

City of Sacramento
State Legislature



BILL REFERRAL

DATE: 5/4/93 COMMITTEE ACTION: _____

TO: _____ DATE: _____

FROM: KENNETH EMANUELS, LEGISLATIVE ADVOCATE

REPLY NO LATER THAN: _____

A.B. 996 As Amended 4/22/93 * Author: Tucker

S.B. _____, As Amended _____ * Author: _____

*Date of introduction or latest amendment.

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact Ken Emanuels at 444-6789, FAX 444-0303 (1400 K Street, Suite 306, Sacramento, CA 95814). This questionnaire should be returned to the City Attorney's office for presentation to the Council Committee on Law and Legislation. PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.

NO RECOMMENDATION. If you think no Committee action on this bill should be taken, either because the bill is not of sufficient importance to the City or for any other reason, please mark here, do not fill out the rest of the form, and return this form to the City Attorney's Office. _____

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill (attach additional sheets if necessary).

This bill would enact statewide smoking regulations which are less restrictive than those in effect in the City of Sacramento. Although the bill would grandfather pre-existing local regulations, it would prevent future local ordinances which are more restrictive, and amendments strengthening those which now exist.

2. This measure should be: (Please circle desired position.)

Supported

Opposed

Supported if amended

Placed on Watch List

Other (explain)

3. Please explain your reasons for the above determination, including how this measure affects your Department and the fiscal impact of this measure on the City. Please make your comments in a format that can be used in a letter to State officials. (Continue on next page or attach additional sheets if necessary.)

This bill would allow smoking in workplace cafeterias, private offices, conference rooms, in factories, warehouse distribution facilities, bowling alley concourses, Bingo facilities, and 30-50% of the area in restaurants.

This bill would put into state law regulations which force adults and children to be exposed to environmental tobacco smoke in many public places and workplaces. An American Lung Association of California "Action Alert," attached hereto, provides additional information.

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

Oppose legislation which will reduce the options, methods, alternatives and flexibility available of the City in dealing with problems, issues and policies of local government.

5. If this measure could be amended to either improve its favorable aspects or to minimize its adverse aspects, which amendments would you propose?

Would need complete revision.

6. List known support or opposition to this measure by groups with which you are familiar and include addresses and phone numbers, if known. League of California Cities position:

Opponents: American Heart Association, American Lung Association, American Heart Association, Americans for Non-Smokers' Rights.

7. Does this bill involve a State-mandated local program? If so, does the bill contain a State-mandated waiver, or an appropriation for allocation and disbursement to local agencies pursuant to Revenue and Taxation Code Section 2231?

N/A

8. Using a rating scale of 1 to 10 (with 10 as the most important), how important do you think this bill is to the City of Sacramento? 7

FORM COMPLETED BY: Diane Balter, Deputy City Attorney ^{dbb} DATE: 5/12/93

RECOMMENDATION APPROVED: David R. Martinez ^{5/13/93}
DAVID MARTINEZ, Deputy City Manager



CAPITOL CORRESPONDENCE

**ACTION
ALERT**

Government Relations Office: Anthony Najera, Director • (916) 442-4446
1010 11th Street, Suite 208 • Sacramento, CA 95814 • (916) 442-8585 Fax

April 22, 1993.

ACTION ALERT #3-93

TO: ALAC AFFILIATE EXECUTIVES WITH MEMBERS ON THE
ASSEMBLY GOVERNMENTAL ORGANIZATION COMMITTEE
AND OTHER INTERESTED PARTIES

FROM: ALAC GOVERNMENT RELATIONS OFFICE

SUBJECT: AB 996 (Tucker) - ACTIVE OPPOSE

This sweepingly dangerous tobacco industry backed bill preempts all future local ordinances regulating smoking, distribution, sale, advertising or sampling of tobacco products. AB 996 prevents any future efforts to improve tobacco controls by declaring that current laws may never be strengthened, and no new laws may be passed at the local level after April 1, 1993. Meantime, AB 996 permanently establishes state tobacco controls at levels common twenty years ago! AB 996 must be stopped now!!!

