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SB-5 Electronic cigarettes. (2015-2016)

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Senate Bill No. 5

CHAPTER 7

An act to amend Sections 22950.5, 22958, and 22962 of, to amend, repeal, and add Section 22980.2 of, and to add Sections 22971.7 and 22973.3 to, the Business and Professions Code, to amend Section 1947.5 of the Civil Code, to amend Section 48901 of the Education Code, to amend Section 7597 of the Government Code, to amend Sections 1234, 1286, 1530.7, 1596.795, 104495, 114332.3, 114371, 118910, 118925, and 118948 of, to add Section 119406 to, 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.

[Approved by Governor May 04, 2016. Filed with Secretary of State May 04, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 5, 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 a person under 18 years of age. 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 a person under 18 years of age. Existing law also prohibits a person from selling or otherwise furnishing an electronic cigarette to a person under 18 years of age, and makes a violation punishable as an infraction.

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

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

This bill would include in the definition of tobacco products for the purposes of those provisions relating to licenses for retailers the STAKE Act's new definition of tobacco products. The bill would impose a specified fee on retailers, to be submitted with each

license or renewal application for the sale or distribution of tobacco products that are not subject to a tax imposed by the Cigarette and Tobacco Products Tax Law, unless the retailer is already in possession of a valid license to sell cigarette and tobacco products that are subject to that tax. The bill would include the STAKE Act's new definition of tobacco products in the provision authorizing seizure of tobacco products described above. The bill would make these provisions operative on January 1, 2017.

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

This bill would include in the definition of tobacco products for the purposes of those provisions the STAKE Act's new definition of tobacco products. The bill would require all cartridges for electronic cigarettes and solutions for filling or refilling an electronic cigarette to be in child-resistant packaging, as prescribed. The bill would make these provisions operative on October 1, 2016.

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

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

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

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

This bill would incorporate additional changes to Section 6404.5 of the Labor Code proposed by certain bills in the 2nd Extraordinary Session of the 2015–16 Legislative Session that would become operative if this bill and those bills are enacted, as specified, and this bill is enacted last.

This bill would incorporate additional changes to Section 22958 of the Business and Professions Code and Section 308 of the Penal Code proposed by SB 7 and AB 8 of the 2015–16 2nd Extraordinary Session of the Legislature. Those other bills would prohibit selling, advertising, or furnishing tobacco products to, or the purchasing of tobacco products by, persons under 21 years of age. If this bill and those bills are enacted, as specified, and this bill is enacted last, then this bill would prohibit selling, advertising, or furnishing an electronic device that delivers nicotine or other vaporized liquids, as specified, to persons under 21 years of age.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22950.5 of the Business and Professions Code is amended to read:

22950.5. For purposes of this division, the following terms have the following meanings:

(a) "Department" means the State Department of Public Health.

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

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

(d) (1) "Tobacco product" means any of the following:

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

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

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

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

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

22958. (a) An enforcing agency may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under 18 years of age, any tobacco, cigarette, cigarette papers, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance, according to the following schedule: (1) a civil penalty of four hundred dollars (\$400) to six hundred dollars (\$600) for the first violation, (2) a civil penalty of nine hundred dollars (\$900) to one thousand dollars (\$1,000) for the second violation within a five-year period, (3) a civil penalty of one thousand two hundred dollars (\$1,200) to one thousand eight hundred dollars (\$1,800) for a third violation within a five-year period, (4) a civil penalty of three thousand dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth violation within a five-year period, or (5) a civil penalty of five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within a five-year period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 2.5. Section 22958 of the Business and Professions Code is amended to read:

22958. (a) (1) An enforcing agency may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under 21 years of age, any tobacco, cigarette, cigarette papers, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance, according to the following schedule: (1) a civil penalty of four hundred dollars (\$400) to six hundred dollars (\$600) for the first violation, (2) a civil penalty of nine hundred dollars (\$900) to one thousand dollars (\$1,000) for the second violation within a five-year period, (3) a civil penalty of one thousand two hundred dollars (\$1,200) to one thousand eight hundred dollars (\$1,800) for a third violation within a five-year period, (4) a civil penalty of three thousand dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth violation within a five-year period, or (5) a civil penalty of five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within a five-year period.

