

Date of Hearing: July 10, 2019

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 1639 (Gray, Cunningham and R. Rivas) – As Amended July 2, 2019

SUBJECT: Tobacco products

SUMMARY: This bill would, among other things, prohibits the sale of flavored electronic cigarettes until January 1, 2022, except as specified. AB 1639 creates various advertising, promoting, packaging, and selling prohibitions on electronic cigarettes, including, among others, prohibiting an electronic cigarette manufacturer from advertising, promoting, or packaging the electronic cigarette in a manner that is attractive to persons under 21 years of age, as specified, or is intended to encourage persons under 21 years of age to use the device, prohibiting a person from displaying on an electronic cigarette, or on its packaging, an indication or illustration that could cause a person to believe that the product is flavored if there is reasonable belief that the indication or illustration could be appealing to persons under 21 years of age. The bill increases retail penalties for selling tobacco products to underage individuals. The bill requires retailers who sell tobacco products to use age verification technology. The bill bans individuals under 21 from entering a tobacco or vaping store, as defined. The bill would make every person under 21 years of age who purchases, receives, or possesses any tobacco products or paraphernalia, including electronic smoking devices, guilty, upon conviction, of an infraction to be punished by a fine of \$100 if they are at least 18 years of age, but less than 21 years of age, or with drug or tobacco cessation education and community service, as specified, if they are under 18 years of age. This bill would require, for each conviction of a person for a violation related to purchasing, receiving, or possession committed while the person was under 18 years of age, but 13 years of age or older, the court shall suspend the person's driving privilege for one year, or if the person convicted does not yet have the privilege to drive, to order the Department of Motor Vehicles (DMV) to delay issuing the privilege to drive for one year subsequent to the time the person becomes legally eligible to drive. The bill is an urgency measure. Specifically, **this bill:**

- 1) Stipulates that a licensed tobacco retailer, as defined, and an online retailer shall not sell flavored electronic cigarettes, except as follows:
 - (a) The ban does not apply to electronic cigarettes with tobacco, mint, or menthol flavors.
 - (b) A tobacco retailer may sell flavored electronic cigarettes in a retail location that does not permit any person under 21 years of age to be present or to enter the premises at any time.
 - (c) An online retailer may sell flavored electronic cigarettes if the online retailer uses an age verification process to establish that the purchaser of the flavored electronic cigarettes is 21 years of age or older.
 - (d) The California Department of Public Health (CDPH) may assess civil penalties for a violation of this provision according to a schedule, as described in law.
 - (e) This provision shall remain in effect only until January 1, 2022, and as of that date is repealed.

- 2) Provides no person under 21 years of age may enter into a tobacco store, as defined in current law. This provision does not apply to active duty military personnel who are 18 years of age or older. An identification card issued by the United States Armed Forces shall be used as proof of age for this purpose.
- 3) Provides a person engaging in the retail sale of tobacco products shall check the identification of a tobacco purchaser using age verification software or an age verification device to establish the age of the purchaser if the purchaser reasonably appears to be under 27 years of age.
- 4) Requires CDPH to conduct random, on-site sting inspections at retail sites of at least 20% of the total number of licensed tobacco retailers, and in the event of a violation at a retail site, would require the department to conduct a 2nd sting inspection at that retail site within 6 months of the first violation, and a 3rd sting inspection within 12 months of the first violation.
- 5) Increases civil penalties, decreases the calculation period (60-months to 36-months) and the number of violations (5 to 3), a licensed retailers may have before revocation for selling tobacco products to persons younger than 21 years of age. (B & P Code Section 22958 - The Stop Tobacco Access to Kids Enforcement Act (STAKE Act) as follows:

- a) A civil penalty of \$1,200 to \$1,800 for the first violation
- b) A civil penalty of \$3,000 to \$4,000 for a second violation within a 36-month period.
- c) A civil penalty of \$5,000 to \$6,000 for a third or subsequent violation within a 36-month period.

In addition to the civil penalties described above, upon the assessment of a civil penalty for a violation, CDPH, within 60 days of the date of service of the final administrative adjudication on the parties or payment of the civil penalty for an uncontested violation, shall notify the California Department of Tax and Fee Administration (CDTFA) of the violation. The CDTFA shall then assess a civil penalty of \$250 and suspend or revoke a license issued, in accordance with the following schedule:

- a) A 60-day suspension of the license for the first violation.
 - b) A 90-day suspension of the license for a second violation at the same location within a 36-month period.
 - c) Revocation of the license for a third violation at the same location within a 36-month period.
- 6) Creates various advertising, promoting, packaging, and selling prohibitions on electronic cigarettes, including, among others, prohibiting an electronic cigarette manufacturer from advertising, promoting, or packaging the electronic cigarette in a manner that is attractive to persons under 21 years of age, as specified, or is intended to encourage persons under 21 years of age to use the device, prohibiting a person from displaying on an electronic cigarette, or on its packaging, an indication or illustration that could cause a person to believe that the product is flavored if there is reasonable belief that the indication or illustration could be appealing to persons under 21 years of age, and prohibiting the sale of flavored electronic cigarettes until

January 1, 2022, except as specified. The bill would authorize the CDPH to assess specified civil penalties for each violation.

7) Requires the CDPH and the State Department of Education to report to the Legislature, the Senate Committee on Health, and the Assembly Committee on Governmental Organization, on or before January 1, 2021, on the use of electronic cigarettes in California among persons under 21 years of age and the impact of flavored electronic cigarette products on the interest of persons under 21 years of age in trying electronic cigarettes, among other things.

8) Increases financial penalties, under Penal Code 308, for every firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under 21 years of age any tobacco, cigarette, cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance, subject to either a criminal action for a misdemeanor or a civil action, punishable by a fine, as specified.

9) Increases penalties, under Penal Code 308, for individuals over the age of 21 who provide a tobacco product to an underage persons, as defined. Currently, Penal Code 308 provides that every person that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under 21 years of age any tobacco product, as defined, is subject to either a criminal action for a misdemeanor or a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of \$200 for the first offense, \$500 for the second offense, and \$1,000 for the third offense. AB 1639 would instead subject a person described above to that criminal or civil fine (which is doubled in amount), specified community service, or the criminal or civil fine and community service. This provision would not apply to the furnishing of tobacco products to active military personnel who are 18 years or older.

10) Makes every person under 21 years of age who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance guilty, upon conviction, of an infraction to be punished by a fine of \$100 if they are at least 18 years of age, but less than 21 years of age, or with drug or tobacco cessation education and community service, as specified, if they are under 18 years of age.

11) Provides, under the Vehicle Code, for each conviction of a person for a violation of the above provision (purchase, receive, or possess any tobacco products or paraphernalia), committed while the person was under 18 years of age, but 13 years of age or older, the court shall suspend the person's driving privilege for one year, or if the person convicted does not yet have the privilege to drive, to order the Department of Motor Vehicles to delay issuing the privilege to drive for one year subsequent to the time the person becomes legally eligible to drive. An underage driver who loses driving privileges would be eligible for a "restricted hardship/critical use license." This would allow the driver to drive to and from work or school if no other transportation is available. This provision replicates Vehicle Code 13202.5 relating to alcohol possession by youth.