**ACTION
REQUESTED:**

YOUR IMMEDIATE HELP IS URGENTLY NEEDED BEFORE APRIL 27 TO KILL AB 996 WHEN IT IS HEARD IN THE GOVERNMENTAL ORGANIZATION COMMITTEE. AB 996 WILL BE HEARD BY THE COMMITTEE TUESDAY, APRIL 27.

Specific Steps:

- * Inundate your representative's district offices with calls urging they oppose AB 996;
- * Mobilize staff/volunteers to visit the district office, preferably on Friday, April 23, to urge opposition to AB 996;
- * Generate as many public opinion messages, as possible before April 27.
(Western Union, 1-800-325-6000.)

**THANK YOU FOR HELPING TO SQUELCH THE MOST DANGEROUS
TOBACCO INDUSTRY WEAPON CURRENTLY IN THE LEGISLATURE!**

**Please refer to the attached fact sheet for your oppose arguments
when you contact your representative on the Governmental
Organization Committee.**

MORE...

PUBLIC POLICY BRIEF

AB 996 (Tucker) - REGULATES SMOKING, SALE, DISTRIBUTION, SAMPLING, ADVERTISING OR PROMOTION OF TOBACCO PRODUCTS. AB 996 ESTABLISHES MUCH WEAKER STATEWIDE REGULATIONS THAN ARE THE CURRENT TREND IN LOCAL ORDINANCES, AND PREVENTS LOCAL COMMUNITIES FROM IMPROVING CURRENT LOCAL ORDINANCES OR ADOPTING STRONGER NEW ONES.

BACKGROUND: The history of adopting local ordinances to control tobacco use, sales, advertising and distribution in the State of California dates back over twenty years. In contrast, very few state laws for such controls have been passed. Since passage of Proposition 99 we have seen hundreds of strong local ordinances pass that are setting a precedent for tobacco controls. Approximately twenty-five of these ordinances call for totally smoke free workplaces and many totally prohibit vending machines.

Some local ordinances, such as in Sacramento and El Dorado counties, have even been strongly voted in by the voters. It must be clear by now to the tobacco industry that they are losing the battle in California. AB 996 is an obvious move on their part to reverse this trend and to set statewide standards that take us back twenty years.

AB 996 is a direct attempt by the tobacco industry to counter a bill, AB 13 (T. Friedman), that was introduced this legislative session, and which would create totally smoke free workplaces throughout the State of California. The Friedman bill would cover all enclosed workplaces, including bars and public workplaces. AB 996, on the other hand, establishes weak and uneven workplace provisions and is full of loopholes.

SPECIFIC PROVISIONS OF AB 996:

- * exempts from regulation restaurants of 50 seats or less.
- * allows 30% smoking in restaurants with over 50 seats.
- * exempts bars and industrial worksites from regulation.
- * exempts workplaces with fewer than 15 full time employees.
- * exempts bingo parlors, hotel rooms and hotel events, private boxes at arenas, indoor exhibits.
- * allows smoking at 25% of concourse and seating areas of indoor arenas, bowling alleys, public areas of office buildings, hotels, and shopping malls.
- * permits smoking in private offices of all workplaces, and allows employers discretion for smoking in conference rooms, lecture rooms, break rooms if ventilation standards are set.

- * where smoking is allowed sets ventilation standards (ASHRAE) supported by the tobacco industry, and which treat smoking as a nuisance rather than a health hazard.
- * repeals smoking restrictions currently in the Health and Safety Code.
- * preempts nonsmokers claims for workers' compensation or related lawsuits.
- * allows selective use of tobacco vending machines and tobacco billboards.
- * raises tobacco excise taxes by the equivalent of 15 cents per pack of 20 cigarettes over a three year period.

RECOMMENDATION: ACTIVE OPPOSE

AMENDED IN ASSEMBLY APRIL 22, 1993

AMENDED IN ASSEMBLY APRIL 19, 1993

AMENDED IN ASSEMBLY APRIL 14, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL

No. 996

Introduced by Assembly Member Tucker

March 1, 1993

An act to add Division 10 (commencing with Section 25800) to the Business and Professions Code, to repeal Chapter 10.8 (commencing with Section 25940) of Division 20 of the Health and Safety Code, to amend Section 308 of the Penal Code, and to amend Section 30101 of the Revenue and Taxation Code, relating to tobacco, to take effect immediately as a tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 996, as amended, Tucker. Tobacco.

