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SB-1230 Strengthen Tobacco Oversight Programs (STOP) and Seize Illegal Tobacco Products Act. (2023-2024)

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Senate Bill No. 1230

CHAPTER 462

An act to amend Section 22958 of, and to add Section 22974.1 to, the Business and Professions Code, to amend Section 104559.5 of the Health and Safety Code, and to amend Section 30449 of the Revenue and Taxation Code, relating to tobacco sales.

[Approved by Governor September 22, 2024. Filed with Secretary of State September 22, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1230, Rubio. Strengthen Tobacco Oversight Programs (STOP) and Seize Illegal Tobacco Products Act.

Existing law, except as specified, prohibits a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale a flavored tobacco product or a tobacco product flavor enhancer, as defined.

Under the Cigarette and Tobacco Products Licensing Act of 2003, the California Department of Tax and Fee Administration administers the statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products.

This bill, the Strengthen Tobacco Oversight Programs (STOP) and Seize Illegal Tobacco Products Act, would amend the Cigarette and Tobacco Products Licensing Act of 2003 to authorize the department, if it discovers that a retailer, or any of the tobacco retailer's agents or employees, sell, offer for sale, or possess with the intent to sell or offer for sale a flavored tobacco product or tobacco product flavor enhancer, in violation of existing law, to seize those products at the retail location or any other person's location. The bill would deem any seized products to be forfeited and would require the department to comply with specified procedures relating to the seizure and forfeiture of cigarette and tobacco products.

Existing law requires certain items forfeited to the state, including any cigarettes or tobacco products forfeited to the state pursuant to the Cigarette and Tobacco Products Licensing Act of 2003, to be destroyed.

This bill would additionally require flavored tobacco products and tobacco product flavor enhancers forfeited to the state pursuant to the Cigarette and Tobacco Products Licensing Act of 2003 to be destroyed.

The Stop Tobacco Access to Kids Enforcement (STAKE) Act regulates the use of tobacco and tobacco products by, among other things, prohibiting a person from selling or otherwise furnishing tobacco, cigarettes, or any other paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance to a person under 21 years of age, and establishes an exception for active duty military personnel who are at least 18 years of age. Existing law authorizes civil penalties for a first and subsequent violations of the act.

This bill would increase the penalties for providing a person who is under 21 years of age any of those substances or paraphernalia.

Existing federal law prohibits the sale of tobacco products to any person younger than 21 years of age.

This bill, in conformity with federal law, would repeal the provision authorizing the sale of tobacco products to active duty military personnel who are at least 18 years of age. The bill would also make a nonsubstantive conforming change.

This bill would also make findings and declarations related to the STOP and Seize Illegal Tobacco Products Act.

This bill would incorporate additional changes to Section 104559.5 of the Health and Safety Code proposed by AB 3218 to be operative only if this bill and AB 3218 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. This act shall be known, and may be cited, as the Strengthen Tobacco Oversight Programs (STOP) and Seize Illegal Tobacco Products Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) According to the federal Centers for Disease Control and Prevention, nicotine is highly addictive and can harm brain development, which continues until about 25 years of age. The use of any tobacco product, including flavored tobacco products, is unsafe for young people.

(b) According to the 2023 National Youth Tobacco Survey conducted by the federal Centers for Disease Control and Prevention and the United States Food and Drug Administration, approximately 2,800,000 high school students and middle school students reported using a tobacco product in the past year, and nearly 90 percent of youth electronic cigarette users used flavored products.

(c) The Legislature passed Senate Bill 793 of the 2019–20 Regular Session to protect the health and safety of all Californians, including California children, by prohibiting the sale of flavored tobacco products in California.

(d) Despite the overwhelming passage of Senate Bill 793, tobacco manufacturers delayed implementation of the law by taking the issue to the ballot for a referendum vote as Proposition 31 at the November 8, 2022, statewide general election, and voters overwhelmingly supported the policy of a flavored tobacco ban.

