

CALIFORNIA CODES
BUSINESS AND PROFESSIONS CODE
SECTION 22950-22963

22950. This Division shall be known and may be referred to as the Stop Tobacco Access to Kids Enforcement Act or the STAKE Act.

22950.5. For purposes of this division, the following terms have the following meanings:

(a) "Department" means the State Department of Public Health.

(b) "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.

22951. The Legislature finds and declares that reducing and eventually eliminating the illegal purchase and consumption of tobacco products by minors is critical to ensuring the long-term health of our state's citizens. Accordingly, California must fully comply with federal regulations, particularly the "Synar Amendment," that restrict tobacco sales to minors and require states to vigorously enforce their laws prohibiting the sale and distribution of tobacco products to persons under 18 years of age. Full compliance and vigorous enforcement of the "Synar Amendment" requires the collaboration of multiple state and local agencies that license, inspect, or otherwise conduct business with retailers, distributors, or wholesalers that sell tobacco.

22952. On or before July 1, 1995, the State Department of Public Health shall do all of the following:

(a) Establish and develop a program to reduce the availability of tobacco products to persons under 18 years of age through the enforcement activities authorized by this division.

(b) Establish requirements that retailers of tobacco products post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 18 years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under 18 years of age. The warning signs shall include a toll-free telephone number to the department for persons to report unlawful sales of tobacco products to minors.

(c) Provide that primary responsibility for enforcement of this division shall be with the department. In carrying out its enforcement responsibilities, the department shall conduct random, onsite sting inspections at retail sites and shall enlist the assistance of persons that are 15 and 16 years of age in conducting

these enforcement activities. The department may conduct onsite sting inspections in response to public complaints or at retail sites where violations have previously occurred, and investigate illegal sales of tobacco products to minors by telephone, mail, or the Internet. Participation in these enforcement activities by a person under 18 years of age does not constitute a violation of subdivision (b) of Section 308 of the Penal Code for the person under 18 years of age, and the person under 18 years of age is immune from prosecution thereunder, or under any other provision of law prohibiting the purchase of these products by a person under 18 years of age.

(d) In accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall adopt and publish guidelines for the use of persons under 18 years of age in inspections conducted pursuant to subdivision (c) that shall include, but not be limited to, all of the following:

(1) An enforcing agency may use persons under 18 years of age who are 15 or 16 years of age in random inspections to determine if sales of cigarettes or other tobacco products are being made to persons under 18 years of age.

(2) A photograph or video recording of the person under 18 years of age shall be taken prior to each inspection or shift of inspections and retained by the enforcing agency for purposes of verifying appearances.

(3) An enforcing agency may use video recording equipment when conducting the inspections to record and document illegal sales or attempted sales.

(4) The person under 18 years of age, if questioned about his or her age, need not state his or her actual age but shall present a true and correct identification if verbally asked to present it. Any failure on the part of the person under 18 years of age to provide true and correct identification, if verbally asked for it, shall be a defense to an action pursuant to this section.

(5) The person under 18 years of age shall be under the supervision of a regularly employed peace officer during the inspection.

(6) All persons under 18 years of age used in this manner by an enforcing agency shall display the appearance of a person under 18 years of age. It shall be a defense to an action under this division that the person's appearance was not that which could be generally expected of a person under 18 years of age, under the actual circumstances presented to the seller of the cigarettes or other tobacco products at the time of the alleged offense.

(7) Following the completion of the sale, the peace officer accompanying the person under 18 years of age shall reenter the retail establishment and shall inform the seller of the random inspection. Following an attempted sale, the enforcing agency shall notify the retail establishment of the inspection.

(8) Failure to comply with the procedures set forth in this subdivision shall be a defense to an action brought pursuant to this section.

(e) Be responsible for ensuring and reporting the state's compliance with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services. A copy of this report shall be made available to the Governor and the Legislature.

(f) Provide that any civil penalties imposed pursuant to Section 22958 shall be enforced against the owner or owners of the retail business and not the employees of the business.

22953. All moneys collected as civil penalties by the department and other state agencies pursuant to this division shall be deposited in the State Treasury to the credit of the Sale of Tobacco to Minors Control Account that is hereby established.

22954. Any cigarette or tobacco products distributor or wholesaler as defined in Sections 30011 and 30016 of the Revenue and Taxation Code, and licensed under Article 1 (commencing with Section 30140) of Chapter 3 of Part 13 of Division 2 of the Revenue and Taxation Code or Article 3 (commencing with Section 30155) of Chapter 3 of Part 13 of Division 2 of the Revenue and Taxation Code, and any cigarette vending machine operator granted a seller's permit under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), shall annually provide to the State Department of Health Services, the names and addresses of those persons to whom they provide tobacco products, including, but not limited to, dealers as defined in Section 30012 of the Revenue and Taxation Code, for the purpose of identifying retailers of tobacco to ensure compliance with this division.

