

AMENDED IN SENATE APRIL 10, 2019

**SENATE BILL**

**No. 39**

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**Introduced by Senators Hill, Glazer, and Portantino**

(Principal coauthor: Assembly Member McCarty)

**(Coauthors: Senators Allen, Beall, Dodd, Hertzberg, Leyva, Skinner, Stone, Wieckowski, and Wiener)**

(Coauthors: Assembly Members Berman, Bloom, Cristina Garcia, Kalra, Rodriguez, Ting, and Wood)

December 3, 2018

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An act to amend Section 22963 of the Business and Professions Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, as amended, Hill. Tobacco products.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, prohibits the sale, distribution, or nonsale distribution of tobacco products, as defined, 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. Existing law requires a person selling or distributing tobacco products directly to a consumer through the United States Postal Service or by another postal or package delivery service to comply with specified age-verification ~~policies~~ *policies and deliver only to the consumer's verified mailing or billing address, as applicable*. Existing law authorizes enforcing agencies to assess civil penalties for violations of the STAKE Act.

This bill would additionally require sellers, distributors, and nonsale distributors to deliver tobacco products only in conspicuously marked containers, as specified, and to obtain the signature of a person 21 years of age or older before delivering a tobacco product. *The bill would allow*

*a person to designate an address for delivery that is different from the person’s mailing or billing address, if the persons’s mailing or billing address has been verified in accordance with specified provisions.*

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. Section 22963 of the Business and Professions  
2 Code is amended to read:

3 22963. (a) The sale, distribution, or nonsale distribution of  
4 tobacco products directly or indirectly to any person under 21 years  
5 of age through the United States Postal Service or through any  
6 other public or private postal or package delivery service at  
7 locations, including, but not limited to, public mailboxes and  
8 mailbox stores, is prohibited.

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

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

28 (B) If the seller, distributor, or nonsale distributor, is unable to  
29 verify that the purchaser or recipient is 21 years of age or older  
30 pursuant to subparagraph (A), ~~he or she~~ *the seller, distributor, or*  
31 *nonsale distributor* shall require the customer or recipient to submit  
32 an age-verification kit consisting of an attestation signed by the

1 customer or recipient that ~~he or she~~ *the customer or recipient* is  
2 21 years of age or older and a copy of a valid form of government  
3 identification. For the purposes of this section, a valid form of  
4 government identification includes a driver’s license, state  
5 identification card, passport, an official naturalization or  
6 immigration document, such as an alien registration receipt card  
7 (commonly known as a “green card”) or an immigrant visa, or  
8 military identification. In the case of a sale, the distributor or seller  
9 shall also verify that the billing address on the check or credit card  
10 provided by the consumer matches the address listed in the form  
11 of government identification.

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

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

29 (4) (A) The nonsale distributor shall deliver the tobacco product  
30 to the recipient’s verified mailing address, or in the case of a sale,  
31 the seller or distributor shall deliver the tobacco product to the  
32 purchaser’s verified billing address on the check or credit card  
33 used for payment. ~~No~~

34 (B) *In the case of a nonsale, a recipient may designate an*  
35 *alternative address for delivery, if the recipient’s mailing address*  
36 *has been verified in accordance with this section.*

37 (C) *In the case of a sale, a purchaser may designate an*  
38 *alternative address for delivery, if the purchaser’s billing address*  
39 *has been verified in accordance with this section.*

1 (D) A delivery described under this section shall *not* be permitted  
2 to any post office box.

3 (5) The tobacco product shall be delivered only in a container  
4 that is conspicuously labeled with the words: “CONTAINS  
5 TOBACCO PRODUCTS: SIGNATURE OF PERSON 21 YEARS  
6 OF AGE OR OLDER REQUIRED FOR DELIVERY.”

7 (6) Upon the delivery of the tobacco product to the recipient’s  
8 or purchaser’s address, the seller, distributor, or nonsale distributor  
9 shall obtain the signature of a person 21 years of age or older before  
10 completing the delivery.

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

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

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

30 (B) A “nonsale distributor” is any person inside or outside of  
31 this state who, directly or indirectly, knowingly provides tobacco  
32 products to any person in this state as part of a nonsale transaction.  
33 “Nonsale distributor” includes the person or entity who provides  
34 the tobacco product for delivery and the person or entity who  
35 delivers the product to the recipient as part of a nonsale transaction.

36 (C) “Nonsale distribution” means to give smokeless tobacco or  
37 cigarettes to the general public at no cost, or at nominal cost, or  
38 to give coupons, coupon offers, gift certificates, gift cards, or other  
39 similar offers, or rebate offers for smokeless tobacco or cigarettes  
40 to the general public at no cost or at nominal cost. Distribution of

1 tobacco products, coupons, coupon offers, gift certificates, gift  
2 cards, or other similar offers, or rebate offers in connection with  
3 the sale of another item, including tobacco products, cigarette  
4 lighters, magazines, or newspapers shall not constitute nonsale  
5 distribution.

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

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

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

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

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

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

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

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