(e) Despite the overwhelming support of both the Legislature and the public, tobacco manufacturers sought to delay implementation of the law by challenging the constitutionality of Senate Bill 793. The tobacco manufacturers' legal challenge was ultimately unsuccessful when the United States Supreme Court declined to hear their challenge in January 2024.

(f) Even after California's ban on the sale of flavored tobacco products took effect, researchers at the University of California, San Diego found that online shopping for flavored tobacco products increased significantly in the weeks after the implementation of Senate Bill 793.

(g) Additionally, sales data has shown a surge in illegal, unregulated flavored tobacco products, such as flavored disposable electronic cigarettes, being imported into the United States from foreign countries in recent years. In December 2023, the United States Food and Drug Administration and the United States Customs and Border Protection announced the seizure of approximately 1,400,000 units of unauthorized electronic cigarette products worth over \$18,000,000 at Los Angeles International Airport.

(h) Strengthening tobacco oversight programs and expanding the seizure of illegal tobacco products is essential to achieving the state's public health goal of lowering youth tobacco use.

SEC. 3. 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 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 one thousand dollars (\$1,000) to one thousand five hundred dollars (\$1,500) for the first violation.

(2) A civil penalty of two thousand dollars (\$2,000) to three thousand dollars (\$3,000) for the second violation at the same location within a five-year period.

(3) A civil penalty of five thousand dollars (\$5,000) to ten thousand dollars (\$10,000) for the third violation at the same location within a five-year period.

(4) A civil penalty of ten thousand dollars (\$10,000) to twenty thousand dollars (\$20,000) for a fourth violation within a five-year period.

(5) A civil penalty of at least twenty thousand dollars (\$20,000) for five or more violations 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 22971.7) 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. 4. Section 22974.1 is added to the Business and Professions Code, to read:

22974.1. (a) Notwithstanding any other law, if the department discovers that a retailer, or any of the tobacco retailer's agents or employees, sell, offer for sale or possess with the intent to sell or offer for sale, a flavored tobacco product or tobacco product flavor enhancer, in violation of Section 104559.5 of the Health and Safety Code, the department may seize those flavored tobacco products or tobacco product flavor enhancers at the retail location or any other person's location. Any flavored tobacco products or tobacco product flavor enhancers seized by the department shall be deemed forfeited and the department shall comply with the procedures set forth in Chapter 7.5 (commencing with Section 30435) of Part 13 of Division 2 of the Revenue and Taxation Code.

(b) For purposes of this section, "flavored tobacco product" and "tobacco product flavor enhancer" shall have the same meaning as the terms are defined in Section 104559.5 of the Health and Safety Code.

SEC. 5. Section 104559.5 of the Health and Safety Code is amended to read:

104559.5. (a) For purposes of this section, the following definitions apply:

(1) "Characterizing flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, vanilla, chocolate, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

(2) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

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

(4) "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.

(5) "Flavored shisha tobacco product" means any shisha tobacco product that contains a constituent that imparts a characterizing flavor.

(6) "Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.

(7) "Hookah" means a type of waterpipe, used to smoke shisha or other tobacco products, with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses.

(8) "Hookah tobacco retailer" means a tobacco retailer that is engaged in the retail sale of shisha tobacco products, hookah, and hookah smoking accessories.

(9) "Labeling" means written, printed, pictorial, or graphic matter upon a tobacco product or any of its packaging.

(10) "Loose leaf tobacco" consists of cut or shredded pipe tobacco, usually sold in pouches, excluding any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes, including roll-your-own cigarettes.

(11) "Packaging" means a pack, box, carton, or container of any kind, or, if no other container, any wrapping, including cellophane, in which a tobacco product is sold or offered for sale to a consumer.

(12) "Premium cigar" means any cigar that is handmade, is not mass produced by use of mechanization, has a wrapper that is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars (\$12). A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

(13) "Retail location" means both of the following:

(A) A building from which tobacco products are sold at retail.

(B) Any vending machine, vehicle, mobile unit, booth, stand, or concession that conducts in-person sales of tobacco products directly to the public.