12) This bill contains an urgency clause.

EXISTING LAW:

- 1) Requires CDTFE, under the Cigarette and Tobacco Products Licensing Act, to administer a statewide program to license cigarette and tobacco products manufacturers, importers, distributors, wholesalers, and retailers. Prohibits selling tobacco products without a valid license, and makes violations punishable as a misdemeanor. Retailers are required to obtain a separate license for each retail location that sells cigarettes and tobacco products and pay to an annual license of \$265
- 2) Provides that a person must be 21 years of age or older to purchase tobacco or tobacco related products (i.e. cigarette papers, tobacco paraphernalia, instruments designed for the smoking or ingestion of tobacco products) in the state. The exception is for active duty military personnel who are 18 years of age or older. An identification card issued by the United States Armed Forces shall be used as proof of age for this purpose.
- 3) Defines “tobacco product” as a product containing, made, or derived from tobacco or nicotine that is intended for human consumption, as specified, including an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, and any component, part, or accessory of a tobacco product, whether or not sold separately. Prohibits any product approved by the federal Food and Drug Administration (FDA) for sale as a tobacco cessation product or for other therapeutic purposes, as specified, from being deemed a tobacco product. [BPC §22950.5]
- 4) Defines “tobacco store”: to mean (1) generates more than 60% of its gross annual revenue from the sale of tobacco products and paraphernalia; (2) does not sell alcohol or food for consumption on the premises; and (3) prohibits minors from entering unless that person is accompanied by his or her parent or legal guardian. [B&P Code Section 22962(a)(4)]
- 5) Provides under California law, it is not illegal for individuals of any age to purchase, receive, or possess any tobacco products or paraphernalia.
- 6) Provides no elementary or secondary school shall permit its students to smoke, including the use of electronic smoking devices, while the students are on campus, attending schools sponsored activities, or under the supervision and control of school district employees. States a student who possesses or uses tobacco products, or products containing tobacco or nicotine, may be suspended or expelled if the act is related to school activity or attendance (for instance, while on school grounds, while going to or returning from school or a school-sponsored activity, or during the on- or off-campus lunch period). This provision does not prohibit students’ use or possession of their own prescription products. The superintendent or principal of the school is authorized to enforce this law.
- 7) Provides under the STAKE Act that it is illegal for any person, firm, or corporation to sell, give, or in any way furnish any tobacco products or paraphernalia, including electronic smoking devices, to an individual under the age of 21. This law may be enforced only against a business owner and not against an employee who sold the tobacco product or paraphernalia. It is legal for any person, firm, or corporation to sell, give, or furnish tobacco products or paraphernalia to active-duty military personnel who are 18 years of age or older. An identification card issued by the U.S. Armed Forces shall be used as proof of age for this purpose.

8) Provides the STAKE Act may be enforced by any defined “enforcing agency,” including the CDPH, office of the Attorney General, and local law enforcement agencies. The law instructs enforcing agencies to use youth decoys in on-site inspections to determine whether retailers are making illegal sales of tobacco products. The law authorizes enforcing agencies to use youth decoys to investigate illegal sales to underage individuals by telephone, mail, or the internet.

9) Authorizes CDPH to assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes tobacco products to another person who is under the age of 21 depending on the number of infractions, as follows: A civil penalty of \$400 to \$600 for a first violation; \$900 to \$1,000 for a second violation within a 5-year period; \$1,200 to \$1,800 for a third violation within a 5-year period; \$3,000 to \$4,000 for a fourth violation within a 5-year period; and \$5,000 to \$6,000 for a fifth or subsequent violation within a 5-year period.

10) In addition, the STAKE Act requires suspension or revocation of a retailer’s license upon a civil penalty assessment for a third, fourth, or fifth violation of sales to minors, in accordance with the following schedule:

- a) A 45-day suspension for a third violation at the same location within five years,
- b) A 90-day suspension for a fourth violation at the same location within five years, and,
- c) Revocation of the license for a fifth violation at the same location within five years.

Additional civil penalties in the amount of \$250 each for the third, fourth, and fifth violations are assessed by CDTFA and deposited, as defined.

11) The STAKE Act further provides:

a) Requires all persons engaging in the retail sale of tobacco products to check the identification of tobacco purchasers if the purchaser reasonably appears to be under 21 years of age.

b) Prohibits the selling, offering for sale, or distributing tobacco products from a cigarette or tobacco products vending machine unless such vending machines or appliances are located at least 15 feet away from the entrance of a premises issued an on-sale public premises license, as defined.

c) Prohibits advertising of any tobacco product on any outdoor billboard, as specified.

d) Prohibits a person engaged in the retail sale of tobacco products from selling, offering for sale, or displaying for sale any tobacco product or tobacco paraphernalia by self-service display, except as permitted. Retailers of blunt wraps cannot place or maintain, or cause to be placed or maintained, any blunt wraps advertising display within two feet of candy, snack, or nonalcoholic beverage displayed inside any store or business or that is less than four feet above the floor.

e) Prohibits the distributing or selling of tobacco products directly or indirectly to any person under the age of 21 years through the United State Postal Service or through any other public or private postal or package delivery service, as described.

12) Provides it is illegal for any person, firm, or corporation to sell, give, or in any way furnish to an individual under the age of 21 any tobacco products or paraphernalia, including electronic smoking devices and those used to consume controlled substances, if that person, firm, or

corporation knows or should otherwise have grounds to know that the recipient is under 21 years of age. This law may be enforced against a business owner or an employee who sold the tobacco product or paraphernalia. Violators are subject to a criminal action for misdemeanor or a civil action punishable by a fine of \$200 for a first offense, \$500 for a second offense, and \$1,000 for a third offense. Each individual franchise or location of a business is treated as a separate entity for purposes of determining liability for the second and subsequent violations of the law. If an employee sells tobacco to an underage individual, the business owner can be penalized under the STAKE Act and the employee can be penalized under Penal Code Section 308.

13) Provides that all electronic smoking device cartridges and solutions used for filling or refilling devices must be sold in child-resistant packaging that meets federal poison prevention standards.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill. According to the author, “with more than 3.5 million middle school and high school students reporting e-cigarette use in 2018, vaping has become the new smoking among American youth. There are now 2.5 times more children using JUUL and other e-cigarette brands compared to traditional cigarettes. With a 78% increase in use amongst high schools students between 2017 and 2018 alone, there is significant momentum behind what has to be called an epidemic. AB 1639 represents a comprehensive plan that would get e-cigarettes out of the hands of children, penalize those who sell to kids, regulate marketing that appeals to minors, and restrict sales in locations where children are present. This is unquestionably the toughest reform aimed at combating youth vaping in any of the fifty states.”

The author states, “The Federal Food & Drug Administration has called the rise in teen vaping an epidemic. Like epidemics of the past, this one deserves a robust and focused public policy response. I believe this bill will help curb the rise of teenage vaping and be positive for public health.”

The author further states, “This bill is about the health and well-being of kids. This bill utilizes proven tools to help ensure these addictive products don’t end up in the hands of our young people. This is an important step and is the start, not the conclusion of our efforts as a legislature to tackle this important issue.”