(1) Existing law, the California Indoor Clean Air Act of 1976, regulates smoking in public places. *Existing law authorizes a local governing body to ban the smoking of tobacco completely or to regulate smoking in any manner not inconsistent with the act.*

This bill would repeal that act. The bill would prohibit smoking in a public place, as defined, a restaurant, as defined, and a workplace, as defined, except as specified. The bill would regulate smoking on public carriers, as described. The bill would require certain signs to be posted and would prohibit these restrictions from affecting the rights of employees under any collective bargaining agreement. *The bill would establish who bears liability for selling or furnishing tobacco products to minors by a tobacco vending machine and would prohibit the sale of tobacco products at retail*

through a vending machine, except as prescribed. The bill would prohibit a person from advertising, or causing to be advertised, tobacco products, on any outdoor billboard located within 500 feet of any public or private elementary school, junior high school, or high school, with certain exceptions.

The bill would require these provisions to apply to a city, county, and city and county, including a charter city, charter county, and charter city and county, and would prohibit any local ordinance or regulation from attempting to regulate the sale, distribution, advertising, sampling, promotion, or display of tobacco products, smoking in public places, restaurants, bars, or ~~smoking in~~ workplaces, or take any action with respect to an employee or a prospective employee based on use or nonuse of tobacco.

Notwithstanding that provision, the bill would not supersede any prohibition or limitation, in effect on April 1, 1993, imposed by an otherwise valid local ordinance or regulation, unless the prohibition or limitation is less restrictive than the corresponding prohibition or limitation imposed by these provisions.

The bill would provide that violation of these provisions is an infraction. By creating a new crime, the bill would impose a state-mandated local program.

The bill would provide that these provisions exclusively define the legal duties of a person in charge of a public place, restaurant, bar, or workplace, and the legal rights of all other persons with respect to smoking in that public place, restaurant, bar, or workplace.

The bill would establish a presumption of having satisfied any applicable legal duty with respect to indoor air quality for employees or customers of a restaurant, bar, or workplace, if the owner of the restaurant, bar, or workplace provides ventilation in accordance with prescribed standards, except as specified.

(2) Existing law provides that every person, firm, or corporation that knowingly sells, gives, or in any way furnishes to another person under 18 years of age any tobacco, or other prescribed related materials, is subject to either a criminal action for a misdemeanor or to a civil action. Existing

Law sets forth various related fines.

This bill would increase the fines.

The bill would delete the provision that establishes who bears liability for selling or furnishing tobacco products to minors by a tobacco vending machine.

The bill would require the posting of prescribed signs.

The bill would require every person, firm, or corporation that sells or deals in tobacco, or any preparation thereof, to notify, in a prescribed manner, each individual employed as a retail sales clerk, that state law prohibits the sale of tobacco products to, and the purchase of tobacco products by, any person under 18 years of age. The bill would impose a specified fine for failure to comply.

The bill would delete the exception that authorizes the Director of Corrections, under certain circumstances to sell or supply tobacco and tobacco products to confined persons.

The bill would require the Attorney General, acting through county sheriffs, to conduct random, unannounced inspections to ensure compliance with these provisions.

The bill would require a fine imposed on a person for a first violation of these provisions to be suspended if the person clearly establishes that he or she acted in good faith to prevent the violation and that the violation occurred despite the person's exercise of due diligence.

The bill would require these provisions to apply to a city, county, and city and county, including a charter city, charter county, and charter city and county, and would prohibit any local ordinance or regulation from attempting to regulate the sale, distribution, advertising, sampling, promotion, or display of tobacco products, smoking in public places, restaurants, bars, or workplaces, or take any action with respect to an employee or a prospective employee based on use or nonuse of tobacco.

