

AMENDED IN SENATE JUNE 18, 2020

AMENDED IN SENATE MAY 5, 2020

SENATE BILL

No. 793

Introduced by Senators Hill, Glazer, McGuire, Pan, Skinner, and Wiener

(Principal coauthor: Senator Durazo)

(Principal coauthors: Assembly Members Bauer-Kahan, Berman, Bloom, Gonzalez, McCarty, Muratsuchi, Robert Rivas, and Wood)

(Coauthors: Senators *Allen, Archuleta, Beall, Dodd, Lena Gonzalez, Hertzberg, Jackson, Leyva, Monning, and Nielsen*) *Nielsen, Portantino, and Rubio*

(Coauthors: Assembly Members Boerner Horvath, Bonta, Chiu, Chu, *Frazier*, Cristina Garcia, Levine, *Limón*, Mullin, O'Donnell, Petrie-Norris, Luz Rivas, Santiago, Mark Stone, Ting, and Wicks)

January 6, 2020

An act to add Article 5 (commencing with Section 104559.5) to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 793, 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 also prohibits the use of tobacco products in county offices of education, on charter school or school district property, or near a playground or youth sports event, as specified.

This bill would prohibit 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 those terms are ~~defined~~: *defined, except as specified*. The bill would make a violation of this prohibition an infraction punishable by a fine of \$250 for each violation. 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. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Article 5 (commencing with Section 104559.5)
 2 is added to Chapter 1 of Part 3 of Division 103 of the Health and
 3 Safety Code, to read:

4
 5 Article 5. Tobacco Sale Prohibition

6
 7 104559.5. (a) For purposes of this section, the following
 8 definitions apply:

9 (1) “Characterizing flavor” means a distinguishable taste or
 10 aroma, or both, other than the taste or aroma of tobacco, imparted
 11 by a tobacco product or any byproduct produced by the tobacco
 12 product. Characterizing flavors include, but are not limited to,
 13 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.

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

5 (3) *“Flavored shisha tobacco product” means any shisha*
6 *tobacco product that contains a constituent that imparts a*
7 *characterizing flavor.*

8 ~~(3)~~

9 (4) “Flavored tobacco product” means any tobacco product that
10 contains a constituent that imparts a characterizing flavor.

11 (5) *“Hookah” means a type of waterpipe, used to smoke shisha*
12 *or other tobacco products, with a long flexible tube for drawing*
13 *aerosol through water. Components of a hookah may include*
14 *heads, stems, bowls, and hoses.*

15 (6) *“Hookah tobacco retailer” means a tobacco retailer that*
16 *is engaged in the retail sale of shisha tobacco products, hookah,*
17 *and hookah smoking accessories.*

18 ~~(4)~~

19 (7) “Labeling” means written, printed, pictorial, or graphic
20 matter upon a tobacco product or any of its packaging.

21 ~~(5)~~

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

25 ~~(6)~~

26 (9) “Retail location” means both of the following:

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

28 (B) A vending machine.

29 ~~(7)~~

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

32 (11) *“Shisha tobacco product” means a tobacco product smoked*
33 *or intended to be smoked in a hookah. “Shisha tobacco product”*
34 *includes, and may be referred to as, hookah tobacco, waterpipe*
35 *tobacco, maassel, narghile, and argileh. “Shisha tobacco product”*
36 *does not include any electronic devices, such as an electronic*
37 *hookah, electronic cigarette, or electronic tobacco product.*

38 ~~(8)~~

1 (12) “Tobacco product” means a tobacco product as defined in
2 paragraph (8) of subdivision (a) of Section 104495, as that
3 provision may be amended from time to time.

4 ~~(9)~~

5 (13) “Tobacco product flavor enhancer” means a product
6 designed, manufactured, produced, marketed, or sold to produce
7 a characterizing flavor when added to a tobacco product.

8 ~~(10)~~

9 (14) “Tobacco retailer” means a person who engages in this
10 state in the sale of tobacco products directly to the public from a
11 retail location. “Tobacco retailer” includes a person who operates
12 vending machines from which tobacco products are sold in this
13 state.

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

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

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

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

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

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

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

7 ~~(e)~~

8 *(d) A tobacco retailer, or agent or employee of a tobacco retailer,*
9 *who violates this section is guilty of an infraction and shall be*
10 *punished by a fine of two hundred fifty dollars (\$250) for each*
11 *violation of this section.*

12 ~~(e)~~

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

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

24 SEC. 3. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.