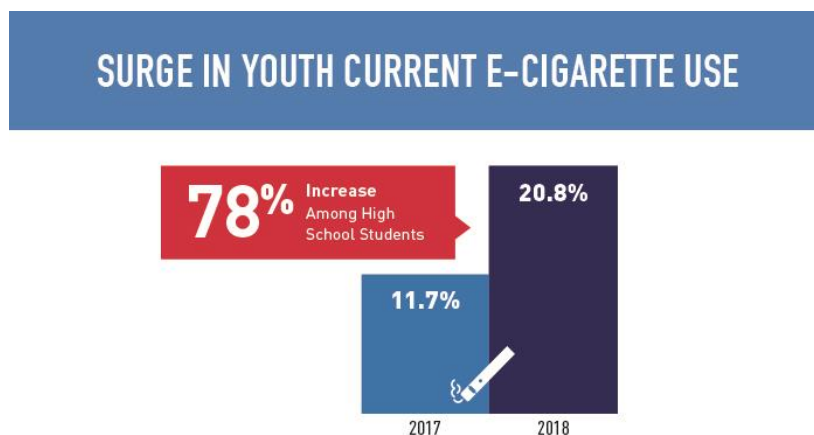
BACKGROUND:

What Are Electronic Smoking Devices (ESDs)? Electronic smoking devices, often called e-cigarettes or vape pens, heat and aerosolize a liquid that sometimes contain a cocktail of ingredients, including flavorings and varying levels of nicotine. Some e-cigarettes are made to look like regular cigarettes, cigars, or pipes. Some resemble pens, USB sticks, and other everyday items. Using these devices is called vaping. The metal or plastic devices contain a cartridge filled with a liquid that is vaporized by a battery-powered heating element. The aerosol is inhaled by the user when they draw on the device, as they would a regular cigarette. The user then exhales secondhand aerosol, which includes chemicals and other pollutants.

Most electronic smoking devices contain nicotine, and some companies claim to sell nicotine-free cartridges. They come in a wide variety of shapes, sizes, flavors, and nicotine levels. These are not one uniform product but hundreds of different products. It should be noted that youth and adults are also using these devices to vape marijuana, hash oil, and other substances. To date, no e-cigarettes have been approved by the FDA and are not currently approved as a quit smoking aid. Preliminary tests by the federal FDA found that e-cigarettes contain many impurities and some contain dangerous chemicals. E-cigarettes are the most commonly used tobacco product among U.S. middle and high school students. Some e-cigarettes don't look like tobacco products, so some kids use them unnoticed in schools, including in classrooms and bathrooms.

According to the FDA, the use of e-cigarettes (vaping) by high school students nearly doubled over the past year. 1 in 5 high school students and 1 in 20 middle school students, currently use e-cigarettes. Most of these kids are using flavored e-cigarettes, inhaling chemical aerosols created by heating solutions containing nicotine and flavoring agents seemingly developed for young people. With flavors such as Gummy Bear, Cotton Candy, Berry Cobbler, Cherry Crush, Vivid Vanilla and host of others, e-cigarette liquids are enticing to many youths. Tobacco use is the leading cause of preventable disease, disability and death in the United States, and the rapid rise in use by young people, driven by use of flavored products, threatens to reverse recent progress in reducing tobacco use.

2018 FDA Chart:



Public health officials are concerned about the rising number of teens using e-cigarettes, because nicotine can harm a young person's developing brain. The Centers for Disease Control (CDC) and Prevention warns that young people who vape may be more likely to start smoking traditional cigarettes. The CDC further states, "While e-cigarettes have the potential to benefit some people and harm other, scientists still have a lot to learn about whether e-cigarettes are effective for quitting smoking."

The CDC further states, "to date, the few studies on the issue are mixed. Evidence from two randomized controlled trials found that e-cigarettes with nicotine can help smokers stop smoking in the long term compared with placebo (non-nicotine) e-cigarettes."



The five largest electronic smoking brands collectively represent more than 97% of the current market for ESDs—JUUL, Vuse, MarkTen, blu eCigs, and Logic.

In November 2018, Juul which maintains about 75 percent of the U.S. e-cigarette market, announced that it was taking action to curb youth access, such as selling flavored JUUL pods on its Web site only, using an enhanced online age verification system, shutting down its Facebook and Instagram accounts, and using its Twitter account for non-promotional communication only, and developing a next-generation device with access restrictions at the user level.

Federal law bans flavors in cigarettes — excluding menthol — but not in other tobacco products, such as smokeless tobacco, cigars, hookah and e-cigarettes.

Prevent All Cigarette Trafficking Act (PACT). In March 2010, President Obama signed the PACT which aimed to regulate the sale of tobacco products over the Internet and through the mail. The PACT makes it harder for vendors to avoid paying federal, state, and local taxes and forces internet retailers to comply with other regulations of tobacco products, including the sale of minors. In addition, the PACT bans the delivery of tobacco products through the U.S. Postal Service, requires age verification upon the purchasing and delivery of tobacco products, and authorizes greater penalties and provides better enforcement tools for state law enforcement. Tobacco retailers are responsible for knowing and complying with all federal, state, and local laws regarding the sale and distribution of tobacco products.

The Synar Amendment. In 1992, Congress passed the Synar Amendment, which requires states to pass and enforce laws that prohibit the sale of tobacco to minors. It also requires that federal alcohol and substance abuse block grant funding be applied to enforcing state law in a manner that can reasonably be expected to reduce the illegal sales rate of tobacco products to minors. Up to 40% of the block grant funding can be withheld from states for not complying with the Synar Amendment.

California tobacco retailer license requirements. Retailers must apply for a license issued by the CDFTA to sell tobacco products and pay an annual fee of \$265. Local governments may require additional licensing fees, as specified. Tobacco retailers are responsible for knowing and complying with all federal, state, and local laws regarding the sale and distribution of tobacco products.

Number of licensed retailers under Cigarette and Tobacco Products Licensing Act. CDFTA records indicate 31,089 retailers were registered to sell cigarettes and tobacco products as of June 2019. About 90% of retailers that currently sell cigarettes or tobacco products also sell

electronic delivery devices and component parts. Based on an industry survey, there are about 531 retailers that sell electronic delivery devices and component parts, but do not sell cigarettes or tobacco products.

What is the minimum sales age for tobacco products and its effective date? California state law prohibits the sale of tobacco products (including electronic smoking devices and e-liquids whether or not they contain nicotine or tobacco) to individuals younger than 21 years of age. Active duty military personnel who are at least 18 years old are exempt, but they must show a valid, unexpired ID card issued by the U.S. Armed Forces.

For the purpose of retail sales, how is “tobacco product” defined? Starting June 9, 2016, a “tobacco product” is defined as a product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested. This includes traditional tobacco products such as cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff. “Tobacco product” is also defined to include an electronic smoking device that delivers nicotine or other vaporized liquids to the person inhaling from the device such as an electronic cigarette, cigar, pipe, or hookah. Finally, the definition of “tobacco product” includes the components, parts and accessories of tobacco products, whether or not sold separately. Tobacco products do not include any product that the FDA has approved for cessation or for other therapeutic purposes in which the product is marketed and sold solely for such an approved purpose. For example, nicotine replacement patches are not tobacco products.