(2) This subdivision does not apply to the sale, giving, or furnishing of any of the products specified in paragraph (1) to active duty military personnel who are 18 years of age or older. An identification card issued by the United States Armed Forces shall be used as proof of age for this purpose.

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

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

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

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

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

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

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

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

(e) An enforcing agency may assess civil penalties against a person, firm, or corporation that sells or deals in tobacco or any preparation thereof, and fails to post conspicuously and keep posted in the place of business at each point of purchase the notice

required pursuant to subdivision (b) of Section 22952. The civil penalty shall be in the amount of two hundred dollars (\$200) for the first offense and five hundred dollars (\$500) for each additional violation.

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

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

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

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

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

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

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

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

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

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

(4) "Tobacco store" means a retail business that meets all of the following requirements:

(A) Primarily sells tobacco products.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) This section shall be operative on January 1, 2017.

SEC. 5. Section 22973.3 is added to the Business and Professions Code, to read:

22973.3. (a) Notwithstanding any other law, an application for a license for the sale of a tobacco product, as defined in subdivision (d) of Section 22950.5, that is not subject to a tax imposed by the Cigarette and Tobacco Products Tax Law pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code shall be filed on a form prescribed by the board and shall include the following:

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

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

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

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

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

(6) The signature of the applicant.

(7) Any other information the board may require.

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

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

(d) A fee of two hundred sixty-five dollars (\$265) shall be submitted with each application. An applicant that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses with an application license fee of two hundred sixty-five dollars (\$265) per location.

(e) Every retailer shall file an application for renewal of its license, accompanied with a fee of two hundred sixty-five dollars (\$265) per retail location in the form and manner prescribed by the board.

(f) (1) The board shall report back to the Legislature no later than January 1, 2019, regarding the adequacy of funding for the Cigarette and Tobacco Products Licensing Act of 2003 with regard to tobacco products for which a license is required by this section. The report shall include data and recommendations about whether the annual licensing fee funding levels are set at an appropriate level to maintain an effective enforcement program.

(2) The report required by paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(g) (1) This section shall apply to a retailer who sells a tobacco product, as defined in subdivision (d) of Section 22950.5, that is not subject to a tax imposed by the Cigarette and Tobacco Products Tax Law pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, and who does not already possess a valid license to sell cigarettes or tobacco products issued pursuant to Section 22972.

(2) A retailer that possesses a valid license to sell cigarettes and tobacco products issued pursuant to Section 22972 may also sell under that license a tobacco product, as defined in subdivision (d) of Section 22950.5, that is not subject to a tax imposed by the Cigarette and Tobacco Products Tax Law pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code.

(h) This section shall become operative January 1, 2017.

SEC. 6. Section 22980.2 of the Business and Professions Code is amended to read:

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

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

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

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

SEC. 7. Section 22980.2 is added to the Business and Professions Code, to read:

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

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

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

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

(e) This section shall be operative on January 1, 2017.

SEC. 8. Section 1947.5 of the Civil Code is amended to read:

1947.5. (a) A landlord of a residential dwelling unit, as defined in Section 1940, or his or her agent, may prohibit the smoking of a cigarette, as defined in Section 104556 of the Health and Safety Code, or other tobacco product on the property or in any building

or portion of the building, including any dwelling unit, other interior or exterior area, or the premises on which it is located, in accordance with this article.

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

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

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

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

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

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

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

SEC. 9. Section 48901 of the Education Code is amended to read:

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

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

(c) For purposes of this section, "smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 10. Section 7597 of the Government Code is amended to read:

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

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

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

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

SEC. 11. Section 1234 of the Health and Safety Code is amended to read:

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

(b) Clearly legible signs shall either:

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

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

If "smoking permitted" signs are posted, there shall also be conspicuously posted, near all major entrances, clearly legible signs stating that smoking is unlawful except in areas designated "smoking permitted."

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

(d) For purposes of this section, "smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 12. Section 1286 of the Health and Safety Code is amended to read:

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

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

(c) Clearly legible signs shall either:

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

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

If "smoking permitted" signs are posted, there shall also be conspicuously posted, near all major entrances, clearly legible signs stating that smoking is unlawful except in areas designated "smoking permitted."