(14) "Sale" or "sold" means a sale as that term is defined in Section 30006 of the Revenue and Taxation Code.

(15) "Shisha tobacco product" means a tobacco product smoked or intended to be smoked in a hookah. "Shisha tobacco product" includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. "Shisha tobacco product" does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product.

(16) "Tobacco product" means a tobacco product as defined in paragraph (8) of subdivision (a) of Section 104495, as that provision may be amended from time to time.

(17) "Tobacco product flavor enhancer" means a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.

(18) "Tobacco retailer" means a person who engages in this state in the sale of tobacco products directly to the public from a retail location. "Tobacco retailer" includes a person who operates vending machines from which tobacco products are sold in this state.

(b) (1) A tobacco retailer, or any of the tobacco retailer's agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.

(2) There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

(c) Subdivision (b) does not apply to the sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met:

(1) The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code.

(2) The hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the premises at any time.

(3) The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products.

(4) If consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the hookah tobacco retailer shall operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer, including, but not limited to, Section 6404.5 of the Labor Code.

(d) Subdivision (b) does not apply to sales of premium cigars sold in cigar lounges where products are purchased and consumed only on the premises.

(e) Subdivision (b) does not apply to loose leaf tobacco or premium cigars.

(f) (1) An enforcing agency may assess civil penalties against any person or entity that violates subdivision (b) according to the schedule of civil penalties prescribed in subdivision (a) of Section 22958 of the Business and Professions Code. In the case of a corporation or business with more than one retail location, the number of accumulated violations for purposes of the penalty schedule shall be determined in accordance with subdivision (h) of that section.

(2) In addition to the civil penalties described in paragraph (1), 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 California Department of Tax and Fee Administration of the violation who 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 of the Business and Professions Code, in accordance with the schedule listed in paragraph (1) of subdivision (b) of Section 22958 of the Business and Professions Code.

(3) Notwithstanding paragraph (7), the civil penalty assessed pursuant to paragraph (2) shall be deposited into the Cigarette and Tobacco Products Compliance Fund and shall be made available to the California Department of Tax and Fee Administration, upon appropriation by the Legislature, for the purposes of meeting its duties prescribed in paragraph (2).

(4) 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 California Department of Tax and Fee Administration pursuant to paragraph (2).

(5) The department shall, upon request, provide information concerning any person or entity that has been assessed a civil penalty for violation of this section to the California Department of Tax and Fee Administration when the department has notified the California Department of Tax and Fee Administration of the violation.

(6) Proceedings under this section shall be conducted pursuant to Section 131071, 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.

(7) Except as otherwise provided in paragraph (3), all moneys collected as civil penalties by the department or by any other state agency or department pursuant to this section shall be deposited in the State Treasury to the credit of the Sale of Tobacco to Minors Control Account.

(g) (1) Primary responsibility for enforcement of this section shall be with the department. In carrying out its enforcement responsibilities, the department may conduct onsite sting inspections at tobacco retailers randomly, in response to public complaints, or at retailers where violations have previously occurred. Agents of the department, while conducting enforcement activities pursuant to this section, are peace officers and are subject to all of the powers and immunities granted to Food and Drug Section inspectors pursuant to Section 106500 in the same manner as are any Food and Drug Section inspectors of the department.

(2) In addition to the primary enforcement responsibility assumed by the department, another enforcing agency may conduct inspections and assess penalties for violations of this section if that enforcing agency complies with the applicable provisions of this section and with all other applicable provisions of law.

(3) State and local enforcing agencies are encouraged, in order to avoid duplication, to share the results of inspections and coordinate with the department when enforcing this section.

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

(h) (1) The department may adopt any regulations that it determines are necessary for the enforcement of this section. The regulations shall be adopted by the department in the manner prescribed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The department may adopt emergency regulations to implement this section. Any emergency regulation shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Emergency regulations adopted shall remain in effect until regulations have been adopted pursuant to paragraph (1).