Internet sales. Under the STAKE Act, no person may sell, distribute, or engage in the non-sale distribution of tobacco products, including electronic smoking devices, to persons under 21 years of age via public or private postal services. The law includes directives designed to ensure that people who order tobacco products by mail, fax, phone, or the internet are 21 years of age or older. For example, distributors or sellers must either (1) match the name, address, and date of birth provided by the customer to information contained in a database of individuals verified to be 21 or older, or (2) require the customer to submit verification of age, including a copy of a valid form of government identification. The law establishes a 2-carton minimum on each order of cigarettes. It also mandates that all applicable purchases be made by personal check or credit card and that the distributor or seller call purchasers to confirm their orders.

It is illegal for a person to knowingly deliver or cause to be delivered any unsolicited tobacco products to any residence in California.

Can tobacco paraphernalia be sold to individuals younger than 21 years of age? Retailers cannot sell tobacco paraphernalia to individuals younger than 21 years of age. “*Tobacco paraphernalia*” is defined as cigarette papers or wrappers, blunt wraps, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

Can a component, part or accessory of an electronic cigarette be sold to someone who is 21 years of age? Retailers may not sell components, parts or accessories of tobacco products, which include electronic smoking devices, to individuals younger than 21 years of age.

Youth purchase and possession no longer illegal in California. As of June 9, 2016, under California law (SB2x 7 – E. Hernandez), Chapter 8, Statutes of 2015-16 Second Extraordinary Session), it is no longer illegal for individuals of any age to purchase, receive, or possess any

tobacco products or paraphernalia. However, California law prohibits selling, giving, or in any way furnishing tobacco products or paraphernalia, including electronic smoking devices, to any individual under the age of 21, or under the age of 18 for active military personnel with valid identification. The prior law, established a fine of \$75 or 30 hours of community service work for those persons under age 18 who purchase, receive, or possess any tobacco product, unless participating in STAKE Act activities.

Penal Code Section 308. A state law that makes it a crime to sell or give tobacco products or paraphernalia to persons under the age of 21. It does not apply to the sale, giving, or furnishing of any tobacco products to active duty military personnel who are 18 years of age or older, as specified.

Tobacco Master Settlement Agreement. The Master Settlement Agreement (or MSA) prohibits the participating manufacturers from certain types of marketing, including targeting youth, using cartoons to advertise tobacco products, using brand-name merchandise, sponsoring youth-oriented events, and paying for product placement in media. E-cigarettes are not part of this agreement.

The Family Smoking Prevention and Tobacco Control Act (2009 Tobacco Control Act). The Act amended the Federal Food, Drug, and Cosmetic Act to authorize the federal FDA to oversee the manufacture, marketing, distribution, and sale of regulated tobacco products and protect the public from the harmful effects of tobacco product use. The Act was signed into law on June 22, 2009. The Act: 1) Restricts tobacco marketing and sales to youth; 2) Requires smokeless tobacco product warning labels; 3) Requires disclosure of ingredients in tobacco products; 4) Preserves state, local, and tribal authority.

The Act gave the FDA the authority to implement the following policies:

1. Require tobacco company owners and operators to register annually and open their manufacturing and processing facilities to be subject to inspection by FDA every two years.
2. Allow FDA to implement standards for tobacco products to protect public health. For example, FDA has the authority to regulate nicotine and ingredient levels.
3. Ban cigarettes with characterizing flavors, except menthol and tobacco. Prohibits the sale clove cigarettes.
4. Fund FDA regulation of tobacco products through a user fee on the manufacturers of certain tobacco products sold in the United States, based on their U.S. market share.

U.S. Surgeon General issues an advisory on e-cigarette use among youth. In 2018, the Surgeon General issued an advisory on "*E-Cigarette Use Among Youth and Young Adults*." The advisory stated, "considerable progress has been made in reducing cigarette smoking among our nation's youth. However, the tobacco product landscape continues to evolve to include a variety of tobacco products, including smoked, smokeless, and electronic products, such as e-cigarettes. E-cigarettes are designed to deliver nicotine, flavorings, and other additives to the user via an inhaled aerosol. E-cigarettes entered the U.S. marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among youth. E-cigarette use among middle and high school students increased 900% during 2011-2015, before declining for the first time during 2015-2017. However, current e-cigarette use increased 78% among high school students during the past year, from 11.7% in 2017 to 20.8% in 2018. In 2018, more than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school students,

currently use e-cigarettes. E-cigarette aerosol is not harmless. Most e-cigs contain nicotine – the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances. In addition, some of the chemicals used to make certain flavors may also have health risks. E-cigs can also be used to deliver other drugs, including marijuana. In 2016, one-third of U.S. middle and high school students who ever used e-cigs had used marijuana in e-cigarettes. Using nicotine in adolescence can also increase risk for future addiction to other drugs.”

Tobacco use trends in California. According to CDPH, fewer adults are smoking cigarettes than ever before. California has the second lowest adult smoking rate among the 50 states plus the District of Columbia, second only to Utah. The adult cigarette smoking rate in California declined by 57.4 percent between 1988 and 2017, with a current rate of 10.1 percent or about 2.8 million adults. In California, 64% of smokers start by the age of 18, and 96% start by age 26. Since 2000, youth cigarette smoking rate in both California and the United States decreased considerably. California reported its lowest high school cigarette smoking rate in 2018 at 2.0 percent.

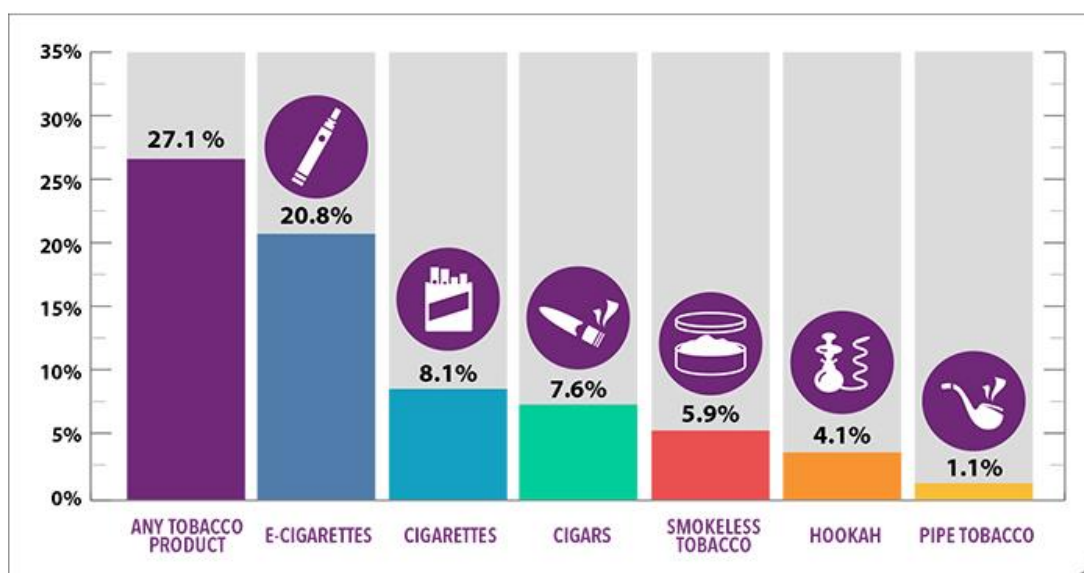
One in eight California high school students currently use any tobacco product, with the most used product among all students being electronic smoking devices (84.3 percent). The proliferation of tobacco product categories, flavored products, and the evolution in tobacco marketing appear to be fueling teens switching from traditional cigarettes to a new generation of tobacco products. Coinciding with the diversification in electronic smoking devices is an exponential growth in flavored tobacco products; the number of flavors these products come in more than doubled from 2014 to over 15,500 flavors today. Flavored tobacco products are driving youth experimentation; more than 80 percent of youth who ever used a tobacco product reported that their first product was flavored. Young adults (under age 30) in California use electronic smoking devices (9.4 percent) and hookah (6.0 percent) at a higher rate compared to older adults. Furthermore, of young adult tobacco users, 57.7 percent use a flavored tobacco product. Currently, there is limited research on the long-term health effects from either using electronic smoking devices or being exposed to secondhand aerosol.

