

**Introduced by Senators Hill, Glazer, McGuire, Pan, and Wiener
(Principal coauthor: Senator Durazo)**

(Principal coauthors: Assembly Members Bauer-Kahan, Berman, Bloom, Gonzalez, McCarty, Muratsuchi, Robert Rivas, and Wood)

(Coauthors: Senators Archuleta, Beall, Lena Gonzalez, Leyva, and Nielsen)

(Coauthors: Assembly Members Boerner Horvath, Bonta, Chiu, Levine, Mullin, O'Donnell, Petrie-Norris, Luz Rivas, Mark Stone, Ting, and Wicks)

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An act to add Article 5 (commencing with Section 104559.5) to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 793, as introduced, Hill. Flavored tobacco products.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, prohibits a person from selling or otherwise furnishing tobacco products, as defined, to a person under 21 years of age. Existing law also prohibits the use of tobacco products in county offices of education, on charter school or school district property, or near a playground or youth sports event, as specified.

This bill would prohibit a tobacco retailer from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product, as defined. The bill would make a violation of this prohibition an infraction punishable by a fine of \$250 for each violation. The bill would state the intent of the Legislature that these provisions not be construed to preempt or prohibit the adoption and implementation of local ordinances related to the prohibition on the sale of flavored

tobacco products. The bill would state that its provisions are severable. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 5 (commencing with Section 104559.5) is added to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, to read:

Article 5. Tobacco Sale Prohibition

104559.5. (a) For purposes of this section, the following definitions apply:

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

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

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

1 (4) “Labeling” means written, printed, pictorial, or graphic
2 matter upon a tobacco product or any of its packaging.

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

6 (6) “Retail location” means both of the following:

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

8 (B) A vending machine.

9 (7) “Sale” or “sold” means a sale as defined in Section 30006
10 of the Revenue and Taxation Code.

11 (8) “Tobacco product” means a tobacco product as defined in
12 paragraph (8) of subdivision (a) of Section 104495, as that
13 provision may be amended from time to time.

14 (9) “Tobacco retailer” means a person who engages in this state
15 in the sale of tobacco products directly to the public from a retail
16 location. “Tobacco retailer” includes a person who operates
17 vending machines from which tobacco products are sold in this
18 state.

19 (b) (1) A tobacco retailer, or any of the tobacco retailer’s agents
20 or employees, shall not sell, offer for sale, or possess with the
21 intent to sell or offer for sale, a flavored tobacco product.

22 (2) There shall be a rebuttable presumption that a tobacco
23 product is a flavored tobacco product if a manufacturer or any of
24 the manufacturer’s agents or employees, in the course of their
25 agency or employment, has made a statement or claim directed to
26 consumers or to the public that the tobacco product has or produces
27 a characterizing flavor, including, but not limited to, text, color,
28 images, or all, on the product’s labeling or packaging that are used
29 to explicitly or implicitly communicate that the tobacco product
30 has a characterizing flavor.

31 (c) A person who violates this section is guilty of an infraction
32 and shall be punished by a fine of two hundred fifty dollars (\$250)
33 for each violation of this section.

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

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

5 SEC. 3. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.