Notwithstanding that provision, the bill would not supersede any prohibition or limitation, in effect on April 1, 1993, imposed by an otherwise valid local ordinance or regulation, unless the prohibition or limitation is less restrictive than the corresponding prohibition or limitation imposed by these provisions.

(3) The existing Cigarette and Tobacco Products Tax Law

imposes a tax rate of 5 mills on every distributor for the distribution of each cigarette and also imposes a cigarette and tobacco products surtax at a tax rate of 12½ mills per cigarette and at a rate for tobacco products equivalent to 17½ mills per cigarette.

This bill would increase the tax on cigarettes by 2½ mills per cigarette or 5¢ per package of 20 cigarettes for distributions on the first day of the first calendar month commencing more than 30 days after the effective date of this bill until January 1, 1994. From January 1, 1994, the bill would increase the tax on cigarettes by 5 mills per cigarette or 10¢ per package of 10 cigarettes until July 1, 1994. From July 1, 1994, the bill would increase the tax on cigarettes by 7½ mills per cigarette or 15¢ per package of 20 cigarette.

The bill would require these provisions to apply to a city, county, and city and county, including a charter city, charter county, and charter city and county, and would prohibit any local ordinance or regulation from attempting to regulate the sale, distribution, advertising, sampling, promotion, or display of tobacco products, smoking in public places, restaurants, bars, or workplaces, or take any action with respect to an employee or a prospective employee based on use or nonuse of tobacco.

Notwithstanding that provision, the bill would not supersede any prohibition or limitation, in effect on April 1, 1993, imposed by an otherwise valid local ordinance or regulation, unless the prohibition or limitation is less restrictive than the corresponding prohibition or limitation imposed by these provisions.

(4) 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.

(5) The bill would provide that the provisions of the bill are severable.

Vote: ⅔. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Division 10 (commencing with Section
2 25800) is added to the Business and Professions Code, to
3 read:

4
5 DIVISION 10. REGULATION OF SMOKING

6
7 CHAPTER 1. GENERAL PROVISIONS

8
9 25800. The Legislature finds and declares all of the
10 following:

11 (a) The need for uniform statewide regulation, as set
12 forth in this division, is a matter of statewide concern and
13 uniform statewide regulation is required to maximize
14 public awareness of and compliance with this division
15 and is warranted because the activities regulated by this
16 division do not vary from county to county or city to city.

17 (b) Uniform statewide regulation, as set forth in this
18 division, guarantees that all persons engaging in the same
19 activities are subject to the same rules throughout the
20 state, and ensures that businesses in a city or county will
21 enjoy no unfair competitive or other advantages with
22 respect to the activities covered by this division.

23 25801. (a) This division shall apply, without
24 limitation, to a city, county, and city and county,
25 including a charter city, charter county, or charter city
26 and county, and it is the Legislature's intent to regulate
27 the subject matter of this division comprehensively and
28 to occupy the field to the exclusion of local action.
29 Notwithstanding any other provision of law, no ordinance
30 or regulation of any city, county, city and county,
31 including a charter city or county, or other political
32 subdivision of this state, or any local ordinance or
33 regulation adopted by the use of an initiative measure,
34 shall prohibit or in any way attempt to regulate the sale,
35 distribution, advertising, sampling, promotion, or display
36 of tobacco products, smoking in public places, or smoking
37 in workplaces, or take any action with respect to an
38 employee or a prospective employee based on use or

1 nonuse of tobacco.

2 (b) Notwithstanding subdivision (a), this division shall
3 not supersede any prohibition or limitation, as in effect on
4 April 1, 1993, imposed by an otherwise valid local
5 ordinance or regulation, unless the prohibition or
6 limitation is less restrictive than the corresponding
7 prohibition or limitation imposed by this division.

8 25803.

9 25800. For purposes of this division, the following
10 definitions shall apply:

11 (a) "Bar" means an area that is devoted to the service
12 of alcoholic beverages for consumption on the premises
13 and in which the serving of food, if any, is incidental to
14 the consumption of alcoholic beverages. When a bar is
15 located within a building in conjunction with another use,
16 including, but not limited to, a restaurant, only the area
17 used primarily for the consumption of alcoholic
18 beverages shall constitute a bar. The dining area shall not
19 constitute a bar, even though alcoholic beverages may be
20 served therein.