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

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

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

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

SEC. 13. Section 1530.7 of the Health and Safety Code is amended to read:

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

(b) A person who is licensed or certified pursuant to this chapter to provide residential care in a foster family home or certified family home shall not smoke a tobacco product or permit any other person to smoke a tobacco product inside the facility, and, when 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 same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 14. 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 same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 15. Section 104495 of the Health and Safety Code is amended to read:

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

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

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

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

(4) "Smoke" and "smoking" have the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

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

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

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

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

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

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

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

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

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

SEC. 16. Section 114332.3 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) For purposes of this section, "smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 17. Section 114371 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) For purposes of this section, "smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 18. Section 118910 of the Health and Safety Code is amended to read:

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

(b) For purposes of this section, "smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 19. Section 118925 of the Health and Safety Code is amended to read:

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

(2) (A) For purposes of this subdivision, "smoke" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

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

SEC. 20. Section 118948 of the Health and Safety Code is amended to read:

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

(b) For purposes of this section, "smoke" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

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

SEC. 21. Section 119405 of the Health and Safety Code is repealed.

SEC. 22. Section 119406 is added to the Health and Safety Code, to read:

119406. (a) Commencing October 1, 2016, all cartridges for electronic cigarettes and solutions for filling or refilling an electronic cigarette shall be in child-resistant packaging.

(b) "Child-resistant packaging" means packaging that meets the specifications in Section 1700.15(b) of, and is tested by the method described in Section 1700.20 of, Title 16 of the Code of Federal Regulations.

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

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that an area not defined as a "place of employment" pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) is subject to local regulation of smoking of tobacco products.

(b) An employer shall not knowingly or intentionally permit, and a person shall not engage in, the smoking of tobacco products in an enclosed space at a place of employment. "Enclosed space" includes lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building and not specifically defined in subdivision (d).

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

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

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

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

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

For purposes of this subdivision, "reasonable steps" does not include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances 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 nonsmoking employees are not present.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) January 1, 1998.

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

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

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

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

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

(B) If feasible, an employee shall not be required, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.

(g) The smoking prohibition set forth in this section constitutes a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and supersedes and renders unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100 percent) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(h) This section does not prohibit an employer from prohibiting smoking of tobacco products in an enclosed place of employment for any reason.

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

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

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

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

(m) For purposes of this section, "smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 23.5. Section 6404.5 of the Labor Code is amended to read:

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

specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that an area not defined as a "place of employment" pursuant to subdivision (e) is subject to local regulation of smoking of tobacco products.

(b) For purposes of this section, an "owner-operated business" shall mean a business having no employees, independent contractors, or volunteers, in which the owner-operator of the business is the only worker. "Enclosed space" includes covered parking lots, lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building and not specifically defined in subdivision (e).

(c) An employer or owner-operator of an owner-operated business shall not knowingly or intentionally permit, and a person shall not engage in, the smoking of tobacco products at a place of employment or in an enclosed space.

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

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

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

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

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

For purposes of this subdivision, "reasonable steps" does not include (A) the physical ejection of a nonemployee from the place of employment or owner-operated business or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee or owner-operator.

(e) For purposes of this section, "place of employment" does not include any of the following:

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

(2) 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.

(3) 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 nonsmoking employees are not present.

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

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

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

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

(f) The smoking prohibition set forth in this section constitutes a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and owner-operated businesses and supersedes and renders unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment and owner-operated businesses. Insofar as the smoking prohibition set forth in this section is applicable to all (100 percent) places of employment and owner-operated businesses within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(g) This section does not prohibit an employer or owner-operator of an owner-operated business from prohibiting smoking of tobacco products in an enclosed place of employment or owner-operated business for any reason.

(h) The enactment of local regulation of smoking of tobacco products in enclosed places of employment or owner-operated businesses by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment and owner-operated businesses in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment and owner-operated businesses within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, an area not defined as a "place of employment" or in which smoking is not regulated pursuant to subdivision (e), is subject to local regulation of smoking of tobacco products.

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

(j) Notwithstanding Section 6309, the division is not required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (i) of a third violation of subdivision (c) within the previous year.