(i) 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. 5.5. Section 104559.5 of the Health and Safety Code is amended to read:

104559.5. (a) For purposes of this section, the following definitions apply:

(1) "Characterizing flavor" means a taste or odor, distinguishable by an ordinary consumer either prior to or during the consumption of a tobacco product, other than the taste or odor of tobacco, including, but not limited to, tastes or odors relating to any fruit, vanilla, chocolate, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice, or a cooling sensation distinguishable by an ordinary consumer during the consumption of a tobacco product.

(2) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

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

(4) "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.

(5) "Flavored shisha tobacco product" means any shisha tobacco product that contains a constituent that imparts a characterizing flavor.

(6) "Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor. "Flavored tobacco product" includes any tobacco product, other than looseleaf tobacco, a premium cigar, or a shisha tobacco product, that is not listed on the Unflavored Tobacco List established and maintained by the Attorney General pursuant to Section 104559.1.

(7) "Hookah" means a type of waterpipe, used to smoke shisha or other tobacco products, with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses.

(8) "Hookah tobacco retailer" means a tobacco retailer that is engaged in the retail sale of shisha tobacco products, hookah, and hookah smoking accessories.

(9) "Labeling" means written, printed, pictorial, or graphic matter upon a tobacco product or any of its packaging.

(10) "Looseleaf tobacco" consists of cut or shredded pipe tobacco, usually sold in pouches, excluding any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes, including roll-your-own cigarettes.

(11) "Nicotine" means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived, and includes nicotinic alkaloids and nicotine analogs.

(12) "Packaging" means a pack, box, carton, or container of any kind, or, if no other container, any wrapping, including cellophane, in which a tobacco product is sold or offered for sale to a consumer.

(13) "Premium cigar" means any cigar that is handmade, is not mass produced by use of mechanization, has a wrapper that is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars (\$12). A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

(14) "Retail location" means both of the following:

(A) A building from which tobacco products are sold at retail.

(B) Any vending machine, vehicle, mobile unit, booth, stand, or concession that conducts in-person sales of tobacco products directly to the public.

(15) "Sale" or "sold" means a sale as that term is defined in Section 30006 of the Revenue and Taxation Code.

(16) "Shisha tobacco product" means a tobacco product smoked or intended to be smoked in a hookah. "Shisha tobacco product" includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. "Shisha tobacco product" does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product.

(17) (A) "Tobacco product" means any of the following:

(i) 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 cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

(ii) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including an electronic cigarette, cigar, pipe, or hookah.

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

(B) Notwithstanding subparagraph (A), "tobacco product" does not include: (i) a nicotine replacement product approved by the United States Food and Drug Administration, or (ii) cannabis or a cannabis product, as those terms are defined in Section 26001 of the Business and Professions Code. Cannabis or a cannabis product that includes an ingredient, substance, chemical, or compound that contains or is made or derived from tobacco or nicotine is a "tobacco product" under this section.

(18) "Tobacco product flavor enhancer" means a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.

(19) "Tobacco retailer" means a person who engages in this state in the sale of tobacco products directly to the public from a retail location. "Tobacco retailer" includes a person who operates vending machines from which tobacco products are sold in

this state.

(b) (1) A tobacco retailer, or any of the tobacco retailer's agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.

(2) There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

(c) Subdivision (b) does not apply to the sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met:

(1) The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code.

(2) The hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the premises at any time.

(3) The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products.

(4) If consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the hookah tobacco retailer shall operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer, including, but not limited to, Section 6404.5 of the Labor Code.

(d) Subdivision (b) does not apply to sales of premium cigars sold in cigar lounges where products are purchased and consumed only on the premises.

(e) Subdivision (b) does not apply to looseleaf tobacco or premium cigars.

(f) (1) An enforcing agency may assess civil penalties against any person or entity that violates subdivision (b) according to the schedule of civil penalties prescribed in subdivision (a) of Section 22958 of the Business and Professions Code. In the case of a corporation or business with more than one retail location, the number of accumulated violations for purposes of the penalty schedule shall be determined in accordance with subdivision (h) of that section.