21 (b) "Industrial facility" means any factory, warehouse,
22 or distribution facility.

23 (c) "Public place" means any enclosed indoor area
24 open to the general public including, but not limited to,
25 a theater, educational facility, health facility, unless
26 prescribed by a physician and surgeon, retail services
27 establishment, retail food production and market
28 establishment, gymnasium, health spa, library, museum,
29 and gallery. "Public place" does not include a workplace,
30 restaurant, or bar.

31 (d) "Restaurant" means any place designated as a
32 restaurant by Section 28522 of the Health and Safety
33 Code.

34 (e) "Workplace" means any enclosed indoor area in
35 which two or more individuals are employed on a
36 full-time basis and to which the general public does not
37 have access, except by specific invitation, including an
38 industrial facility.

CHAPTER 2. PUBLIC PLACES

1
2
3 25806. Except as otherwise provided in this chapter,
4 smoking is prohibited in any public place on and after
5 January 1, 1994.

6 25808. Smoking ~~is~~ *may be* permitted in up to 25
7 percent of the concourse and seating areas of indoor
8 arenas, the concourse area of any bowling alley, ~~or~~ *and*
9 the public areas of office buildings, hotels, motels, and
10 shopping malls.

11 25810. The prohibition of Section 25806 shall not
12 apply to any of the following places:

13 (a) Private residences, except when used as a child
14 day care facility or health facility.

15 (b) Hotel and motel rooms rented to guests, unless
16 they are designated nonsmoking rooms.

17 (c) Establishments devoted primarily to the retail sale
18 of tobacco products, *or operations of a manufacturer of*
19 *tobacco products.*

20 (d) Hotel and motel conference or meeting rooms,
21 and public and private assembly rooms, while these
22 places are being used for private functions.

23 (e) Gaming clubs registered pursuant to Chapter 5
24 (commencing with Section 19800) of Division 8, facilities
25 used to conduct bingo games pursuant to Section 326.5 of
26 the Penal Code, private boxes in indoor sports arenas, and
27 indoor areas of facilities used for animal or automotive
28 contests or exhibitions, when these events are being held.

29 25811. Nothing in this chapter shall be construed to
30 prevent the owner of any public place from prohibiting
31 smoking entirely on any premises under his or her
32 control.

33
34 CHAPTER 3. RESTAURANTS

35
36 25812. Except as otherwise provided in this chapter,
37 smoking is prohibited in any restaurant on and after
38 January 1, 1994.

39 25814. (a) The prohibition of Section 25812 shall not
40 apply to any restaurant having a seating capacity of 50 or

1 fewer.

2 (b) (1) On or before July 1, 1994, Section 25812 shall
3 not apply to any restaurant in which smoking is confined
4 to a single contiguous area not exceeding 30 percent of
5 the service area.

6 (2) After July 1, 1994, the prohibition of Section 25812
7 shall not apply to any restaurant to which both of the
8 following apply:

9 (A) Smoking is confined to a single contiguous area
10 not exceeding 30 percent of the service area.

11 (B) Ventilation is provided in accordance with the
12 recommended ventilation rates specified for dining
13 rooms and cafeterias in Table 2 of ASHRAE Standard
14 62-1989 (Ventilation for Acceptable Indoor Air Quality)
15 or in accordance with the requirements of the indoor air
16 quality procedure described in ASHRAE Standard
17 62-1989. If a restaurant elects to provide ventilation in
18 accordance with the recommended ventilation rate for
19 purposes of this subparagraph, the restaurant shall keep
20 on the premises a current written certification, provided
21 by the contractor who maintains the ventilation system,
22 that the system is operated at the specified rate.

23 (c) Any restaurant permitting smoking shall post a
24 sign on the exterior of the building at each point of public
25 entrance stating that smoking is allowed in the
26 restaurant.

27 25816. The prohibition of Section 25812 shall not
28 apply to rooms in restaurants being used for private
29 functions.

