

AMENDED IN SENATE MAY 17, 2019

SENATE BILL

No. 38

Introduced by Senators Hill, Glazer, McGuire, and Portantino

(Principal coauthors: Assembly Members McCarty and Wood)

(Coauthors: Senators Allen, Beall, Leyva, Skinner, and Wiener)

(Coauthors: Assembly Members Berman, Bloom, Cristina Garcia, Muratsuchi, O'Donnell, Mark Stone, and Ting)

December 3, 2018

An act to add Division 8.7 (commencing with Section 22995) to the Business and Professions Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 38, as amended, Hill. Flavored tobacco products.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, prohibits a person from selling or otherwise furnishing tobacco products, as defined, to a person under 21 years of age. Existing law authorizes specified enforcing agencies to assess civil penalties for violations of the STAKE Act.

This bill would prohibit a tobacco retailer from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product, as defined. *The bill would exclude from its provisions a product that has a patent issued prior to January 1, 2000, and is not a menthol flavored product, and tobacco products designed for a nonelectronic hookah.* The bill would authorize an enforcing agency to assess civil penalties under the STAKE Act for a violation of this prohibition. The bill would state the intent of the Legislature that these provisions not be construed to preempt or prohibit the adoption and implementation of local ordinances related to the prohibition on the

sale of flavored tobacco products. The bill would state that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Division 8.7 (commencing with Section 22995)
2 is added to the Business and Professions Code, to read:

3

4 DIVISION 8.7. PROHIBITION ON THE SALE OF
5 FLAVORED TOBACCO PRODUCTS

6

7 22995. For purposes of this division, the following definitions
8 apply:

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

21 (b) “Constituent” means any ingredient, substance, chemical,
22 or compound, other than tobacco, water, or reconstituted tobacco
23 sheet, that is added by the manufacturer to a tobacco product during
24 the processing, manufacture, or packing of the tobacco product.

25 (c) “Enforcing agency” means the State Department of Public
26 Health, another state agency, including, but not limited to, the
27 office of the Attorney General, or a local law enforcement agency,
28 including, but not limited to, a city attorney, district attorney, or
29 county counsel.

30 (d) “Flavored tobacco product” means any tobacco product that
31 contains a constituent that imparts a characterizing ~~flavor~~ *flavor*;
32 *except for tobacco products designed for a nonelectronic hookah.*

1 (e) “Labeling” means written, printed, pictorial, or graphic
2 matter upon a tobacco product or any of its packaging.

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

6 (g) “Retail location” means both of the following:

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

8 (2) A vending machine.

9 (h) “Sale” or “sold” means a sale as defined in Section 30006
10 of the Revenue and Taxation Code.

11 (i) “Tobacco product” means a *product that meets both of the*
12 *following requirements:*

13 (1) *The product either does not have a patent issued prior to*
14 *January 1, 2000, or is a menthol flavored product.*

15 (2) *The product is a tobacco product as defined in paragraph 8*
16 *of subdivision (a) of Section 104495 of the Health and Safety*
17 *Code, as that provision may be amended from time to time.*

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

23 22996. (a) A tobacco retailer, or any of the tobacco retailer’s
24 agents or employees, shall not sell, offer for sale, or possess with
25 the intent to sell or offer for sale, a flavored tobacco product.

26 (b) There shall be a rebuttable presumption that a tobacco
27 product is a flavored tobacco product if a manufacturer or any of
28 the manufacturer’s agents or employees, in the course of ~~his or~~
29 ~~her~~ *their* agency or employment, has made a statement or claim
30 directed to consumers or to the public that the tobacco product has
31 or produces a characterizing flavor, including, but not limited to,
32 text, color, images, or all, on the product’s labeling or packaging
33 that are used to explicitly or implicitly communicate that the
34 tobacco product has a characterizing flavor.

35 22997. An enforcing agency may assess civil penalties in the
36 amounts set forth in subdivision (a) of Section 22958 for a violation
37 of this division.

38 22998. ~~This section~~ *division* does not preempt or otherwise
39 prohibit the adoption of a local standard that imposes greater
40 restrictions on the access to tobacco products than the restrictions

1 imposed by this section. To the extent that there is an inconsistency
2 between this ~~section~~ *division* and a local standard that imposes
3 greater restrictions on the access to tobacco products, the greater
4 restriction on the access to tobacco products in the local standard
5 shall prevail.

6 SEC. 2. The provisions of this act are severable. If any
7 provision of this act or its application is held invalid, that invalidity
8 shall not affect other provisions or applications that can be given
9 effect without the invalid provision or application.