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SB-7 Tobacco products: minimum legal age. (2015-2016)

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Senate Bill No. 7

CHAPTER 8

An act to amend Sections 17537.3, 22951, 22952, 22956, 22958, and 22963 of, and to add Section 22964 to, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to tobacco.

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

LEGISLATIVE COUNSEL'S DIGEST

SB 7, Hernandez. Tobacco products: minimum legal age.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, establishes various requirements for distributors and retailers relating to tobacco sales to minors. Existing law prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, a person under 18 years of age. Under existing law, a person is prohibited from making various promotional or advertising offers of smokeless tobacco products without taking actions to ensure that the product is not available to persons under 18 years of age. Existing law also requires the State Department of Public Health to conduct random, onsite sting inspections of tobacco product retailers with the assistance of persons under 18 years of age.

Existing law, the STAKE Act, authorizes an enforcing agency to 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, products prepared from tobacco, or any controlled substance, according to a specified schedule. Existing law also makes 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, cigarette papers, blunts wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, 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, as specified.

This bill would extend the applicability of those provisions to persons under 21 years of age. The bill would authorize the State Department of Public Health to conduct random, onsite sting inspections of tobacco product retailers with the assistance of persons under 21 years of age.

The bill would also provide that the STAKE Act does not invalidate existing local government ordinances or prohibit the adoption of local government ordinances requiring a more restrictive legal age to purchase or possess tobacco products.

This bill would make the civil and criminal penalties described above inapplicable if the person being furnished the product is active duty military personnel who is 18 years of age or older, as confirmed by a military identification card.

Existing law makes it a crime, punishable by a fine of \$75 or 30 hours of community service work, for a person under 18 years of age to purchase, receive, or possess certain tobacco products. Existing law requires 25% of certain fines to be paid to the city or

county for the administration and cost of that community service work component. Existing law immunizes a person under 18 years of age from prosecution for those actions when they were taken while participating in specified enforcement activities.

This bill would delete those provisions.

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 5 and AB 6 of the 2015–16 2nd Extraordinary Session of the Legislature. Those other bills would include an electronic device that delivers nicotine or other vaporized liquids in the definition of a tobacco product. 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 existing crimes, 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 17537.3 of the Business and Professions Code is amended to read:

17537.3. The following acts are prohibited:

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

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

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

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

SEC. 2. Section 22951 of the Business and Professions Code is amended to read:

22951. The Legislature finds and declares that reducing and eventually eliminating the illegal purchase and consumption of tobacco products by any person under 21 years of age is critical to ensuring the long-term health of our state's citizens. Accordingly, California must fully comply with federal regulations, particularly the "Synar Amendment," that restrict tobacco sales to minors and require states to vigorously enforce their laws prohibiting the sale and distribution of tobacco products to persons under 18 years of age. Full compliance and vigorous enforcement of the "Synar Amendment" requires the collaboration of multiple state and local agencies that license, inspect, or otherwise conduct business with retailers, distributors, or wholesalers that sell tobacco.

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

22952. The State Department of Public Health shall do all of the following:

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

(b) Establish requirements that retailers of tobacco products post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably

appears to be under 21 years of age. The warning signs shall include a toll-free telephone number to the department for persons to report unlawful sales of tobacco products to any person under 21 years of age.

(c) Provide that primary responsibility for enforcement of this division shall be with the department. In carrying out its enforcement responsibilities, the department shall conduct random, onsite sting inspections at retail sites and shall enlist the assistance of persons that are under 21 years of age in conducting these enforcement activities. The department may conduct onsite sting inspections in response to public complaints or at retail sites where violations have previously occurred, and investigate illegal sales of tobacco products to any person under 21 years of age by telephone, mail, or the Internet. A person under 21 years of age who participates in these enforcement activities is immune from prosecution under any provision of law prohibiting the purchase of these products by a person under 21 years of age.

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

(1) An enforcing agency may use persons under 21 years of age in random inspections to determine if sales of cigarettes or other tobacco products are being made to persons under 21 years of age.

(2) A photograph or video recording of the person under 21 years of age shall be taken prior to each inspection or shift of inspections and retained by the enforcing agency for purposes of verifying appearances.