30 25818. Nothing in this chapter shall be construed to
31 prevent the owner of any restaurant ~~or bar~~ from
32 prohibiting smoking entirely on any premises under his
33 or her control.

34
35 CHAPTER 4. WORKPLACES
36

37 25820. Except as otherwise provided in this chapter,
38 smoking is prohibited in any workplace on and after
39 January 1, 1994.

40 25822. (a) The prohibition of Section 25820 shall not

1 apply to any workplace in which 15 or fewer people are
2 employed on a full-time basis.

3 (b) (1) On or before July 1, 1994, the prohibition of
4 Section 25820 shall not apply to any workplace.

5 (2) After July 1, 1994, the prohibition of Section 25820
6 shall not apply to any workplace that is any of the
7 following:

8 (A) Any private office, conference room, or lecture
9 room if ventilation is provided to that office or room in
10 accordance with the recommended ventilation rates
11 specified for offices in Table 2 of ASHRAE Standard
12 62-1989 (Ventilation for Acceptable Indoor Air Quality)
13 or in accordance with the requirements of the indoor air
14 quality procedure described in ASHRAE Standard
15 62-1989.

16 (B) Any employee cafeteria where smoking is
17 confined to a single area not exceeding 25 percent of the
18 seating capacity of the cafeteria, and ventilation is
19 provided in accordance with the recommended
20 ventilation rates specified for dining rooms and cafeterias
21 in Table 2 of ASHRAE Standard 62-1989 (Ventilation for
22 Acceptable Indoor Air Quality) or in accordance with the
23 requirements of the indoor air quality procedure
24 described in ASHRAE Standard 62-1989.

25 (C) Designated smoking lounges if ventilation is
26 provided in accordance with the recommended
27 ventilation rates specified for smoking lounges in Table 2
28 of ASHRAE Stand 62-1989 (Ventilation for Acceptable
29 Indoor Air Quality) or in accordance with the
30 requirements of the indoor air quality procedure
31 described in ASHRAE Standard 62-1989.

32 (3) If an employer elects to provide ventilation in
33 accordance with the recommended ventilation rate for
34 purposes of paragraph (2), the employer shall keep on
35 the premises a current written certification, provided by
36 the contractor who maintains the ventilation system, that
37 the system is operated at the specified rate.

38 25824. Notwithstanding Section 25820, smoking is
39 permitted in company vehicles with the consent of all
40 those present in the vehicle.

1 25826. The prohibition against smoking in the
2 workplace set forth in Section 25820 shall not apply to any
3 industrial facility.

4 25828. Nothing in this chapter shall be construed to
5 prevent the owner of any ~~business or place of~~
6 ~~employment workplace~~ from prohibiting smoking
7 entirely on any premises under his or her control,
8 including any industrial facility.

9

10 CHAPTER 5. PUBLIC CARRIERS

11

12 25830. It is unlawful for any person to smoke tobacco
13 or any plant product in any vehicle of a passenger stage
14 corporation, the National Railroad Passenger
15 Corporation (Amtrak) except to the extent permitted by
16 federal law, in any aircraft except to the extent permitted
17 by federal law, on a public transportation system, as
18 defined in Section 99211 of the Public Utilities Code, or
19 in any vehicle of an entity receiving any transit assistance
20 from the state.

21 25832. A notice prohibiting smoking, displayed as a
22 symbol and in English, shall be posted in each vehicle or
23 aircraft subject to Section 25830.

24 25834. (a) Every person and public agency providing
25 transportation services for compensation, including, but
26 not limited to, the National Railroad Passenger
27 Corporation (Amtrak) to the extent permitted by federal
28 law, passenger stage corporations, and local agencies that
29 own or operate airports, shall designate and post, by signs
30 of sufficient number and in locations that may be readily
31 seen by persons within the area, a contiguous area of not
32 less than 75 percent of any area made available by the
33 person or public agency as a waiting room for these
34 passengers where the smoking of tobacco is prohibited.
35 Not more than 25 percent of any given area shall be set
36 aside for smokers.

