

File No. 190583

Committee Item No. _____
Board Item No. 29

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: _____
Board of Supervisors Meeting

Date: _____
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

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|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>California State Senate Bill No. 39 - 04/10/19</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
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Prepared by: Lisa Lew
Prepared by: _____

Date: May 31, 2019
Date: _____

1 [Supporting California State Senate Bill No. 39 (Hill) - Tobacco Products]

2
3 **Resolution supporting California State Senate Bill No. 39, authored by Senator Jerry**
4 **Hill and co-authored by Senators Steve Glazer and Anthony Portantino, to require**
5 **tobacco products to be delivered only in a container that is conspicuously labeled as**
6 **being a tobacco product that requires the signature of a person 21 years of age or**
7 **older; and require before completing a delivery, a specified entity shall obtain the**
8 **signature of a person 21 years of age or older upon delivering the product to the**
9 **recipient's or purchaser's address, as specified.**

10
11 WHEREAS, Despite 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, Existing law, the Stop Tobacco Access to Kids Enforcement Act, prohibits
17 a person from selling or otherwise furnishing tobacco products, as defined, to a person under
18 21 years of age; and

19 WHEREAS, Existing law prohibits the sale, distribution, or non-sale distribution of
20 tobacco products directly or indirectly to any person under 21 years of age through the United
21 States Postal Service or through any other public or private postal or package delivery service
22 at locations, including, but not limited to, public mailboxes and mailbox stores; and

23 WHEREAS, Existing law requires that any person selling or distributing or engaging in
24 the non-sale distribution of tobacco products directly to a consumer in the state through the
25 United States Postal Services or any other public or private package delivery service verify

1 that the purchaser or recipient of the product is 21 years of age by attempting to match the
2 name, address, and date of birth provided by the customer to information contained in records
3 in a database of individuals whose age has been verified to be 21 or older by reference to an
4 appropriate database of government records kept by the distributor, a direct marketing firm, or
5 any other entity; and

6 WHEREAS, According to the Journal of the American Medical Association, 96% of 15
7 to 16 year olds were able to find an internet cigarette vendor and place an order in less than
8 25 minutes, with most completing the order in seven minutes; and

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

12 WHEREAS, Senate Bill No. 39 will be a critical component in the efforts to restrict sales
13 of tobacco to children and youth by creating a robust age verification process; and

14 WHEREAS, Senate Bill No.39 will require tobacco products to be delivered only in a
15 container that is conspicuously labeled with the words "CONTAINS TOBACCO PRODUCTS:
16 SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY;"
17 and

18 WHEREAS, Senate Bill No. 39 will also require before completing delivery, a seller,
19 distributor, or non-sale distributor to obtain the signature of a person 21 years of age or older
20 upon the delivery of a tobacco product to a recipient's or purchaser's address; and

21 WHEREAS, Senate Bill No. 39 will permit a recipient and a purchaser to designate an
22 alternative address for delivery if the addresses have been verified; now, therefore, be it

23 RESOLVED, That the City and County of San Francisco Board of Supervisors urges
24 the California Legislature and Governor Gavin Newsom to support and pass California State
25 Senate Bill No. 39; and, be it

1 FURTHER RESOLVED, That the City and County of San Francisco Board of
2 Supervisors hereby directs the Clerk of the Board to send a copy of this resolution to the
3 Governor of the State of California, the California State Assembly, the California State Senate,
4 and California Senator Jerry Hill.

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AMENDED IN SENATE APRIL 10, 2019

SENATE BILL

No. 39

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

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 person'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.

O

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

BOARD OF SUPERVISORS
SAN FRANCISCO

2019 MAY 21 11:43:27
Time stamp
or meeting date

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 [redacted] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [redacted] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [redacted]
- 9. Reactivate File No. [redacted]
- 10. Topic submitted for Mayoral Appearance before the BOS on [redacted]

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. 39 (Hill) –Tobacco Products

The text is listed:

Resolution supporting California State Senate Bill No. 39, authored by Senators Jerry Hill and co-authored by Senators Steve Glazer, and Anthony Portantino, to require tobacco products to be delivered only in a container that is conspicuously labeled as being a tobacco product that requires the signature of a person 21 years of age or older; and requires before completing a delivery, a specified entity to obtain the signature of a person 21 years of age or older upon delivering the product to the recipient's or purchaser's address, as specified.

Signature of Sponsoring Supervisor: [Handwritten Signature]

For Clerk's Use Only