was born before January 1, 1985.

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

36 22952. The State Department of Health Services shall do all  
37 of the following:

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



1 (b) Establish requirements that retailers of tobacco products  
2 post conspicuously, at each point of purchase, a notice stating that  
3 selling tobacco products to anyone under 21 years of age is illegal  
4 and subject to penalties unless otherwise specified by law. The  
5 notice shall also state that the law requires that all persons selling  
6 tobacco products check the identification of any purchaser of  
7 tobacco products who reasonably appears to be under 21 years of  
8 age. The warning signs shall include a toll-free telephone number  
9 to the state department for persons to report unlawful sales of  
10 tobacco products to a person under 21 years of age who was not  
11 born before January 1, 1985.

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

28 (d) In accordance with Chapter 3.5 (commencing with Section  
29 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
30 the state department shall adopt and publish guidelines for the use  
31 of persons under 21 years of age in inspections conducted pursuant  
32 to subdivision (c) that shall include, but not be limited to, all of the  
33 following:

34 (1) The state department and any local law enforcement agency  
35 under an enforcement delegation contract with the department  
36 may use persons under 21 years of age who are 18 or 19 years of  
37 age in random inspections to determine if sales of cigarettes or  
38 other tobacco products are being made to persons under 21 years  
39 of age.



- 1 (2) A photograph or video recording of the person under 21  
2 years of age shall be taken prior to each inspection or shift of  
3 inspections and retained by the department or the local law  
4 enforcement agency under an enforcement delegation contract  
5 with the department for purposes of verifying appearances.
- 6 (3) The state department or a local law enforcement agency  
7 under an enforcement delegation contract with the department  
8 may use video recording equipment when conducting the  
9 inspections to record and document illegal sales or attempted sales.
- 10 (4) The person under 21 years of age, if questioned about his  
11 or her age, need not state his or her actual age but shall present a  
12 true and correct identification if verbally asked to present it. Any  
13 failure on the part of the person under 21 years of age to provide  
14 true and correct identification, if verbally asked for it, shall be a  
15 defense to any action pursuant to this section.
- 16 (5) The person under 21 years of age shall be under the  
17 supervision of a regularly employed peace officer during the  
18 inspection.
- 19 (6) All persons under 21 years of age used in this manner by the  
20 department or a local law enforcement agency under an  
21 enforcement delegation contract with the department shall display  
22 the appearance of a person under 21 years of age. It shall be a  
23 defense to any action under this division that the person's  
24 appearance was not that which could be generally expected of a  
25 person under 21 years of age, under the actual circumstances  
26 presented to the seller of the cigarettes or other tobacco products  
27 at the time of the alleged offense.
- 28 (7) Following the completion of the sale, the peace officer  
29 accompanying the person under 21 years of age shall reenter the  
30 retail establishment and inform the seller of the random inspection  
31 and following an attempted sale, the department shall notify the  
32 retail establishment of the inspection.
- 33 (8) Failure to comply with the procedures set forth in this  
34 subdivision shall be a defense to any action brought pursuant to  
35 this section.
- 36 (e) Be responsible for ensuring and reporting the state's  
37 compliance with Section 1926 of Title XIX of the federal Public  
38 Health Service Act (42 U.S.C. 300x-26) and any implementing  
39 regulations adopted in relation thereto by the United States



1 Department of Health and Human Services. A copy of this report  
2 shall be made available to the Governor and the Legislature.

3 (f) Provide that any civil penalties imposed pursuant to Section  
4 22958 shall be enforced against the owner or owners of the retail  
5 business and not the employees of the business.

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

8 22956. All persons engaging in the retail sale of tobacco  
9 products shall check the identification of tobacco purchasers, to  
10 establish the age of the purchaser, if the purchaser reasonably  
11 appears to be under 21 years of age.

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

14 22958. (a) The state department may assess civil penalties  
15 against any person, firm, or corporation that sells, gives, or in any  
16 way furnishes to another person who is under the age of 21 years  
17 other than for a person born before January 1, 1985, any tobacco,  
18 cigarette, or cigarette papers, or any other instrument or  
19 paraphernalia that is designed for the smoking or ingestion of  
20 tobacco, products prepared from tobacco, or any controlled  
21 substance, according to the following schedule: (1) a civil penalty  
22 of from two hundred dollars (\$200) to three hundred dollars (\$300)  
23 for the first violation, (2) a civil penalty of from six hundred dollars  
24 (\$600) to nine hundred dollars (\$900) for the second violation  
25 within a five-year period, (3) a civil penalty of from one thousand  
26 two hundred dollars (\$1,200) to one thousand eight hundred  
27 dollars (\$1,800) for a third violation within a five-year period, (4)  
28 a civil penalty of from three thousand dollars (\$3,000) to four  
29 thousand dollars (\$4,000) for a fourth violation within a five-year  
30 period, or (5) a civil penalty of from five thousand dollars (\$5,000)  
31 to six thousand dollars (\$6,000) for a fifth or subsequent violation  
32 within a five-year period.