37 (b) Every person or public agency subject to
38 subdivision (a) shall also post, by signs of sufficient
39 number, and in locations as to be readily seen by persons
40 within the area of any building where tickets, tokens, or

1 other evidences that a fare has been paid for
2 transportation services that are provided by the person or
3 public agency, a notice that the smoking of tobacco by
4 persons waiting in line to purchase the tickets, tokens, or
5 other evidences that a fare has been paid is prohibited.
6 (c) It is unlawful for any person to smoke in an area
7 posted pursuant to this section.
8

9 CHAPTER 6. SIGNS

10
11 25836. Smoking and nonsmoking areas designated
12 pursuant to this division shall be clearly indicated by the
13 posting of signs. Existing physical barriers and ventilation
14 systems shall be used, to the extent practicable, to
15 minimize the drifting of smoke from smoking to
16 nonsmoking areas.
17

18 CHAPTER 7. COLLECTIVE BARGAINING AGREEMENTS

19
20 25838. Nothing in this division shall affect the rights of
21 employees under any collective bargaining agreement.
22

23 CHAPTER 8. VIOLATIONS VENDING MACHINES

24
25 25840. *For purposes of this section, the person liable*
26 *for selling or furnishing tobacco products to minors by a*
27 *tobacco vending machine shall be the person authorizing*
28 *the installation or placement of the tobacco vending*
29 *machine upon premises he or she manages or otherwise*
30 *controls and under circumstances in which he or she has*
31 *knowledge, or should otherwise have grounds for*
32 *knowledge, that the tobacco vending machine will be*
33 *utilized by minors.*

34 25842. Tobacco products shall not be sold at retail
35 through a vending machine unless the vending machine
36 is located in one of the following areas:

37 (a) In an area of a factory, business, office, or other
38 place that is not open to the general public.

39 (b) On any public premises, as defined in Section
40 23039, to which persons under the age of 21 years are

1 denied access pursuant to Section 25665.

2 (c) On other premises to which persons under the age
3 of 18 years are not permitted access.

4 (d) In any other place, but only if the machine can be
5 operated only by the activation of an electronic switch by
6 the licensee, or by an employee of the licensee, prior to
7 each purchase.

8

9 CHAPTER 9. BILLBOARDS

10

11 25844. No person shall advertise or cause to be
12 advertised tobacco products on any outdoor billboard
13 located within 500 feet of any public or private
14 elementary school, junior high school, or high school. This
15 prohibition shall not apply to advertisements erected or
16 maintained at street level and affixed to business
17 establishments selling tobacco products over the counter
18 at retail.

19

20 CHAPTER 10. VIOLATIONS

21

22 25850. Every person who smokes in violation of this
23 division and every person in charge of a place where
24 smoking is prohibited by this ~~chapter~~ division who
25 knowingly permits smoking in violation of this ~~chapter~~
26 division, and every person who fails to post a sign
27 required by this ~~chapter~~ division, shall be guilty of an
28 infraction punishable by a fine not to exceed one hundred
29 dollars (\$100) for a first violation, by a fine not to exceed
30 two hundred dollars (\$200) for a second violation within
31 one year, or by a fine not to exceed five hundred dollars
32 (\$500) for a third and for each subsequent violation
33 within one year.

34 ~~25842.~~

35 25852. This division exclusively defines the legal duties
36 of a person in charge of a public place, restaurant, bar,
37 or workplace, and the legal rights of all other persons,
38 with respect to smoking in that public place, restaurant,
39 bar, or workplace. No claim shall be asserted and no
40 action shall be brought against any person for smoking or

1 permitting smoking in accordance with this division.

2 ~~25844. An owner of a restaurant or workplace who~~

3 25854. An owner of a restaurant, bar, or workplace
4 who provides ventilation for the facility in accordance
5 with the ventilation rates specified for the facility in
6 ASHRAE Standard 62-1989 or in accordance with the
7 requirements of the indoor air quality procedure
8 described in ASHRAE Standard 62-1989 shall be
9 presumed to have satisfied any applicable legal duty with
10 respect to indoor air quality for employees or customers
11 of the restaurant, bar, or workplace. The presumption
12 shall not be deemed to supersede any occupational safety
13 and health standard adopted by the Occupational Safety
14 ~~of and~~ Health Administration pursuant to Section 6(B) of,
15 or a standard promulgated by the Division of
16 Occupational Health Safety under its authority and
17 approved by federal administration in accordance with
18 Section 18(c) (2) of, the federal Occupational Safety and
19 Health Act of 1970 (29 U.S.C. 651 et seq.).