CDPH notes that in 1997, 21.7% of retailers sold tobacco products to minors, just above the federally mandated target of 20%. The rate in 2017 was 5.7%, a significant decrease from 10.3% in 2016. However, tobacco-only stores continue to have the highest retailer violation rate (12%) when compared to other retailers (4.9%).

Data from the U.S. Department of Health & Human Services. According to the U.S. Department of Health & Human Services preventing tobacco product use among youth is critical to ending the tobacco epidemic in the United States. Tobacco product use is started and established primarily during adolescence. Nearly 9 out of 10 cigarette smokers first try cigarette smoking by age 18, and 98% first try smoking by age 26.1. Each day in the U.S. about 2,000 youth under 18 years of age smoke their first cigarette and more than 300 youth under 18 years of age become daily cigarette smokers. Flavorings in tobacco products can make them more appealing to youth. In 2014, 73% of high school students and 56% of middle school students who used tobacco products in the past 30 days reported using a flavored tobacco product during that time. Recent increases in the use of e-cigarettes is driving increases in tobacco product use among youth. The number of middle and high school students using e-cigs rose from 2.1 million in 2017 to 3.6

million in 2018—a difference of about 1.5 million youth. Current (past 30 day) use of e-cigarettes went up among middle and high school students from 2011 to 2018. Nearly 1 of every 20 middle school students (4.9%) reported in 2018 that they used electronic cigarettes in the past 30 days—an increase from 0.6% in 2011. Nearly 1 of every 5 high school students (20.8%) reported in 2018 that they used electronic cigarettes in the past 30 days—an increase from 1.5% in 2011. From 2011 to 2018, current (past 30 day) cigarette smoking went down among middle and high school students. Nearly 1 of every 50 middle school students (1.8%) reported in 2018 that they smoked cigarettes in the past 30 days—a decrease from 4.3% in 2011. About 2 of every 25 high school students (8.1%) reported in 2018 that they smoked cigarettes in the past 30 days—a decrease from 15.8% in 2011.

2018 – Tobacco Product Use Among High School Students



CDC Graph

FDA action. The FDA has issued several statements over the past couple of years focusing on youth access to tobacco products. Specifically, the FDA is concerned about youth access to ESDs, as the youth use rate has reached epidemic status. In the September 2018 statement, the FDA announced issuing 12 warning letters to companies that continued to advertise and sell products to youth. Earlier the same year the FDA had also issued 56 warning letters and six civil monetary penalties to retailers as part of its enforcement action to limit access of tobacco products to youth. The FDA also sent letters to five ESD manufacturers (JUUL, Vuse, MarkTen, blu eCigs, and Logic) whose products were sold to kids during the FDA's ramped up enforcement period. The FDA requested that these companies provide robust plans on how they address the widespread use of their products by minors or face increased enforcement.

When the FDA started regulating e-cigarettes in 2016, the agency prevented new products from entering the market and said those already being sold would need to send in applications for FDA review starting in 2018. In 2017, the FDA extended the deadline to 2022.

In March 2019, the former FDA commissioner issued a statement announcing that manufacturers and retailers were being put on notice that they could be subject to FDA enforcement for selling

certain flavored ESD products without authorization. The FDA announced it would prioritize enforcement to focus on protecting youth from becoming addicted to nicotine, which includes the retail sale of ESDs that are offered in ways that pose a greater risk for minors' access to the products, such as retail and online sales without heightened age verification, and products that appeal to kids.

In June 2019, the FDA issued final guidance for e-cigarette makers to submit pre-market tobacco product applications, giving e-cigarette manufacturers a path to seek official authorization to market their products. The announcement came about a month after a federal judge ordered the agency to speed up its review of thousands of vaping products now on the market. That decision, part of a lawsuit filed by multiple health groups, said that the agency has acted illegally by allowing e-cigarettes to remain on the market until 2022 before requiring companies to apply for that authorization. The FDA moved up by one year — to August 2021 — the deadline for flavored e-cig manufacturers to submit product applications for FDA approval to remain on the market. Once e-cigarette companies submit their applications to the FDA by August 2021, they'll have to show that their products are appropriate for the "protection of public health," including that they do not encourage teens to start vaping. Public health advocates say it would be difficult for many of the e-cigarettes on the market to meet that standard. The sales restrictions and new deadline would apply to a vast array of e-cigarette products, including those offered in flavors such as cherry, bubble gum and cotton candy. The guidance would not apply to the sale of tobacco-flavored products, menthol and mint— flavors the FDA said it wants to preserve because they're available in cigarettes and help switch adult smokers. This means that these flavored products would be allowed to be sold at retail stores, including tobacco stores, vape shops, convenience stores, grocery stores, liquor stores, etc.

The draft compliance policy would limit sales of flavored ENDS products to online sellers who must tighten age verification and curb bulk sales, vape shops, and other retailers that impose age restrictions. It has been reported that such guidelines, even when finalized, are not legally binding but companies are expected to adhere to them to avoid conflicts with the FDA. However, the companies and other retail interests could challenge the policy in court.