(3) An enforcing agency may use video recording equipment when conducting the inspections to record and document illegal sales or attempted sales.

(4) The person under 21 years of age, if questioned about his or her age, need not state his or her actual age but shall present a true and correct identification if verbally asked to present it. Any failure on the part of the person under 21 years of age to provide true and correct identification, if verbally asked for it, shall be a defense to an action pursuant to this section.

(5) The person under 21 years of age shall be under the supervision of a regularly employed peace officer during the inspection.

(6) All persons under 21 years of age used in this manner by an enforcing agency shall display the appearance of a person under 21 years of age. It shall be a defense to an action under this division that the person's appearance was not that which could be generally expected of a person under 21 years of age, under the actual circumstances presented to the seller of the cigarettes or other tobacco products at the time of the alleged offense.

(7) Following the completion of the sale, the peace officer accompanying the person under 21 years of age shall reenter the retail establishment and shall inform the seller of the random inspection. Following an attempted sale, the enforcing agency shall notify the retail establishment of the inspection.

(8) Failure to comply with the procedures set forth in this subdivision shall be a defense to an action brought pursuant to this section.

(e) Be responsible for ensuring and reporting the state's compliance with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services. A copy of this report shall be made available to the Governor and the Legislature.

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

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

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

SEC. 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, products prepared from tobacco, or any controlled substance, according to the following schedule: (1) a civil penalty of from four hundred dollars (\$400) to six hundred dollars (\$600) for the first violation, (2) a civil penalty of from nine hundred dollars (\$900) to one thousand dollars (\$1,000) for the second violation within a five-year period, (3) a civil penalty of from 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 from 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 from 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. 5.5. 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. 6. Section 22963 of the Business and Professions Code is amended to read:

22963. (a) The sale, distribution, or nonsale distribution of tobacco products directly or indirectly to any person under 21 years of age through the United States Postal Service or through any other public or private postal or package delivery service at locations, including, but not limited to, public mailboxes and mailbox stores, is prohibited.

(b) Any person selling or distributing, or engaging in the nonsale distribution of, tobacco products directly to a consumer in the state through the United States Postal Service or by any other public or private postal or package delivery service, including orders placed by mail, telephone, facsimile transmission, or the Internet, shall comply with the following provisions:

(1) (A) Before enrolling a person as a customer, or distributing or selling, or engaging in the nonsale distribution of, the tobacco product through any of these means, the distributor or seller shall verify that the purchaser or recipient of the product is 21 years of age or older. The distributor or seller shall attempt to match the name, address, and date of birth provided by the customer to information contained in records in a database of individuals whose age has been verified to be 21 years or older by reference to an appropriate database of government records kept by the distributor, a direct marketing firm, or any other entity. In the case of a sale, the distributor or seller shall also verify that the billing address on the check or credit card offered for payment by the purchaser matches the address listed in the database.

(B) If the seller, distributor, or nonsale distributor, is unable to verify that the purchaser or recipient is 21 years of age or older pursuant to subparagraph (A), he or she shall require the customer or recipient to submit an age-verification kit consisting of an attestation signed by the customer or recipient that he or she is 21 years of age or older and a copy of a valid form of government identification. For the purposes of this section, a valid form of government identification includes a driver's license, state identification card, passport, an official naturalization or immigration document, such as an alien registration receipt card (commonly known as a "green card") or an immigrant visa, or military identification. In the case of a sale, the distributor or seller shall also verify that the billing address on the check or credit card provided by the consumer matches the address listed in the form of government identification.

(2) In the case of a sale, the distributor or seller shall impose a two-carton minimum on each order of cigarettes, and shall require payment for the purchase of any tobacco product to be made by personal check of the purchaser or the purchaser's credit card. No money order or cash payment shall be received or permitted. The distributor or seller shall submit to each credit card acquiring company with which it has credit card sales identification information in an appropriate form and format so that the words "tobacco product" may be printed in the purchaser's credit card statement when a purchase of a tobacco product is made by credit card payment.