33 (b) The state department shall assess penalties in accordance  
34 with the schedule set forth in subdivision (a) against any person,  
35 firm, or corporation that sells, offers for sale, or distributes tobacco  
36 products from a cigarette or tobacco products vending machine, or  
37 any person, firm, or corporation that leases, furnishes, or services  
38 these machines in violation of Section 22960.

39 (c) The state department shall assess penalties in accordance  
40 with the schedule set forth in subdivision (a) against any person,



1 firm, or corporation that advertises or causes to be advertised any  
2 tobacco product on any outdoor billboard in violation of Section  
3 22961.

4 (d) If a civil penalty has been assessed pursuant to this section  
5 against any person, firm, or corporation for a single, specific  
6 violation of this division, the person, firm, or corporation shall not  
7 be prosecuted under Section 308 of the Penal Code for a violation  
8 based on the same facts or specific incident for which the civil  
9 penalty was assessed. If any person, firm, or corporation has been  
10 prosecuted for a single, specific violation of Section 308 of the  
11 Penal Code, the person, firm, or corporation shall not be assessed  
12 a civil penalty under this section based on the same facts or specific  
13 incident upon which the prosecution under Section 308 of the  
14 Penal Code was based.

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

21 (2) In the case of a retail location that operates pursuant to a  
22 franchise as defined in Section 20001, violations of this division  
23 accumulated and assessed against a prior owner of a single  
24 franchise location shall not be accumulated against a new owner  
25 of the same single franchise location for purposes of the penalty  
26 schedule set forth in subdivision (a).

27 (f) Proceedings under this section shall be conducted in  
28 accordance with Section 100171 of the Health and Safety Code.

29 SEC. 6. Section 22963.5 is added to the Business and  
30 Professions Code, to read:

31 22963.5. (a) Except as provided in subdivisions (b) and (d),  
32 no person, firm, or corporation shall display or make available  
33 ashtrays or other receptacles designed for tobacco-related waste  
34 for use on the premises where smoking is prohibited under existing  
35 state law.

36 (b) Notwithstanding subdivision (a), a receptacle for  
37 tobacco-related waste may be placed within five feet of a door  
38 available for public entry onto the premises.

39 (c) Any person, firm, or corporation that maintains an area  
40 where smoking is permitted under state law, such as an outdoor





1 dining area, shall provide one or more receptacles for  
2 tobacco-related waste for use on the premises.

3 (d) Notwithstanding subdivision (a), ashtrays may be sold or  
4 distributed to the public on premises where smoking is prohibited  
5 but only for use in areas where smoking is not prohibited.

6 (e) Any person, firm, or corporation who is in violation of  
7 subdivision (a) shall be subject to ~~either of the following:~~

8 ~~(1) A civil penalty assessed by the State Department of Health  
9 Services for each violation according to the following schedule:~~

10 ~~(A) A civil penalty of two hundred fifty dollars (\$250) for the  
11 first violation.~~

12 ~~(B) A civil penalty of five hundred dollars (\$500) for the  
13 second violation at the same location within a five-year period.~~

14 ~~(C) A civil penalty of one thousand dollars (\$1,000) for the  
15 third or subsequent violation at the same location within a  
16 five-year period.~~

17 ~~(2) A citation by local police, sheriff, or code enforcement  
18 personnel for committing a public offense punishable as an  
19 infraction by a fine subject to the following schedule:~~

20 ~~(A)~~

21 ~~(1) For a first offense, punishable by a fine of two hundred fifty  
22 dollars (\$250).~~

23 ~~(B)~~

24 ~~(2) For a second offense at the same location within a five-year  
25 period, punishable by a fine of five hundred dollars (\$500).~~

26 ~~(C)~~

27 ~~(3) For a third or subsequent offense at the same location within  
28 a five-year period, punishable by a fine of one thousand dollars  
29 (\$1,000).~~

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

32 ~~22964. (a) No person, firm, or corporation shall provide free  
33 samples of any tobacco product by mail to anyone who has not  
34 been previously identified as a consumer of tobacco products who  
35 is 21 years of age or older.~~

36 ~~(b) Each mailing of a tobacco product to any person who has  
37 not been previously identified as a consumer of tobacco products  
38 who is 21 years of age or older shall constitute a separate violation  
39 of subdivision (a) and shall be subject to the civil penalty as  
40 provided in subdivision (d).~~



1 ~~(c) Subdivisions (a) and (b) shall not prohibit the provision of~~  
2 ~~tobacco products to a person who was born before January 1, 1985,~~  
3 ~~who has been previously identified as a consumer of tobacco~~  
4 ~~products.~~

5 ~~(d) In addition to any penalty that may be imposed for a~~  
6 ~~violation under Section 308b of the Penal Code, a person, firm, or~~  
7 ~~corporation shall be subject to a civil penalty assessed by the State~~  
8 ~~Department of Health Services of two hundred fifty dollars (\$250)~~  
9 ~~for each separate violation of subdivision (a).~~

10 ~~SEC. 8. Section 22965 is added to the Business and~~  
11 ~~Professions Code, to read:~~

12 ~~22965.~~

13 ~~22964.~~ (a) ~~Sections Section 22963.5 and 22964~~ shall not  
14 preempt or otherwise prohibit the adoption of a local standard that  
15 imposes greater restrictions on the promotion of, use of, or access  
16 to tobacco products than the restrictions imposed by this division.