(2) In addition to the civil penalties described in paragraph (1), 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 California Department of Tax and Fee Administration of the violation who 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 of the Business and Professions Code, in accordance with the schedule listed in paragraph (1) of subdivision (b) of Section 22958 of the Business and Professions Code.

(3) Notwithstanding paragraph (7), the civil penalty assessed pursuant to paragraph (2) shall be deposited into the Cigarette and Tobacco Products Compliance Fund and shall be made available to the California Department of Tax and Fee Administration, upon appropriation by the Legislature, for the purposes of meeting its duties prescribed in paragraph (2).

(4) 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 California Department of Tax and Fee Administration pursuant to paragraph (2).

(5) The department shall, upon request, provide information concerning any person or entity that has been assessed a civil penalty for violation of this section to the California Department of Tax and Fee Administration when the department has notified the California Department of Tax and Fee Administration of the violation.

(6) Proceedings under this section shall be conducted pursuant to Section 131071, 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.

(7) Except as otherwise provided in paragraph (3), all moneys collected as civil penalties by the department or by any other state agency or department pursuant to this section shall be deposited in the Sale of Tobacco to Minors Control Account.

(g) (1) Primary responsibility for enforcement of this section shall be with the department. In carrying out its enforcement responsibilities, the department may conduct onsite sting inspections at tobacco retailers randomly, in response to public

complaints, or at retailers where violations have previously occurred. Agents of the department, while conducting enforcement activities pursuant to this section, are peace officers and are subject to all of the powers and immunities granted to Food and Drug Section inspectors pursuant to Section 106500 in the same manner as are any Food and Drug Section inspectors of the department.

(2) In addition to the primary enforcement responsibility assumed by the department, another enforcing agency may conduct inspections and assess penalties for violations of this section if that enforcing agency complies with the applicable provisions of this section and with all other applicable provisions of law.

(3) State and local enforcing agencies are encouraged, in order to avoid duplication, to share the results of inspections and coordinate with the department when enforcing this section.

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

(h) (1) The department may adopt any regulations that it determines are necessary for the enforcement of this section. The regulations shall be adopted by the department in the manner prescribed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The department may adopt emergency regulations to implement this section. Any emergency regulation shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Emergency regulations adopted shall remain in effect until regulations have been adopted pursuant to paragraph (1).

(i) 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. 6. Section 30449 of the Revenue and Taxation Code is amended to read:

30449. (a) Except as provided in subdivision (b), (c), or (d), any property, except money, forfeited to the state under this chapter shall be sold by the board at public auction. Notice of the sale shall be given by posting a written notice of the time and place of sale in three public places in the county where the property is to be sold for not less than 5 days nor more than 10 days before the sale. If the board is unable to sell any property forfeited to the state under this part or, if the board determines that the property is unsalable, it may destroy that property.

(b) Any property forfeited to the state pursuant to subdivision (e) of Section 30436 shall be destroyed.

(c) Any cigarettes forfeited to the state pursuant to subdivision (b) of Section 30436 shall be destroyed.

(d) Any cigarettes, tobacco products, flavored tobacco products, or tobacco product flavor enhancers forfeited to the state pursuant to Division 8.6 (commencing with Section 22970) of the Business and Professions Code shall be destroyed.

(e) A record shall be kept of all property destroyed pursuant to this section showing the nature of the property, the quantity, the reason for, and the manner of destruction. The proceeds of the sale and any money forfeited to the state shall be deposited in the State Treasury to the credit of the General Fund.

(f) For purposes of this section, "flavored tobacco product" and "tobacco product flavor enhancer" shall have the same meaning as those terms are defined in Section 104559.5 of the Health and Safety Code.

SEC. 7. Section 5.5 of this bill incorporates amendments to Section 104559.5 of the Health and Safety Code proposed by both this bill and Assembly Bill 3218. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 104559.5 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 3218, in which case Section 5 of this bill shall not become operative.