

Introduced by Senators Hill, Glazer, and Portantino

(Principal coauthor: Assembly Member McCarty)

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

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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 introduced, 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. 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.

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, shall
14 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 shall require the customer
31 or recipient to submit an age-verification kit consisting of an
32 attestation signed by the customer or recipient that he or she is 21
33 years of age or older and a copy of a valid form of government
34 identification. For the purposes of this section, a valid form of
35 government identification includes a driver's license, state
36 identification card, passport, an official naturalization or
37 immigration document, such as an alien registration receipt card
38 (commonly known as a "green card") or an immigrant visa, or

1 military identification. In the case of a sale, the distributor or seller
2 shall also verify that the billing address on the check or credit card
3 provided by the consumer matches the address listed in the form
4 of government identification.

5 (2) In the case of a sale, the distributor or seller shall impose a
6 two-carton minimum on each order of cigarettes, and shall require
7 payment for the purchase of any tobacco product to be made by
8 personal check of the purchaser or the purchaser's credit card. No
9 money order or cash payment shall be received or permitted. The
10 distributor or seller shall submit to each credit card acquiring
11 company with which it has credit card sales identification
12 information in an appropriate form and format so that the words
13 "tobacco product" may be printed in the purchaser's credit card
14 statement when a purchase of a tobacco product is made by credit
15 card payment.

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

22 (4) The nonsale distributor shall deliver the tobacco product to
23 the recipient's verified mailing address, or in the case of a sale,
24 the seller or distributor shall deliver the tobacco product to the
25 purchaser's verified billing address on the check or credit card
26 used for payment. No delivery described under this section shall
27 be permitted to any post office box.

28 (5) *The tobacco product shall be delivered only in a container*
29 *that is conspicuously labeled with the words: "CONTAINS*
30 *TOBACCO PRODUCTS: SIGNATURE OF PERSON 21 YEARS*
31 *OF AGE OR OLDER REQUIRED FOR DELIVERY."*

32 (6) *Upon the delivery of the tobacco product to the recipient's*
33 *or purchaser's address, the seller, distributor, or nonsale*
34 *distributor shall obtain the signature of a person 21 years of age*
35 *or older before completing the delivery.*

36 (c) Notwithstanding subdivisions (a) and (b), if a seller,
37 distributor, or nonsale distributor, complies with all of the
38 requirements of this section and a person under 21 years of age
39 obtains a tobacco product by any of the means described in

1 subdivision (b), the seller, distributor, or nonsale distributor is not
2 in violation of this section.

3 (d) For the purposes of the enforcement of this section pursuant
4 to Section 22958, the acts of the United States Postal Service or
5 other common carrier when engaged in the business of transporting
6 and delivering packages for others, and the acts of a person,
7 whether compensated or not, who transports or delivers a package
8 for another person without any reason to know of the package's
9 contents, are not unlawful and are not subject to civil penalties.

10 (e) (1) (A) For the purposes of this section, a "distributor" is
11 any person or entity, within or outside the state, who agrees to
12 distribute tobacco products to a customer or recipient within the
13 state. The United States Postal Service or any other public or
14 private postal or package delivery service ~~are not distributors~~ *is*
15 *not a distributor* within the meaning of this section.

16 (B) A "nonsale distributor" is any person inside or outside of
17 this state who, directly or indirectly, knowingly provides tobacco
18 products to any person in this state as part of a nonsale transaction.
19 "Nonsale distributor" includes the person or entity who provides
20 the tobacco product for delivery and the person or entity who
21 delivers the product to the recipient as part of a nonsale transaction.

22 (C) "Nonsale distribution" means to give smokeless tobacco or
23 cigarettes to the general public at no cost, or at nominal cost, or
24 to give coupons, coupon offers, gift certificates, gift cards, or other
25 similar offers, or rebate offers for smokeless tobacco or cigarettes
26 to the general public at no cost or at nominal cost. Distribution of
27 tobacco products, coupons, coupon offers, gift certificates, gift
28 cards, or other similar offers, or rebate offers in connection with
29 the sale of another item, including tobacco products, cigarette
30 lighters, magazines, or newspapers shall not constitute nonsale
31 distribution.

32 (2) For the purpose of this section, a "seller" is any person or
33 entity, within or outside the state, who agrees to sell tobacco
34 products to a customer within the state. The United States Postal
35 Service or any other public or private postal or package delivery
36 service ~~are not sellers~~ *is not a seller* within the meaning of this
37 section.

38 (3) For the purpose of this section, a "carton" is a package or
39 container that contains 200 cigarettes.

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

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

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

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

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

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

