

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1500

Introduced by Assembly Member Dickinson

January 13, 2014

An act to ~~repeal and~~ add Section ~~22963~~ of 22963.5 to the Business and Professions Code, to add Section 119406 to the Health and Safety Code, and to repeal Section 30101.7 of the Revenue and Taxation Code, relating to public health *electronic cigarettes*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1500, as amended, Dickinson. ~~Cigarettes, tobacco products, and electronic~~ *Electronic* cigarettes.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, among other things, prohibits any person from distributing or selling tobacco products via the United States Postal Service, or any other public or private postal or package delivery service, to any purchaser who is a minor. The STAKE Act also requires a specified distributor or seller, among other things, to verify that a purchaser of tobacco products is 18 years of age or older, and to telephone the purchaser after 5 p.m. to confirm the order prior to shipping the tobacco products.

~~This bill would repeal those provisions~~

Existing law makes it unlawful for a person to sell or otherwise furnish an electronic cigarette, as defined, to a person under 18 years of age and makes a violation punishable as an infraction, as specified.

~~This bill would, with certain exceptions, prohibit shipping or transporting cigarettes, tobacco products, or electronic cigarettes to persons in California. The bill would establish civil penalties for a~~

~~violation of that prohibition and would authorize the State Board of Equalization or a law enforcement agency to seize and take possession of the cigarettes, tobacco products, or electronic cigarettes. The bill would require any cigarettes, tobacco products, or electronic cigarettes seized by, or delivered to, the board to be deemed forfeited to the state and would require the board to comply with specified procedures in handling the forfeited products.~~

~~Existing law, the Cigarette and Tobacco Products Tax Law, prohibits, except under specified circumstances, the retail sale of cigarettes in California unless the sale is a vendor-assisted, face-to-face sale, as defined.~~

~~This bill would repeal those provisions.~~

This bill would prohibit a delivery seller, as defined, from selling, delivering, or causing to be delivered an electronic cigarette to a person under 18 years of age. The bill would require the delivery seller to use a method of mailing or shipping that has specified requirements, including the requirement that the person delivering the electronic cigarette not deliver the electronic cigarette without first obtaining the full name, birth date, and residential address of the person signing for the delivery of the electronic cigarette and verifying that information, as specified. The bill would make a violation of these provisions an infraction, punishable as specified. By creating a new 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: ~~no~~-yes.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) ~~The transfer and shipment of cigarettes, tobacco products,~~
- 4 ~~and electronic cigarette products~~ *cigarettes* (e-cigarettes) sold via
- 5 the Internet or by telephone or by mail order, or by any other means
- 6 in which the seller is not in the physical presence of the buyer, to

1 residents of this state poses a serious threat to public health, safety,
2 welfare, and economy of the state.

3 ~~(b) When cigarettes, tobacco products, and e-cigarettes are~~
4 ~~shipped directly to a consumer, adequate proof that the consumer~~
5 ~~is of legal age to purchase the products cannot be obtained by the~~
6 ~~vendor, thereby enabling sellers of cigarettes, tobacco products,~~
7 ~~and e-cigarettes to evade provisions of law designed to prevent~~
8 ~~sales to minors.~~

9 (c) By preventing shipment of ~~cigarettes, tobacco products, and~~
10 ~~e-cigarettes directly to consumers, minors~~ the state will be better
11 able to measure and monitor ~~cigarette and tobacco products~~
12 ~~e-cigarette~~ consumption, determine the public health and fiscal
13 consequences of smoking, and keep these products out of the hands
14 of children.

15 ~~(d) Existing penalties for cigarette and tobacco products~~
16 ~~bootlegging have been an inadequate deterrent.~~

17 *SEC. 2. Section 22963.5 is added to the Business and*
18 *Professions Code, to read:*

19 *22963.5. (a) For purposes of this section, the following*
20 *definitions apply:*

21 *(1) "Consumer" means a person who purchases an electronic*
22 *cigarette. "Consumer" does not include any person lawfully*
23 *operating as a manufacturer, distributor, wholesaler, or retailer*
24 *of electronic cigarettes.*

25 *(2) "Delivery sale" means sale of electronic cigarettes into and*
26 *in this state in either of the following cases:*

27 *(A) The consumer submits the order for the sale by means of a*
28 *telephone or other method of voice transmission, the mail, or the*
29 *Internet or other online service, or the seller is otherwise not in*
30 *the physical presence of the consumer when the request for*
31 *purchase or order is made.*

32 *(B) The electronic cigarette is delivered to the consumer by*
33 *common carrier, private delivery service, or other method of*
34 *remote delivery, or the seller is not in the physical presence of the*
35 *consumer when the consumer obtains possession of the electronic*
36 *cigarette.*

37 *(3) "Delivery seller" means a person who makes a delivery*
38 *sale.*

39 *(4) "Electronic cigarette" has the same meaning as defined in*
40 *Section 119405 of the Health and Safety Code.*

1 (b) A delivery seller shall not sell, deliver, or cause to be
2 delivered an electronic cigarette to a person under 18 years of
3 age.