American Cancer Society Position Statement on Electronic Cigarettes. "The American Cancer Society Board of Directors approved the following position statement on electronic cigarettes (e-cigarettes) in February 2018. The position statement will be used to guide ACS's tobacco control and cessation efforts as it relates to these products. Clinical Recommendations: The ACS has always supported any smoker who is considering quitting, no matter what approach they use; there is nothing more important that they can do for their health. To help smokers quit, the ACS recommends that clinicians advise their patients to use FDA-approved cessation aids that have been proven to support successful quit attempts. Many smokers choose to quit smoking without the assistance of a clinician and some opt to use e-cigarettes to accomplish this goal. The ACS recommends that clinicians support all attempts to quit the use of combustible tobacco and work with smokers to eventually stop using any tobacco product, including e-cigarettes. Some smokers, despite firm clinician advice, will not attempt to quit smoking cigarettes and will not use FDA approved cessation medications. These individuals should be encouraged to switch to the least harmful form of tobacco product possible; switching to the exclusive use of e-cigarettes is preferable to continuing to smoke combustible products. Of course, these individuals should be regularly advised to completely quit using all tobacco products. The ACS strongly discourages the concurrent (or "dual") use of e-cigarettes and combustible cigarettes, a behavior that is far more detrimental to a person's health compared to the substantial health benefit of

quitting smoking.” <https://www.cancer.org/healthy/stay-away-from-tobacco/e-cigarette-position-statement.html>

Preemption. The preemption doctrine is derived from the Supremacy Clause of the U.S. Constitution. Under this doctrine, a hierarchy of laws exists where the Constitution, laws passed by the U.S. Congress, federal agency regulations, executive orders or treaties are the supreme law of the land and can override state and local laws and rules. Similarly, state statutes and regulations can preempt local laws. A law can explicitly preempt state or local authority (express preemption) or it can preempt by implication (implied preemption). For example, the Federal Cigarette Labeling and Advertising Act expressly preempts state or local governments from regulating cigarette labeling, including all warnings, and the content of cigarette advertisements and promotions. In addition, the 2009 Tobacco Control Act expressly preempts state and local governments from regulating tobacco product standards, premarket review, manufacturing practices, labeling, and product registration. Those powers are reserved to the federal government.

However, the Tobacco Control Act includes language stating that the Act does NOT preempt state and local communities from enacting more stringent tobacco sales and distribution restrictions; youth possession restrictions; use restrictions (typically, smoke-free laws); fire safety standards for products; or taxes on tobacco products. The Act thus sets a minimum standard in regulating some aspects of tobacco products, but allow states and localities to adopt more restrictive tobacco control regulations in these areas.

Cities have passed local tobacco control laws relating to flavored tobacco. More than 30 cities within California have passed ordinances that ban the sale of flavored tobacco products, including cigars, little cigars, pipe tobacco and electronic cigarettes. Each city ordinance differs in its requirements regarding which stores it affects and which products are prohibited.

- San Francisco, along with Alameda, Albany, Beverly Hills, Corte Madera, Half Moon Bay, Marin County, Richmond, San Anselmo, San Mateo County, Santa Cruz, Sausalito and Yolo County prohibit the sale of flavored tobacco products, including menthol cigarettes.
- San Francisco bans the sale and distribution of e-cigarettes in the city.
- Los Gatos, Oakland, Palo Alto and Santa Clara County prohibit the sale of flavored tobacco products, including menthol cigarettes, except in adult-only tobacco stores.
- Berkeley prohibits the sale of flavored tobacco products, including menthol cigarettes, within 600 feet of any school.
- Contra Costa County prohibits the sale of flavored tobacco products, including menthol cigarettes, within 1,000 feet of a “youth-sensitive place,” including public and private schools, playgrounds, parks and libraries.
- Cloverdale, El Cerrito, Fairfax, Hayward, Manhattan Beach, Novato, San Leandro, Saratoga, Sonoma, West Hollywood and Windsor all have varying restrictions on the sale of flavored tobacco products.
- San Francisco and 17 other cities and counties have banned pharmacies from selling tobacco products.
- Sonoma County requires retailers to sell cigarettes for a minimum of \$7 per pack.
- San Francisco caps the number of tobacco sales permits in each of the city’s 11 districts at 45, and new tobacco retailers are prohibited within 500 feet of any school or another retailer.

San Francisco e-cigarettes ban. In June 2019, San Francisco become the first US city to effectively ban the sale and distribution of e-cigarettes. The ordinance states that "no person shall

sell or distribute an electronic cigarette to a person in San Francisco" unless that product has undergone premarket review by the US Food and Drug Administration. To date, none have. This includes sales in brick-and-mortar stores, as well as online sales shipped to a San Francisco address. The ordinance also applies to flavored tobacco products in addition to e-cigarettes. The measure does not ban the use of e-cigarettes among people 21 and older.

The California Healthcare, Research and Prevention Tax Act of 2016 (Proposition 56). Prop 56 provides local public agencies with funding to promote a healthier California by reducing illegal sales and marketing of cigarettes and tobacco products to minors. The Office of the Attorney General makes these annual funds available to local law enforcement agencies through the California Department of Justice Tobacco Grant Program.

Approved by voters in 2016, Prop 56 increased taxes on cigarettes and other tobacco products by \$2.00 starting in April 2017. The Proposition specifically allocates \$30 million of annual revenue to the California Department of Justice. These funds support local agencies to enforce tobacco-related statutes and ordinances, including to reduce the illegal sale of tobacco products to minors. Grantees may use grant funds to enforce state and local laws related to the illegal sale and marketing of tobacco products to minors and youth including: Retailer compliance checks, retailer training programs, installation of signage, youth outreach, tobacco retail license inspections, and/or preventing and deterring use of tobacco products on school premises.

How Cigarettes and Tobacco Products are taxed. Two types of excise taxes are collected on cigarettes and tobacco products distributed in California: 1) the cigarette tax, and 2) the cigarette and tobacco products surtaxes. Cigarettes are subject to both the cigarette tax and the cigarette and tobacco products surtaxes, collectively referred to as cigarette taxes. The taxes are assessed on each cigarette distributed in California. Other tobacco products, also known as OTP, are subject to the cigarette and tobacco products surtaxes. The CDTFA determines one combined rate annually, which is equivalent to the combined rate of the taxes imposed on cigarettes. The calculation of the rate is based on the wholesale premium brand cigarette price as of March 1 each year, as published by the Tobacco Merchants Association, to be effective during the next fiscal year (July 1 through June 30). For 2019, the rate is 59.27% of wholesale cost. The tobacco products tax is imposed upon the distribution of tobacco products and is paid by tobacco products distributors.

CA tax on e-cigarettes. Every distributor of e-cigarettes is subject to a tax upon the distribution of e-cigarettes equivalent to the total tax imposed on cigarettes. The tax is imposed on the distribution of: (1) any liquid or substance containing nicotine, (2) any device intended to be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, and (3) any component, part, or accessory of such a device that is intended to be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device.

How the revenue is used. Effective April 1, 2017 (due to Proposition 56, November 2016), the cigarette tax rate increased from \$0.0435 to \$0.1435 per cigarette. Typically, a pack of cigarettes contains 20 sticks of cigarettes. Using this example, the cigarette tax rate on a pack of 20 cigarettes increased from \$0.87 to \$2.87. Of the total two dollars and eighty-seven cents (\$2.87) cigarette tax rate per package of 20 cigarettes (or equivalent amount of tobacco products):

- **Two dollars (\$2.00) are deposited into the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund (Prop. 56, effective April 1, 2017)**

These funds are to be used for various purposes and programs, including:

- Increased funding for existing healthcare programs and services,
 - Use prevention programs among all Californians, but particularly the youth, and
 - Medical research for cancer, heart and lung tobacco-related diseases.
- **Fifty cents (\$0.50) are deposited into the California Children and Families Trust Fund (Prop. 10, effective January 1, 1999)**
- These funds are used for programs that encourage proper childhood development, including:
- The development of professional and parental education and training,
 - Informed selection of childcare,
 - Development and education of childcare providers, and
 - Research into the best practices and standards for all programs and services relating to early childhood development.
- **Twenty-five cents (\$0.25) are deposited into the Cigarette and Tobacco Products Surtax Fund (Prop. 99, effective January 1, 1989)**
- These funds may only be used for the following purposes:
- Tobacco-related health education programs and disease research,
 - Medical and hospital care and treatment of patients who cannot afford those services, and for whom payment will not be made by any private coverage or federal program, and
 - Programs for fire prevention; environmental conservation; protection, restoration, enhancement, and maintenance of fish, waterfowl, and wildlife habitat areas; and enhancement of state and local parks and recreation.
- **Ten cents (\$0.10) are deposited into the Cigarette Tax Fund**
 - These funds are transferred to the General Fund.
 - **Two cents (\$0.02) are deposited into the Breast Cancer Fund**
 - These funds support breast cancer-related research and breast cancer screening for uninsured women.