Cigarette vending machine operators granted a seller's permit under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), shall annually provide to the department their name and the address of each location where cigarette vending machines are placed, in order to ensure compliance with this division.

The data provided, pursuant to this section, shall be deemed confidential official information by the department and shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

22955. Agents of the state department, while conducting enforcement activities pursuant to this division, are peace officers and are subject to all of the powers and immunities granted to Food and Drug Section inspectors pursuant to Section 106500 of the Health and Safety Code in the same manner as are any Food and Drug Section inspectors of the state department.

22956. All persons engaging in the retail sale of tobacco products shall check the identification of tobacco purchasers, to establish the age of the purchaser, if the purchaser reasonably appears to be under 18 years of age.

22957. (a) In addition to the primary enforcement responsibility

assumed by the department, another enforcing agency may conduct inspections and assess penalties for violations of this division if the enforcing agency complies with this division and with all applicable laws and guidelines developed pursuant to this division.

(b) State and local enforcement agencies are encouraged, in order to avoid duplication, to share the results of inspections and coordinate with the department when enforcing this division.

22958. (a) An enforcing agency may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years, any tobacco, cigarette, cigarette papers, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, according to the following schedule: (1) a civil penalty of from four hundred dollars (\$400) to six hundred dollars (\$600) for the first violation, (2) a civil penalty of from nine hundred dollars (\$900) to one thousand dollars (\$1,000) for the second violation within a five-year period, (3) a civil penalty of from one thousand two hundred dollars (\$1,200) to one thousand eight hundred dollars (\$1,800) for a third violation within a five-year period, (4) a civil penalty of from three thousand dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth violation within a five-year period, or (5) a civil penalty of from five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth or subsequent violation within a five-year period.

(b) The enforcing agency shall assess penalties in accordance with the schedule set forth in subdivision (a) against a person, firm, or corporation that sells, offers for sale, or distributes tobacco products from a cigarette or tobacco products vending machine, or a person, firm, or corporation that leases, furnishes, or services these machines in violation of Section 22960.

(c) An enforcing agency may assess civil penalties against a person, firm, or corporation that sells or deals in tobacco or any preparation thereof, and fails to post conspicuously and keep posted in the place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952. The civil penalty shall be in the amount of two hundred dollars (\$200) for the first offense and five hundred dollars (\$500) for each additional violation.

(d) An enforcing agency shall assess penalties in accordance with the schedule set forth in subdivision (a) against a person, firm, or corporation that advertises or causes to be advertised a tobacco product on an outdoor billboard in violation of Section 22961.

(e) If a civil penalty has been assessed pursuant to this section against a person, firm, or corporation for a single, specific violation of this division, the person, firm, or corporation shall not be prosecuted under Section 308 of the Penal Code for a violation based on the same facts or specific incident for which the civil penalty was assessed. If a person, firm, or corporation has been prosecuted for a single, specific violation of Section 308 of the Penal Code, the person, firm, or corporation shall not be assessed a civil penalty under this section based on the same facts or specific incident upon which the prosecution under Section 308 of the Penal Code was based.

(f) (1) In the case of a corporation or business with more than one retail location, to determine the number of accumulated violations for purposes of the penalty schedule set forth in subdivision (a), violations of this division by one retail location shall not be accumulated against other retail locations of that same corporation or business.

(2) In the case of a retail location that operates pursuant to a franchise as defined in Section 20001, violations of this division accumulated and assessed against a prior owner of a single franchise location shall not be accumulated against a new owner of the same single franchise location for purposes of the penalty schedule set forth in subdivision (a).

(g) Proceedings under this section shall be conducted in accordance with Section 100171 of the Health and Safety Code, except in cases where a civil penalty is assessed by an enforcing agency other than the department, in which case, proceedings shall be conducted in accordance with the procedures of that agency that are consistent with Section 22957.

22959. (a) The sum of two million dollars (\$2,000,000) shall be transferred annually from the portion of the federal Substance Abuse Prevention and Treatment block grant moneys allocated to the State Department of Alcohol and Drug Programs for administrative purposes related to substance abuse programs, to the Sale of Tobacco to Minors Control Account.

(b) Upon appropriation by the Legislature, moneys in the Sale of Tobacco to Minors Control Account shall be expended by the state department to administer and enforce this division.

22960. (a) Except as provided in subdivision (b), no cigarette or tobacco product shall be sold, offered for sale, or distributed from a vending machine or appliance, or any other coin or token operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

(b) (1) Commencing January 1, 1996, cigarette or tobacco product vending machines or appliances may be located at least 15 feet away from the entrance of a premise issued an on-sale public premises license as defined in Section 23039 by the Department of Alcoholic Beverage Control to sell alcoholic beverages.

(2) As used in this subdivision "at least 15 feet away from the entrance" means within the premises of the licensed establishment and not outside those premises.