4 (c) (1) The delivery seller shall use a method of mailing or
5 shipping that requires all of the following:

6 (A) The consumer placing the delivery sale order, or an adult
7 who is at least 18 years of age at the place of delivery, shall sign
8 to accept delivery of the electronic cigarette at the delivery address.

9 (B) The person who signs to accept delivery of the electronic
10 cigarette shall provide proof, in the form of a valid,
11 government-issued identification bearing a photograph of the
12 person, that the person is 18 years of age or older.

13 (C) The person delivering the electronic cigarette shall not
14 deliver the electronic cigarette without first obtaining the full
15 name, birth date, and residential address of that person and
16 verifying that information through the use of a commercially
17 available database or aggregate of databases, consisting primarily
18 of data from government sources, that are regularly used by
19 government and businesses for the purpose of age and identity
20 verification and authentication, to ensure that the purchaser is at
21 least the minimum age required for the legal sale or purchase of
22 electronic cigarettes.

23 (2) A database being used for age and identity verification
24 pursuant to paragraph (1) shall not be in the possession or under
25 the control of the delivery seller, or be subject to any changes or
26 supplementation by the delivery seller.

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

32 (e) This section or any other law shall not invalidate an existing
33 ordinance of, or prohibit the adoption of an ordinance by, a city
34 or county that regulates the distribution of electronic cigarettes
35 in a manner that is more restrictive than this section, to the extent
36 that the ordinance is not otherwise prohibited by federal law.

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 *infraction, eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section 17556 of*
3 *the Government Code, or changes the definition of a crime within*
4 *the meaning of Section 6 of Article XIII B of the California*
5 *Constitution.*

6 ~~SEC. 2.— Section 22963 of the Business and Professions Code~~
7 ~~is repealed.~~

8 ~~SEC. 3.— Section 22963 is added to the Business and Professions~~
9 ~~Code, to read:~~

10 ~~22963. (a) It is unlawful for any person engaged in the business~~
11 ~~of selling or distributing cigarettes or tobacco products to ship or~~
12 ~~cause to be shipped any cigarettes or tobacco products to any~~
13 ~~person in this state who is not any of the following:~~

14 ~~(1) A retailer licensed pursuant to Division 8.6 (commencing~~
15 ~~with Section 22970):~~

16 ~~(2) An export warehouse proprietor as defined in Section 5702~~
17 ~~of Title 26 of the United States Code.~~

18 ~~(3) An operator of a customs bonded warehouse as described~~
19 ~~in Section 1311 or 1555 of Title 19 of the United States Code.~~

20 ~~(4) A person who is an officer, employee, or agent of the federal~~
21 ~~government, or of this state or of a department, agency,~~
22 ~~instrumentality, or political subdivision of the federal government~~
23 ~~or this state, when the person is acting in accordance with his or~~
24 ~~her official duties.~~

25 ~~(b) It is unlawful for any common or contract carrier to~~
26 ~~knowingly transport cigarettes or tobacco products to any person~~
27 ~~in this state reasonably believed by the carrier to be other than a~~
28 ~~person described in subdivision (a). It is unlawful for any other~~
29 ~~person to knowingly, or with reason to know, transport cigarettes~~
30 ~~or tobacco products to any person in this state, other than a person~~
31 ~~described in subdivision (a).~~

32 ~~(c) Notwithstanding any other provision of this division, upon~~
33 ~~discovery by the State Board of Equalization or a law enforcement~~
34 ~~agency of any cigarettes or tobacco products that have been, or~~
35 ~~are being, shipped or transported in violation of this section, the~~
36 ~~State Board of Equalization or the law enforcement agency may~~
37 ~~seize and take possession of the cigarettes or tobacco products.~~
38 ~~Any cigarettes or tobacco products seized by a law enforcement~~
39 ~~agency shall be delivered to the State Board of Equalization, or~~
40 ~~its designee, within seven days, unless the cigarettes or tobacco~~

~~1 products are otherwise required to be used as evidence in an
2 administrative, criminal, or civil proceeding, or as part of an
3 ongoing law enforcement operation. Any cigarettes or tobacco
4 products seized by the State Board of Equalization or delivered to
5 the State Board of Equalization by a law enforcement agency shall
6 be deemed forfeited to the state and the State Board of Equalization
7 shall comply with procedures set forth in Chapter 7.5 (commencing
8 with Section 30435) of Part 13 of Division 2 of the Revenue and
9 Taxation Code.~~

~~10 (d) (1) A district attorney, city attorney, or the Attorney General
11 may assess civil penalties against any person, firm, corporation,
12 or other entity that violates this section and may recover the
13 reasonable costs of investigating and prosecuting the action,
14 including expert fees, reasonable attorney's fees, and court costs.
15 The civil penalties shall be assessed according to the following
16 schedule:~~