In opposition. The American Lung Association in California, the American Heart Association, the American Cancer Society Cancer Action Network, and the Tobacco-Free Kids Action Fund write in opposition, “tobacco remains the leading cause of preventable death in our country, and sadly, 95% of adult smokers begin before the age of 21. Of the 9 million youth currently living in our state, nearly 1.4 million of them will become smokers, and approximately 440,000 of those kids will die prematurely as a result of tobacco use. While this bill claims to address the recent epidemic of youth e-cigarette use, it contains provisions which undermine the work being done across the state to truly address it. One such provision is the reinstatement of penalties for youth possession of tobacco. In 2016, this Legislature made a huge impact on the public health of California residents by changing state law to raise the legal age of sale for tobacco products to 21. Included in that victory was the removal of the state’s purchase, use, and/or possession law which punished minors for possessing tobacco products. These actions were taken in recognition that civil and criminal penalties for youth purchase, use and/or possession have not proven to be effective enforcement measures and detract from more effective tobacco control strategies. We believe that any penalty (if the law is broken) should be levied only on the retailer and not the underage purchaser.

Furthermore, efforts to address the proliferation of flavored tobacco products leave out numerous products and key flavors that are used to addict youth to nicotine. More than four out of five young adults ages 18 to 24 who have ever used tobacco reported that their first product was flavored. Youth also perceived fruit-flavored and menthol-flavored e-cigarettes as less harmful than tobacco-flavored e-cigarettes. The majority of youth initiate with a flavored product across

product type, including cigarettes, cigars, hookah, and e-cigarettes. About 80 percent of current youth users of a tobacco product report using a flavored product. Over half of current high school e-cigarette users report using a menthol or mint flavored product. Over half (54%) of youth smokers use menthol cigarettes compared to only one-third (32%) of older adult smokers. In a recent poll, 65% of voters agreed that these products were created as a new way to profit from a product that kills. Although this bill seeks to restrict sales of flavored electronic cigarettes to adult only stores, it leaves available the number one most popular flavor among 18-21 year olds, mint and menthol.

That is not the only group this bill leaves behind. The tobacco companies have a long and sorted history of discriminatory targeting of their flavored products. In the 1960's the tobacco companies launched a sustained menthol marketing campaign aimed at African American smokers. Those efforts have paid off in California as 70 percent of African American adults who smoke consume menthols compared to just 18 percent of white adults who smoke. The Tobacco Products Scientific Advisory Committee, in its 2011 report to the FDA, estimated that by 2020, 4,700 excess deaths in the African American community will be attributable to menthol cigarettes, and over 460,000 African Americans will have started smoking because of menthol cigarettes."

The Vapor Technology Association writes in opposition, "while we applaud your well-intentioned efforts to curb youth access to vapor products, restrictions of the kind proposed in this measure will severely limit the availability of flavored vapor products to adults who are desperately trying to quit smoking, while leaving access to deadly combustible cigarettes and flavored combustible tobacco unchanged. Our members employ tens of thousands of people around the country and in the state of California. Any ban or limitation on access to vapor products directly impacts consumers who are reliant upon vapor products as an alternative to combustible cigarettes, not to mention, jeopardizes the businesses that Californians have built and are still building.

The restriction of flavored vapor products to age restricted stores dangerously limits access for adults trying to quit combustible tobacco. Furthermore, the vague and subjective marketing standards contained within the bill go far beyond any standards imposed on other age-restricted products which arguably pose a much greater public health threat to youth than vapor products. Moreover, the overly broad and subjective standards likely will result in years of litigation and regulatory debates in order to fully define the parameters put into statute. Lastly, the proposed penalties on businesses are, without justification, significantly higher than those for similar industries. Although our industry generally supports increasing penalties, it should be done in a way that does not shut down small businesses and is also commensurate with other areas of law. Specifically, a 60-day license suspension on a first offense is unprecedented. So, while convenience stores and gas stations may be able to survive because they sell a wide variety of products, given the definitions in AB 1639, age restricted small businesses owners selling vapor products would never be able to survive a 60-day suspension of their license."

Related legislation. SB 8 (Glazer) would make it an infraction punishable by a fine of up to \$25 for a person to smoke, as defined, on a state coastal beach or in a unit of the state park system, as defined, or to dispose of used cigar or cigarette waste on a state coastal beach or in a unit of the state park system unless the disposal is made in an appropriate waste receptacle. (Pending in the Senate Appropriations Committee)

SB 38 (Hill, Glazer, McGuire, and Portantino) of 2019. Would require sellers, distributors, and non-sale 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. (Ordered to Senate inactive file on request of Senator Hill)

SB 424 (Jackson) of 2019. This bill prohibits a person or entity from selling, giving, or in any way furnishing to another person of any age in the state any single-use filters, plastic devices, electronic cigarettes, and vaporizer devices, as specified. Requires the manufacturer of these components to use materials eligible for recycling under state or local recycling programs to make any multiuse, reusable component, and to offer methods for recycling those components, as specified. (Pending in Assembly G.O. Committee)

SB 485 (Beall) of 2019. Would remove the ability of the court and DMV to delay, suspend, or revoke a person's driving privilege as a result of a conviction for various misdemeanor offenses. (Pending in Assembly Public Safety Committee)

SB 538 (S. Rubio of 2019). The bill requires a manufacturer of electronic cigarettes to submit specified information CDPH about electronic cigarettes sold in the state. This bill requires CDPH to post the information on its Web site and to conduct a public outreach campaign to notify specified entities about the information on electronic cigarettes to address the increase in youth usage. This bill contains an urgency clause that will make this bill effective upon enactment. (Pending in the Assembly Governmental Organization Committee)

AB 739 (McCarty and Wood) of 2019. Substantially similar to SB 38 (Hill, Glazer, McGuire, and Portantino). 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, as specified. (Pending in Assembly G.O. Committee)

AB 1625 (Robert Rivas) of 2019. Would require the Attorney General to establish and maintain on his Attorney General's Web site a list of tobacco product brand styles that lack a characterizing flavor, as defined. (Pending in the Assembly Governmental Organization Committee)

AB 1718 (Levine) of 2019). The bill is substantially similar to SB 8 (Glazer); however, the bill allows the director of DPR to exempt portions of the state parks system from the smoking prohibition, as specified. (Senate Natural Resources and Water Committee)

Prior legislation. AB 725 (Levine) and SB 386 (Glazer), of the 2017-2018 Legislative Session. Both AB 725 and SB 386 were vetoed by Governor Brown. According to the Governor, "*If people can't smoke even on a deserted beach, where can they? There must be some limit to the coercive power of government.*"

SB 835 (Glazer of 2018). Would have implemented a ban on smoking and disposing of tobacco products, as defined, at state parks and establishes an infraction punishable by a fine of up to \$25 for a violation. *SB 835 was vetoed by the Governor who stated that he had vetoed similar measures in each of the last two years, and the third time is not always a charm. The Governor stated his opinion on the matter had not changed, and we have many rules telling us what we can't do and these are wide open spaces.*

SB 836 (Glazer of 2018). Would have prohibited smoking of cigarettes, cigars, pipes and other tobacco-products in state coastal beaches, as specified, and establish that a violation is an infraction with a fine of up to \$25. SB 836 was vetoed by the Governor, who issued the same veto message as for SB 835.