(c) This section and subdivision (b) of Section 22958 set forth minimum state restrictions on the sale of cigarettes or tobacco products from vending machines or devices and do not preempt or otherwise prohibit the adoption of a local standard that further restricts access to and reduces the availability of cigarette or tobacco products from vending machines or devices or that imposes a complete ban on the sale of cigarettes or tobacco products from vending machines or devices. A local standard that further restricts or imposes a complete ban on the sale of cigarettes or tobacco products from vending machines or devices shall control in the event

of an inconsistency between this section and a local standard.

22961. (a) No person, firm, corporation, partnership, or other organization shall advertise or cause to be advertised any tobacco products on any outdoor billboard located within 1,000 feet of any public or private elementary school, junior high school, or high school, or public playground.

(b) This section sets forth minimum state restrictions on the advertisement of any tobacco products on outdoor billboards near schools and public playgrounds and does not preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive or complete ban on billboard advertising or on tobacco-related billboard advertising. A local standard that imposes a more restrictive or complete ban on billboard advertising or on tobacco-related billboard advertising shall control in the event of any inconsistency between this section and a local standard.

(c) This section shall not be construed to prohibit the display of a message or advertisement opposing the use of tobacco products. However, this subdivision shall not be construed to permit an advertisement promoting the use of tobacco products by including a message opposing the use of tobacco products within that advertisement.

22962. (a) For purposes of this section, the following terms have the following meanings:

(1) "Self-service display" means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.

(2) "Tobacco paraphernalia" means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the Penal Code, 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.

(3) "Tobacco product" means any product containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(4) "Tobacco store" means a retail business that meets all of the following requirements:

(A) Primarily sells tobacco products.

(B) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.

(C) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian, as defined in Section 6903 of the Family Code.

(D) Does not sell alcoholic beverages or food for consumption on the premises.

(b) (1) (A) Except as permitted in subdivision (b) of Section 22960, it is unlawful for a person engaged in the retail sale of tobacco products to sell, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by self-service display. A

person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(B) A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(2) It is unlawful for a person engaged in the retail sale of blunt wraps to place or maintain, or to 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.

(3) It is unlawful for any person or business to place or maintain, or cause to be placed or maintained, any blunt wrap advertising display that is less than four feet above the floor.

(c) Subdivision (b) shall not apply to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that in the case of cigars they are generally not sold or offered for sale in a sealed package of the manufacturer or importer containing less than six cigars. In any enforcement action brought pursuant to this division, the retail business that displays any of the items described in this subdivision in a self-service display shall have the burden of proving that it qualifies for the exemption established in this subdivision.

(d) The Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

(e) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco products, the greater restriction on the access to tobacco products in the local standard shall prevail.

22963. (a) The sale, distribution, or nonsale distribution of tobacco products directly or indirectly to any person under the age of 18 years through the United States Postal Service or through any other public or private postal or package delivery service at locations, including, but not limited to, public mailboxes and mailbox stores, is prohibited.

(b) Any person selling or distributing, or engaging in the nonsale distribution of, tobacco products directly to a consumer in the state through the United States Postal Service or by any other public or private postal or package delivery service, including orders placed by mail, telephone, facsimile transmission, or the Internet, shall comply with the following provisions:

(1) (A) Before enrolling a person as a customer, or distributing or selling, or engaging in the nonsale distribution of, the tobacco product through any of these means, the distributor or seller shall verify that the purchaser or recipient of the product is 18 years of age or older. The distributor or seller shall attempt to match the name, address, and date of birth provided by the customer to information contained in records in a database of individuals whose age has been verified to be 18 years or older by reference to an appropriate database of government records kept by the distributor, a direct marketing firm, or any other entity. In the case of a sale, the distributor or seller shall also verify that the billing address

on the check or credit card offered for payment by the purchaser matches the address listed in the database.

(B) If the seller, distributor, or nonsale distributor, is unable to verify that the purchaser or recipient is 18 years of age or older pursuant to subparagraph (A), he or she shall require the customer or recipient to submit an age-verification kit consisting of an attestation signed by the customer or recipient that he or she is 18 years of age or older and a copy of a valid form of government identification. For the purposes of this section, a valid form of government identification includes a driver's license, state identification card, passport, an official naturalization or immigration document, such as an alien registration receipt card (commonly known as a "green card") or an immigrant visa, or military identification. In the case of a sale, the distributor or seller shall also verify that the billing address on the check or credit card provided by the consumer matches the address listed in the form of government identification.

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

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

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

(c) Notwithstanding subdivisions (a) and (b), if a seller, distributor, or nonsale distributor, complies with all of the requirements of this section and a minor obtains a tobacco product by any of the means described in subdivision (b), the seller, distributor, or nonsale distributor is not in violation of this section.

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

(e) (1) (A) For the purposes of this section, a "distributor" is any person or entity, within or outside the state, who agrees to distribute tobacco products to a customer or recipient within the state. The United States Postal Service or any other public or

private postal or package delivery service are not distributors within the meaning of this section.

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

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

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

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

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

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

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

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

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

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