~~17 (A) Upon the first violation, a civil penalty of not more than
18 one thousand dollars (\$1,000).~~

~~19 (B) Upon the second violation, a civil penalty of not more than
20 five thousand dollars (\$5,000).~~

~~21 (C) Upon the third violation or subsequent violations, a civil
22 penalty of not more than twenty-five thousand dollars (\$25,000).~~

~~23 (2) The civil penalties assessed pursuant to this section shall be
24 in addition to any other penalties that may be applicable, including,
25 but not limited to, civil penalties pursuant to Section 22958.~~

~~26 (e) For the purposes of this section, the following definitions
27 apply:~~

~~28 (1) "Cigarette" has the same meaning as in Section 104556 of
29 the Health and Safety Code.~~

~~30 (2) "Tobacco products" has the same meaning as in Section
31 22962.~~

~~32 SEC. 4. Section 119406 is added to the Health and Safety Code,
33 to read:~~

~~34 119406. (a) It is unlawful for any person engaged in the
35 business of selling or distributing electronic cigarettes (e-cigarettes)
36 to ship or cause to be shipped any e-cigarettes to any person in
37 this state who is not any of the following:~~

~~38 (1) A retailer licensed pursuant to Division 8.6 (commencing
39 with Section 22970) of the Business and Professions Code.~~

1 ~~(2) An export warehouse proprietor as defined in Section 5702~~
2 ~~of Title 26 of the United States Code.~~

3 ~~(3) An operator of a customs bonded warehouse as described~~
4 ~~in Section 1311 or 1555 of Title 19 of the United States Code.~~

5 ~~(4) A person who is an officer, employee, or agent of the federal~~
6 ~~government, or of this state or of a department, agency,~~
7 ~~instrumentality, or political subdivision of the federal government~~
8 ~~or this state, when the person is acting in accordance with his or~~
9 ~~her official duties.~~

10 ~~(b) It is unlawful for any common or contract carrier to~~
11 ~~knowingly transport e-cigarettes to any person in this state~~
12 ~~reasonably believed by the carrier to be other than a person~~
13 ~~described in subdivision (a). It is unlawful for any other person to~~
14 ~~knowingly, or with reason to know, transport e-cigarettes to any~~
15 ~~person in this state, other than a person described in subdivision~~
16 ~~(a).~~

17 ~~(c) Notwithstanding any other provision of this division, upon~~
18 ~~discovery by the State Board of Equalization or a law enforcement~~
19 ~~agency of any e-cigarettes that have been, or are being, shipped~~
20 ~~or transported in violation of this section, the State Board of~~
21 ~~Equalization or the law enforcement agency may seize and take~~
22 ~~possession of the e-cigarettes. Any e-cigarettes seized by a law~~
23 ~~enforcement agency shall be delivered to the State Board of~~
24 ~~Equalization, or its designee, within seven days, unless the~~
25 ~~e-cigarettes are otherwise required to be used as evidence in an~~
26 ~~administrative, criminal, or civil proceeding, or as part of an~~
27 ~~ongoing law enforcement operation. Any e-cigarettes seized by~~
28 ~~the State Board of Equalization or delivered to the State Board of~~
29 ~~Equalization by a law enforcement agency shall be deemed~~
30 ~~forfeited to the state and the State Board of Equalization shall~~
31 ~~comply with procedures set forth in Chapter 7.5 (commencing~~
32 ~~with Section 30435) of Part 13 of Division 2 of the Revenue and~~
33 ~~Taxation Code.~~

34 ~~(d) (1) A district attorney, city attorney, or the Attorney General~~
35 ~~may assess civil penalties against any person, firm, corporation,~~
36 ~~or other entity that violates this section and may recover the~~
37 ~~reasonable costs of investigating and prosecuting the action,~~
38 ~~including expert fees, reasonable attorney's fees, and court costs.~~
39 ~~The civil penalties shall be assessed according to the following~~
40 ~~schedule:~~

1 ~~(A) Upon the first violation, a civil penalty of not more than~~
2 ~~one thousand dollars (\$1,000):~~

3 ~~(B) Upon the second violation, a civil penalty of not more than~~
4 ~~five thousand dollars (\$5,000):~~

5 ~~(C) Upon the third violation or subsequent violations, a civil~~
6 ~~penalty of not more than twenty-five thousand dollars (\$25,000):~~

7 ~~(2) The civil penalties assessed pursuant to this section shall be~~
8 ~~in addition to any other penalties that may be applicable:~~

9 ~~(e) For the purposes of this section, “electronic cigarette” or~~
10 ~~“e-cigarette” means a device designed to look like a cigarette,~~
11 ~~cigar, pipe, or other smoking device, or any other nicotine delivery~~
12 ~~device that is used for the purpose of creating a vapor inhaled by~~
13 ~~the user, including cartridges, accessories, or liquids used with the~~
14 ~~device:~~

15 ~~SEC. 5. Section 30101.7 of the Revenue and Taxation Code~~
16 ~~is repealed.~~