SCR 143 (Pan of 2018). Would have encouraged major motion picture studios to give a Restricted (R) rating to any new film designed for viewing by children and adolescents that shows or implies smoking or tobacco use. (The bill failed passage in the Assembly Health Committee)

AB 1097 (Levine of 2018). Was substantially similar to SB 835. The bill was vetoed by the Governor, who issued the same veto message as SB 835 (Glazer of 2018).

SB 386 (Glazer of 2017). Would have prohibited the smoking of cigarettes, cigars, pipes, and other tobacco products at state parks and state coastal beaches, as specified, and established that a violation is an infraction with a fine of up to \$100. *The bill was vetoed by Governor Brown who stated that such a far-reaching prohibition in every state park and on every state beach is too broad. In addition, the fine prescribed in SB 386 for lighting one cigarette is excessive. If people can't smoke even on a deserted beach, where can they? There must be some limit to the coercive power of government.*

AB 725 (Levine of 2017). Would have prohibited smoking of tobacco products on state coastal beaches and at state parks, as specified, and established that a violation is an infraction with a fine of up to \$50. The bill was vetoed by Governor Brown who stated, *"If people can't smoke even on a deserted beach, where can they? There must be some limit to the coercive power of government."*

SB 1333 (Block of 2016). Would have prohibited the smoking of tobacco products on state coastal beaches and at state parks, as specified, and established that a violation is an infraction with a fine of up to \$250. *SB 1333 was vetoed by Governor Brown who stated, "the complete prohibition in all parks and beaches is too broad. A more measured - and less punitive - approach might be warranted."*

SB2x 5 (Leno), Chapter 7, Statutes of 2015-16 Second Extraordinary Session. Regulated electronic cigarettes the same as other tobacco products and establish an annual licensing fee on e-cigarette retailers of \$265 per location.

SB2x 7 (Ed Hernandez), Chapter 8, Statutes of 2015-16 Second Extraordinary Session. Raised California's legal smoking age and the age to buy tobacco products from 18 to 21, except for active duty military 18 or older.

AB2x 7 (Mark Stone), Chapter 4, Statutes of 2015-16 Second Extraordinary Session. Extended California's workplace smoking ban to owner-operated businesses (including businesses run from someone's home), and remove several exemptions that allow smoking in certain hotel lobbies and banquet rooms, bars, gaming clubs and other workplaces.

AB2x 9 (Thurmond), Chapter 5, Statutes of 2015-16 Second Extraordinary Session. Extended tobacco use prevention funding eligibility and requirements for county offices of education and school districts to include charter schools. Broadened the definition of products containing tobacco and nicotine, as specified, and prohibits their use in specified areas of schools and school

districts, regardless of funding. Requires specified signs to be prominently displayed at all entrances to school property.

AB2x 10 (Bloom) of 2016, Vetoed by Governor Brown. Would have allowed counties to tax the distribution of cigarettes and other tobacco products, subject to voter approval.

AB2x 11 (Nazarian), Chapter 6, Statutes of 2015-16 Second Extraordinary Session. Revised the Cigarette and Tobacco Products Licensing Act of 2003 to change the retailer license fee from a \$100 one-time fee to a \$265 annual fee, and increases the distributor and wholesaler license fee from \$1,000 to \$1,200.

SB 977 (Pan), Chapter 537, Statutes of 2016. Prohibited a person from smoking a tobacco product, as defined, within 250 feet of a youth sports event, as defined. Broadened the definition of “smoke or smoking” in existing law.

SB 591 (Pan of 2015). Would have imposed an additional cigarette tax at a rate of \$2.00 per package of 20 cigarettes, and a corresponding rate for a cigarette tax stamp. (Placed on the Inactive File on the Senate Floor and no further action was taken)

AB 768 (Thurmond), Chapter 779, Statutes of 2015. Prohibited the use or possession of smokeless tobacco products, as defined, on the playing field of a baseball stadium during a professional baseball game or practice.

AB 1500 (Dickinson of 2014). The bill would have prohibited a seller that delivers products via shipping or mailing from selling or delivering an electronic cigarette to a person under 18 years of age. (Failed passage in Assembly Appropriations Committee)

SB 648 (Corbett of 2013). The bill would have prohibited the offer, sale, or distribution of electronic cigarettes (e-cigarettes) from a vending machine or other coin or token operated mechanical device or appliance, unless that machine or appliance is located on a premises issued an on-sale public license to sell alcoholic beverages and is at least 15 feet from the entrance to that premises. (Failed passage in Assembly Appropriations Committee)

SB 768 (De León of 2013). Was substantially similar to SB 591 (Pan of 2015). (Held on the Senate Appropriations suspense file)

SB 882 (Corbett), Chapter 310, Statutes of 2010. The bill made it unlawful, to the extent not preempted by federal law, for a person to sell or otherwise furnish an e-cigarette to a person under 18 years of age.

SB 400 (Corbett), 2009-2010 Legislative Session. The bill would have defined e-cigarettes as drugs under state law, making them subject to the Sherman Food, Drug, and Cosmetic Law, and would have allowed CDPH to halt and ban the sale, distribution, or offering of e-cigarettes as part of its enforcement of the STAKE Act. (The bill was vetoed by Governor Schwarzenegger)

SB 1766 (Ortiz), Chapter 686, Statutes of 2002. Required that all sales of cigarettes to be vendor-assisted, face-to-face sales unless the seller receives valid identification, that the purchaser is over 18, the product is shipped to the address provided on the identification, the sales is at least for two cartons, and the seller either provides the State Board of Equalization

with all taxes due on the sale or includes with the shipment a notice that the purchaser is responsible for state taxes.

AB 1830 (Frommer), Chapter 685, Statutes of 2002. Prohibited the sales of tobacco products to minors through the United States Postal Service or through any other public or private postal or package delivery service, and imposes specified age-verification requirements on tobacco product sellers or distributors.

SB 1927 (Hayden), Chapter 1009, Statutes of 1994. Enacted the STAKE Act to address the increase in tobacco sales to minors in California and fulfill the federal mandate that prohibited the sale of cigarettes and tobacco products to minors.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

American Cancer Society Cancer Action Network
American Heart Association
American Lung Association in California
Tobacco-Free Kids Action Fund
Vapor Technology Association

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