

File No. 190582

Committee Item No. _____

Board Item No. 28

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: _____

Date: _____

Board of Supervisors Meeting

Date: June 4, 2019

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

- | | | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>California State Senate Bill No. 38 - 05/17/19</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
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Prepared by: Lisa Lew

Date: May 31, 2019

Prepared by: _____

Date: _____

1 [Supporting California State Senate Bill No. 38 (Hill) - Flavored Tobacco Products]

2
3 **Resolution supporting California State Senate Bill No. 38, authored by Senator Jerry**
4 **Hill and co-authored by Senators Steve Glazer, Mike McGuire, and Anthony Portantino,**
5 **to restrict sales of flavored e-cigarettes and all other flavored tobacco products to**
6 **combat use by youths.**

7
8 WHEREAS, Existing law, the Stop Tobacco Access to Kids Enforcement Act, prohibits
9 a person from selling or otherwise furnishing tobacco products, as defined, to a person under
10 21 years of age; and

11 WHEREAS, Despite the progress reducing smoking, tobacco use remains the leading
12 cause of preventable death in the United States, killing more than 480,000 people each year
13 in many forms of cancer, heart disease and respiratory diseases, among other health
14 disorders which are more than AIDS, alcohol, car accidents, illegal drugs, murders and
15 suicides combined; and

16 WHEREAS, Electronic cigarettes (or "e-cigarettes") entered the marketplace around
17 2007, and since 2014, they have been the most commonly used tobacco product among
18 youth in the United States; and

19 WHEREAS, E-cigarettes are frequently marketed in a variety of flavors with obvious
20 appeal to youth, such as fruit, gummy bear, cotton candy, chocolate, vanilla, honey, cocoa,
21 dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice; and

22 WHEREAS, A 2016 study found that 78.2% of middle and high school students - 20.5
23 million youth - had been exposed to e-cigarette advertisements from at least one source, an
24 increase from 68.9% only two years before, in 2014; and

1 WHEREAS, According to the Centers for Disease Control and Prevention, the number
2 of middle and high school students who reported being current users of tobacco products
3 increased 36% - from 3.6 million to 4.9 million students - between 2017 and 2018; and

4 WHEREAS, Flavored tobacco products are commonly sold by California tobacco
5 retailers; for example: 97.4% of stores that sell cigarettes sell menthol cigarettes; 94.5% of
6 stores that sell little cigars sell them in flavored varieties; 84.2% of stores that sell electronic
7 smoking devices sell flavored varieties; and 83.8% of stores that sell chew or snus sell
8 flavored varieties; and

9 WHEREAS, Each day, about 2,500 children in the United States try their first cigarette;
10 and another 400 children under 18 years of age become new regular, daily smokers; 81% of
11 youth who have ever used a tobacco product report that the first tobacco product they used
12 was flavored; and

13 WHEREAS, Flavored tobacco products promote youth initiation of tobacco use and
14 help young occasional smokers to become daily smokers by reducing or masking the natural
15 harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco
16 products; and

17 WHEREAS, As tobacco companies well know, menthol, in particular; cools and numbs
18 the throat to reduce throat irritation and make the smoke feel smoother, making menthol
19 cigarettes an appealing option for youth who are initiating tobacco use; and

20 WHEREAS, It is therefore unsurprising that young people are much more likely to use
21 menthol-, candy- and fruit-flavored tobacco products, including not just cigarettes but also e-
22 cigarettes, cigars, cigarillos, and hookah tobacco, than adults; and

23 WHEREAS, Studies have shown that nicotine exposure during adolescence can harm
24 the developing brain impacting learning, memory, attention and increasing the addition to
25 other drugs; and

1 WHEREAS, In addition to nicotine, the aerosol that users inhale and exhale from e-
2 cigarettes can potentially expose both themselves and bystanders to other harmful
3 substances, including heavy metals, volatile organic compounds, and ultrafine particles that
4 can be inhaled deeply into the lungs; and

5 WHEREAS, In 2017, to address the appeal of flavored tobacco products to youth, the
6 City enacted Ordinance No. 140-17, prohibiting tobacco retail establishments from selling
7 flavored tobacco products and as a result of the referendum process, the ordinance was
8 placed before the voters, who approved the ordinance in June 2018 (Proposition E) by a
9 majority of 68.39%; and

10 WHEREAS, Senate Bill No. 38 will expand these efforts to prohibit the sale of flavored
11 tobacco products statewide; now, therefore, be it

12 RESOLVED, That the City and County of San Francisco Board of Supervisors urges
13 the California Legislature and Governor Gavin Newsom to support and pass California State
14 Senate Bill No. 38; and, be it

15 FURTHER RESOLVED, That the City and County of San Francisco Board of
16 Supervisors hereby directs the Clerk of the Board to send a copy of this resolution to the
17 Governor of the State of California, the California State Assembly, the California State Senate,
18 and California Senator Jerry Hill.

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.

O

Introduction Form

By a Member of the Board of Supervisors or Mayor

BOARD OF SUPERVISORS
 1500 PLAZA
 2019 APR 27 PM 1:27
 Time stamp or meeting date: 27

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Walton

Subject:

Supporting California State Senate Bill No. 38 (Hill) – Flavored Tobacco Products

The text is listed:

Resolution supporting California State Senate Bill No. 38, authored by Senators Jerry Hill and co-authored by Senators Steve Glazer, Mike McGuire, and Anthony Portantino, to restrict sales of flavored e-cigarettes and all other flavored tobacco products to combat use by youths.

Signature of Sponsoring Supervisor:

For Clerk's Use Only