17 (b) To the extent that there is an inconsistency between  
18 ~~Sections Section 22963.5 and 22964~~ and a local standard that  
19 imposes greater restrictions on the promotion of, use of, or access  
20 to tobacco products, the greater restriction on the promotion of,  
21 use of, or access to tobacco products in the local standard shall  
22 prevail.

23 ~~SEC. 9.~~

24 ~~SEC. 8.~~ Section ~~22966~~ 22964.5 is added to the Business and  
25 Professions Code, to read:

26 ~~22966.~~

27 22964.5. The provisions of this division shall not prohibit a  
28 city or county from enacting laws with respect to the legal age to  
29 purchase or possess tobacco products as long as they are at least as  
30 stringent as state law.

31 ~~SEC. 10.~~

32 ~~SEC. 9.~~ Section 308 of the Penal Code is amended to read:

33 308. (a) Every person, firm, or corporation that knowingly or  
34 under circumstances in which it has knowledge, or should  
35 otherwise have grounds for knowledge, sells, gives, or in any way  
36 furnishes to another person who is under the age of 21 years other  
37 than a person born before January 1, 1985, any tobacco, cigarette,  
38 or cigarette papers, or any other preparation of tobacco, or any  
39 other instrument or paraphernalia that is designed for the smoking  
40 or ingestion of tobacco, products prepared from tobacco, or any



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

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

15 Proof that a defendant, or his or her employee or agent,  
16 demanded, was shown, and reasonably relied upon evidence of  
17 majority shall be defense to any action brought pursuant to this  
18 subdivision. Evidence of majority of a person is a facsimile of or  
19 a reasonable likeness of a document issued by a federal, state,  
20 county, or municipal government, or subdivision or agency  
21 thereof, including, but not limited to, a motor vehicle operator's  
22 license, a registration certificate issued under the Federal Selective  
23 Service Act, or an identification card issued to a member of the  
24 Armed Forces indicating the person is age 21 years or older or was  
25 born before January 1, 1985.

26 For purposes of this section, the person liable for selling or  
27 furnishing tobacco products to a person under the age of 21 years  
28 or a person born on or after January 1, 1985 by a tobacco vending  
29 machine shall be the person authorizing the installation or  
30 placement of the tobacco vending machine upon premises he or  
31 she manages or otherwise controls and under circumstances in  
32 which he or she has knowledge, or should otherwise have grounds  
33 for knowledge, that the tobacco vending machine will be utilized  
34 by a person under the age of 21 years or a person born on or after  
35 January 1, 1985.

36 (b) Every person under the age of 21 years other than a person  
37 born before January 1, 1985, who purchases, receives, or possesses  
38 any tobacco, cigarette, or cigarette papers, or any other preparation  
39 of tobacco, or any other instrument or paraphernalia that is  
40 designed for the smoking of tobacco, products prepared from



1 tobacco, or any controlled substance shall, upon conviction, be  
2 punished by a fine of seventy-five dollars (\$75) or 30 hours of  
3 community service work.

4 (c) Every person, firm, or corporation that sells, or deals in  
5 tobacco or any preparation thereof, shall post conspicuously and  
6 keep so posted in his, her, or their place of business at each point  
7 of purchase the notice required pursuant to subdivision (b) of  
8 Section 22952 of the Business and Professions Code, and any  
9 person failing to do so shall upon conviction be punished by a fine  
10 of ten dollars (\$10) for the first offense and fifty dollars (\$50) for  
11 each succeeding violation of this provision, or by imprisonment  
12 for not more than 30 days.

13 (d) For purposes of determining the liability of persons, firms,  
14 or corporations controlling franchises or business operations in  
15 multiple locations for the second and subsequent violations of this  
16 section, each individual franchise or business location shall be  
17 deemed a separate entity.

18 (e) It is the Legislature's intent to regulate the subject matter of  
19 this section. As a result, no city, county, or city and county shall  
20 adopt any ordinance or regulation inconsistent with this section.

21 (f) Notwithstanding any other provision of this section, the  
22 Director of Corrections may sell or supply tobacco and tobacco  
23 products, including cigarettes and cigarette papers, to any person  
24 confined in any institution or facility under his or her jurisdiction  
25 who has attained the age of 16 years, if the parent or guardian of  
26 the person consents thereto, and may permit smoking by the person  
27 in any institution or facility. No officer or employee of the  
28 Department of Corrections shall be considered to have violated  
29 this section by any act authorized by this subdivision.

30 ~~SEC. 11.~~

31 *SEC. 10.* No reimbursement is required by this act pursuant  
32 to Section 6 of Article XIII B of the California Constitution  
33 because the only costs that may be incurred by a local agency or  
34 school district will be incurred because this act creates a new crime  
35 or infraction, eliminates a crime or infraction, or changes the  
36 penalty for a crime or infraction, within the meaning of Section  
37 17556 of the Government Code, or changes the definition of a



1 crime within the meaning of Section 6 of Article XIII B of the  
2 California Constitution.

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