

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 introduced, 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 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:

SECTION 1. Division 8.7 (commencing with Section 22995) is added to the Business and Professions Code, to read:

DIVISION 8.7. PROHIBITION ON THE SALE OF
FLAVORED TOBACCO PRODUCTS

22995. For purposes of this division, the following definitions apply:

(a) "Characterizing flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

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

(c) "Enforcing agency" means the State Department of Public Health, another state agency, including, but not limited to, the office of the Attorney General, or a local law enforcement agency, including, but not limited to, a city attorney, district attorney, or county counsel.

(d) "Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.

(e) "Labeling" means written, printed, pictorial, or graphic matter upon a tobacco product or any of its packaging.

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

(g) "Retail location" means both of the following:

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

1 (2) A vending machine.

2 (h) "Sale" or "sold" means a sale as defined in Section 30006
3 of the Revenue and Taxation Code.

4 (i) "Tobacco product" means a tobacco product as defined in
5 paragraph 8 of subdivision (a) of Section 104495 of the Health
6 and Safety Code, as that provision may be amended from time to
7 time.

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

13 22996. (a) A tobacco retailer, or any of the tobacco retailer's
14 agents or employees, shall not sell, offer for sale, or possess with
15 the intent to sell or offer for sale, a flavored tobacco product.

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

25 22997. An enforcing agency may assess civil penalties in the
26 amounts set forth in subdivision (a) of Section 22958 for a violation
27 of this division.

28 22998. This section does not preempt or otherwise prohibit the
29 adoption of a local standard that imposes greater restrictions on
30 the access to tobacco products than the restrictions imposed by
31 this section. To the extent that there is an inconsistency between
32 this section and a local standard that imposes greater restrictions
33 on the access to tobacco products, the greater restriction on the
34 access to tobacco products in the local standard shall prevail.

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

