

File No. 200712

Committee Item No. \_\_\_\_\_

Board Item No. 9

## COMMITTEE/BOARD OF SUPERVISORS

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Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: July 7, 2020

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Prepared by: Lisa Lew

Date: July 2, 2020

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Supporting California State Senate Bill No. 793 (Hill) - Flavored Tobacco Products]

2

3 **Resolution supporting California State Senate Bill No. 793, authored by Senator Jerry**  
4 **Hill and co-authored by Senators Steve Glazer, Mike McGuire, Richard Pan, Nancy**  
5 **Skinner, and Scott Wiener, to restrict sales of flavored e-cigarettes and all other**  
6 **flavored tobacco products to 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, Studies have shown that nicotine exposure during adolescence can harm  
17 the developing brain impacting learning, memory, attention and increasing the addition to  
18 other drugs; and

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

23 WHEREAS, Electronic cigarettes (or “e-cigarettes”) entered the marketplace around  
24 2007, and since 2014, they have been the most commonly used tobacco product among  
25 youth in the United States; and

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

4           WHEREAS, Flavored tobacco products promote youth initiation of tobacco use and  
5 help young occasional smokers to become daily smokers by reducing or masking the natural  
6 harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco  
7 products; and

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

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

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

17           WHEREAS, The tobacco industry has a well-documented history of developing and  
18 marketing flavored tobacco brands to racial and ethnic minorities and youth; and

19           WHEREAS, A high percentage of children aged 12-17 years, including Asian  
20 American, Latino/Hispanic, African American, and white high school-aged teens who smoke  
21 use menthol cigarettes; and

22           WHEREAS, A high percentage of Lesbian, Gay, Bisexual, Transgender and Queer  
23 (LGBTQ) smokers, particularly youth, smoke menthol cigarettes; and

24           WHEREAS, Each day, about 2,500 children in the United States try their first cigarette;  
25 and another 400 children under 18 years of age become new regular, daily smokers; 81% of

1 youth who have ever used a tobacco product report that the first tobacco product they used  
2 was flavored; and

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

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

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

16 WHEREAS, In 2019, the City enacted Ordinance No. 122-19 amending the Health  
17 Code to prohibit the sale by tobacco retail establishments of electronic cigarettes that do not  
18 have approval from the Food and Drug Administration (FDA) and as a result of the  
19 referendum process, the tobacco industry tried to overturn the ordinance through the  
20 November 2019 election (Proposition C) where voters overwhelmingly voted against the  
21 tobacco industry's agenda by a majority of 81.81%, upholding the ordinance; and

22 WHEREAS, Senate Bill No. 793 will expand these efforts to prohibit the sale of flavored  
23 tobacco products statewide; now, therefore, be it

24 RESOLVED, That the City and County of San Francisco Board of Supervisors urges  
25 the California Assembly Health Committee to pass this Resolution; and, be it

1           RESOLVED, That the City and County of San Francisco Board of Supervisors urges  
2 the California Legislature and Governor Gavin Newsom to support and pass California State  
3 Senate Bill No. 793; and, be it

4           FURTHER RESOLVED, That the City and County of San Francisco Board of  
5 Supervisors hereby directs the Clerk of the Board to send a copy of this Resolution to the  
6 Governor of the State of California, California State Assembly, California State Senate,  
7 California State Assembly Health Committee Chair Assembly Member Jim Wood and  
8 California Senator Jerry Hill.

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AMENDED IN SENATE JUNE 18, 2020

AMENDED IN SENATE MAY 5, 2020

**SENATE BILL**

**No. 793**

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**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

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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.

# Introduction Form

By a Member of the Board of Supervisors or Mayor

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  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. 793 (Hill) - Flavored Tobacco Products

The text is listed:

Resolution supporting California State Senate Bill No. 793, authored by Senator Jerry Hill and co-authored by Senators Steve Glazer, Mike McGuire, Richard Pan, Nancy Skinner, and Scott Wiener, to restrict sales of flavored e-cigarettes and all other flavored tobacco products to combat use by youths.

Signature of Sponsoring Supervisor: /s/ Shamann Walton