

Date of Hearing: August 28, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1639 (Gray) – As Amended August 21, 2019

Policy Committee:	Governmental Organization	Vote:	16 - 0
	Health		15 - 0

Urgency: Yes      State Mandated Local Program: No      Reimbursable: No

**SUMMARY:**

This bill revises Department of Public Health's (DPH's) enforcement activities against tobacco retailers, increases specified penalties and restricts electronic cigarette advertisements and promotions. Specifically, this bill:

- 1) Requires DPH to conduct random, onsite sting operations of at least 20% of the total number of licensed tobacco retailers and, in the event of a violation, requires DPH to conduct a second sting inspection within six months of that violation and a third within 12 months of that first violation.
- 2) Requires a retailer to check the identification of any tobacco purchaser using age verification software or an age verification device.
- 3) Increases the amount of civil penalties an enforcing agency may assess against any person, firm, or corporation that sells, gives or in any way furnishes tobacco, cigarettes or paraphernalia that is designed for smoking or ingesting tobacco, tobacco products or controlled substances.
- 4) Prohibits a person under 21 years of age to enter into a "tobacco store," which is a store that primarily sells tobacco products and generates more than 60% of its gross revenues annually from the sale of tobacco and tobacco paraphernalia and does not sell alcohol or food for on-site consumption. This prohibition does not apply to active duty military personnel who are 18 years of age or older.
- 5) Prohibits an electronic cigarette manufacturer from advertising, promoting or packaging electronic cigarettes in a specified manner, including in a manner intended to encourage underage individuals (under the age of 21) to use an electronic cigarette or from using cartoons or imitation candy packaging or labeling.

**FISCAL EFFECT:**

Annual General Fund costs of approximately \$1.4 million beginning in 2020-21. This bill requires DPH to conduct approximately 2,100 more inspections each than the Food and Drug Branch has resources to conduct. The above cost estimate reflects the costs of six investigators, one supervising investigator, and an analyst to complete the additional workload.

**COMMENTS:**

- 1) **Background.** The California Stop Tobacco Access to Kids Enforcement (STAKE) program aims to curb illegal sales of tobacco products to individuals under the age of 21. Generally, the provisions of the STAKE Act may be enforced by California Department of Public Health, the Attorney General or a local enforcement agency. The STAKE Act requires retailers to check the identification of purchasers of tobacco products who reasonably appear to be too young and prohibits the non-sale distribution of tobacco products via public or private postal services.
- 2) **Recent amendments.** This bill was recently amended by the Assembly Health Committee (those amendments were taken in this committee because of legislative deadline considerations) to do the following:
  - a) Remove provisions that prohibited a retailer to sell flavored electronic cigarettes. These provisions contained exceptions for electronic cigarettes with tobacco, mint or menthol flavors and for tobacco retailers that allow only those 21 years of age and older to enter the premises.
  - b) Remove a reporting requirement for DPH regarding the use of flavored electronic cigarettes.
  - c) Modify requirements for retailers to check a customer's age. Health Committee amendments require a retailer to check the identification of any purchaser of any age instead of any purchaser who reasonably appears to be under 27 years of age.
- 3) **Related legislation.** Other bills introduced this year that address issues around tobacco or electronic cigarettes include:
  - a) SB 38 (Hill) prohibits 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. SB 38 is currently on the Senate Inactive File.
  - b) SB 39 (Hill) requires a tobacco product to be delivered only in a container with a specified label and requires the seller, distributor or non-sale distributor to obtain the signature of a person 21 years of age or older prior to completing a delivery. SB 39 is pending on the Assembly Floor.
  - c) SB 538 (Rubio) requires an electronic cigarette manufacturer to submit to DPH written physical description and photograph of each electronic cigarette sold to be placed on the DPH website. SB 538 is also being heard in this committee on August 28, 2019.

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