(k) If a provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(l) For purposes of this section, "smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

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

308. (a) (1) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under 18 years of age any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

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

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

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

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

(b) Every person under 18 years of age who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, tobacco

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

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

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

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

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

(2) An activity conducted by the State Department of Public Health, a local health department, or a law enforcement agency for the purpose of determining or evaluating youth tobacco 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 same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 24.5. Section 308 of the Penal Code is amended to read:

308. (a) (1) (A) (i) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under 21 years of age any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

(ii) This subparagraph does not apply to the sale, giving, or furnishing of any of the products specified in clause (i) to active duty military personnel who are 18 years of age or older. An identification card issued by the United States Armed Forces shall be used as proof of age for this purpose.

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

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

(D) For purposes of this section, the person liable for selling or furnishing tobacco products to persons under 21 years of age by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by persons under 21 years of age.

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

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

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

(d) 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.

(e) For purposes of this section, "smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 25. 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 same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 26. 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).

(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 unreasonably loud sound equipment on or in a system facility or vehicle, or failing to comply with the warning of a transit official related to disturbing another person by loud or unreasonable noise.

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

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

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

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

(13) Failing to yield seating reserved for an elderly or disabled person.

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

(2) For the purpose of this chapter, "processing agency" means either of the following:

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

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

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

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

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

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

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

(3) If, after a notice of fare evasion or passenger conduct violation is issued pursuant to this section, the issuing officer determines that there is incorrect data on the notice, including, but not limited to, the date or time, the issuing officer may

indicate in writing on a form attached to the original notice the necessary correction to allow for the timely entry of the corrected notice on the processing agency's data system. A copy of the correction shall be mailed to the address provided by the person cited at the time the original notice of fare evasion or passenger conduct violation was served.

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

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

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

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

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

(2) The amount of the administrative penalties.

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

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

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

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

(h) For purposes of this section, "smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

SEC. 27. 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 same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

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

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

SEC. 29. (a) Section 2.5 of this bill incorporates amendments to Section 22958 of the Business and Professions Code proposed by both this bill and Assembly Bill 6 of the Second Extraordinary Session, Senate Bill 7 of the Second Extraordinary Session, and Assembly Bill 8 of the Second Extraordinary Session. It shall only become operative if (1) all bills are enacted, or just this bill and either or both Senate Bill 7 of the Second Extraordinary Session or Assembly Bill 8 of the Second Extraordinary Session are enacted, and become effective on or before January 1, 2017, (2) each bill amends Section 22958 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 6 of the Second Extraordinary Session, Senate Bill 7 of the Second Extraordinary Session, and Assembly Bill 8 of the Second Extraordinary Session, in which case Section 2 of this bill shall not become operative.

(b) Section 23.5 of this bill incorporates amendments to Section 6404.5 of the Labor Code proposed by both this bill and Assembly Bill 6 of the Second Extraordinary Session, Senate Bill 6 of the Second Extraordinary Session, and Assembly Bill 7 of the Second Extraordinary Session. It shall only become operative if (1) all bills are enacted, or just this bill and either or both Senate Bill 6 of the Second Extraordinary Session or Assembly Bill 7 of the Second Extraordinary Session are enacted, and become effective on or before January 1, 2017, (2) each bill amends Section 6404.5 of the Labor Code, and (3) this bill is enacted after Assembly Bill 6 of the Second Extraordinary Session, Senate Bill 6 of the Second Extraordinary Session, and Assembly Bill 7 of the Second Extraordinary Session, in which case Section 23 of this bill shall not become operative.

(c) Section 24.5 of this bill incorporates amendments to Section 308 of the Penal Code proposed by both this bill and Assembly Bill 6 of the Second Extraordinary Session, Senate Bill 7 of the Second Extraordinary Session, and Assembly Bill 8 of the Second Extraordinary Session. It shall only become operative if (1) all bills are enacted, or just this bill and either or both Senate Bill 7 of the Second Extraordinary Session or Assembly Bill 8 of the Second Extraordinary Session are enacted, and become effective on or before January 1, 2017, (2) each bill amends Section 308 of the Penal Code, and (3) this bill is enacted after Assembly Bill 6 of the Second Extraordinary Session, Senate Bill 7 of the Second Extraordinary Session, and Assembly Bill 8 of the Second Extraordinary Session, in which case Section 24 of this bill shall not become operative.

SEC. 30. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.