(3) In the case of a sale, the distributor or seller shall make a telephone call after 5 p.m. to the purchaser confirming the order prior to shipping the tobacco products. The telephone call may be a person-to-person call or a recorded message. The distributor or seller is not required to speak directly with a person and may leave a message on an answering machine or by voice mail.

(4) The nonsale distributor shall deliver the tobacco product to the recipient's verified mailing address, or in the case of a sale, the seller or distributor shall deliver the tobacco product to the purchaser's verified billing address on the check or credit card used for payment. No delivery described under this section shall be permitted to any post office box.

(c) Notwithstanding subdivisions (a) and (b), if a seller, distributor, or nonsale distributor, complies with all of the requirements of this section and a person under 21 years of age obtains a tobacco product by any of the means described in subdivision (b), the seller, distributor, or nonsale distributor is not in violation of this section.

(d) For the purposes of the enforcement of this section pursuant to Section 22958, the acts of the United States Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others, and the acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's contents, are not unlawful and are not subject to civil penalties.

(e) (1) (A) For the purposes of this section, a "distributor" is any person or entity, within or outside the state, who agrees to distribute tobacco products to a customer or recipient within the state. The United States Postal Service or any other public or private postal or package delivery service are not distributors within the meaning of this section.

(B) A "nonsale distributor" is any person inside or outside of this state who, directly or indirectly, knowingly provides tobacco products to any person in this state as part of a nonsale transaction. "Nonsale distributor" includes the person or entity who

provides the tobacco product for delivery and the person or entity who delivers the product to the recipient as part of a nonsale transaction.

(C) "Nonsale distribution" means to give smokeless tobacco or cigarettes to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for smokeless tobacco or cigarettes to the general public at no cost or at nominal cost. Distribution of tobacco products, coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers in connection with the sale of another item, including tobacco products, cigarette lighters, magazines, or newspapers shall not constitute nonsale distribution.

(2) For the purpose of this section, a "seller" is any person or entity, within or outside the state, who agrees to sell tobacco products to a customer within the state. The United States Postal Service or any other public or private postal or package delivery service are not sellers within the meaning of this section.

(3) For the purpose of this section, a "carton" is a package or container that contains 200 cigarettes.

(f) A district attorney, city attorney, or the Attorney General may assess civil penalties against any person, firm, corporation, or other entity that violates this section, according to the following schedule:

(1) A civil penalty of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000) for the first violation.

(2) A civil penalty of not less than two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500) for the second violation.

(3) A civil penalty of not less than four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000) for the third violation within a five-year period.

(4) A civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500) for the fourth violation within a five-year period.

(5) A civil penalty of ten thousand dollars (\$10,000) for a fifth or subsequent violation within a five-year period.

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

22964. This division sets forth minimum state restrictions with respect to the legal age to purchase or possess tobacco products and does not preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive legal age to purchase or possess tobacco products. A local standard that imposes a more restrictive legal age to purchase or possess tobacco products shall control in the event of any inconsistency between this division and a local standard.

SEC. 8. 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, products prepared from tobacco, 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.

SEC. 8.5. 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 products" means a product or device as defined in subdivision (d) of Section 22950.5 of the Business and Professions Code.

SEC. 9. (a) Section 5.5 of this bill incorporates amendments to Section 22958 of the Business and Professions Code proposed by both this bill and Assembly Bill 8 of the Second Extraordinary Session, Senate Bill 5 of the Second Extraordinary Session, and Assembly Bill 6 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 5 of the Second Extraordinary Session or Assembly Bill 6 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 8 of the Second Extraordinary Session, Senate Bill 5 of the Second Extraordinary Session, and Assembly Bill 6 of the Second Extraordinary Session, in which case Section 5 of this bill shall not become operative.

(b) Section 8.5 of this bill incorporates amendments to Section 308 of the Penal Code proposed by both this bill and Assembly Bill 8 of the Second Extraordinary Session, Senate Bill 5 of the Second Extraordinary Session, and Assembly Bill 6 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 5 of the Second Extraordinary Session or Assembly Bill 6 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 8 of the Second Extraordinary Session, Senate Bill 5 of the Second Extraordinary Session, and Assembly Bill 6 of the Second Extraordinary Session, in which case Section 8 of this bill shall not become operative.

SEC. 10. 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.