20 SEC. 2. Chapter 10.8 (commencing with Section
21 25940) of Division 20 of the Health and Safety Code is
22 repealed.

23 SEC. 3. Section 308 of the Penal Code is amended to
24 read:

25 308. (a) Every person, firm or corporation that
26 knowingly sells, gives, or in any way furnishes to another
27 person who is under the age of 18 years any tobacco,
28 cigarette, or cigarette papers, or any other preparation of
29 tobacco, or any other instrument or paraphernalia that is
30 designed for the smoking or ingestion of tobacco,
31 products prepared from tobacco, or any controlled
32 substance, is subject to either a criminal action for a
33 misdemeanor or to a civil action brought by a city
34 attorney, a county counsel, or a district attorney,
35 punishable by a fine of five hundred dollars (\$500) for the
36 first offense, one thousand dollars (\$1,000) for the second
37 offense, and two thousand dollars (\$2,000) for the third
38 offense.

39 Notwithstanding Section 1464 or any other provision of
40 law, 25 percent of each civil and criminal penalty

1 collected pursuant to this subdivision shall be paid to the
2 office of the city attorney, county counsel, or district
3 attorney, whoever is responsible for bringing the
4 successful action, and 25 percent of each civil and
5 criminal penalty collected pursuant to this subdivision
6 shall be paid to the city or county for the administration,
7 and cost of the community service work component
8 provided in subdivision ~~(e)~~ (b).

9 Proof that a defendant, or his or her employee or agent,
10 demanded, was shown, and reasonably relied upon
11 evidence of majority shall be a defense to any action
12 brought pursuant to this subdivision. Evidence of
13 majority of a person is a facsimile of or a reasonable
14 likeness of a document issued by a federal, state, county,
15 or municipal government, or subdivision or agency
16 thereof, including, but not limited to, a motor vehicle
17 operator's license, a registration certificate issued under
18 the Federal Selective Service Act, or an identification
19 card issued to a member of the armed forces.

20 ~~(b) (1)~~ For purposes of this section, the person liable
21 for selling or furnishing tobacco products to minors by a
22 tobacco vending machine shall be the person authorizing
23 the installation or placement of the tobacco vending
24 machine upon premises he or she manages or otherwise
25 controls and under circumstances in which he or she has
26 knowledge, or should otherwise have grounds for
27 knowledge, that the tobacco vending machine will be
28 utilized by minors.

29 ~~(2)~~ Tobacco products shall not be sold at retail through
30 a vending machine unless the vending machine is located
31 in one of the following areas:

32 ~~(A)~~ In an area of a factory, business, office, or other
33 place that is not open to the general public.

34 ~~(B)~~ On any public premises, as defined in Section
35 23039 of the Business and Professions Code, to which
36 persons under the age of 21 years are denied access
37 pursuant to Section 25665 of the Business and Professions
38 Code.

39 ~~(C)~~ On other premises to which persons under the age
40 of 18 years are not permitted access.

1 ~~(D)~~ In any other place, but only if the machine can be
2 operated only by the activation of an electronic switch by
3 the licensee, or by an employee of the licensee, prior to
4 each purchase.

5 ~~(e)~~

6 (b) Every person under the age of 18 years who
7 purchases or receives any tobacco, cigarette, or cigarette
8 papers, or any other preparation of tobacco, or any other
9 instrument or paraphernalia that is designed for the
10 smoking of tobacco, products prepared from tobacco, or
11 any controlled substance shall, upon conviction, be
12 punished by a fine of five hundred dollars (\$500) or 100
13 hours of community service work.

14 ~~(d)~~

15 (c) Every person, firm, or corporation that sells, or
16 deals in tobacco or any preparation thereof, shall post
17 conspicuously and keep so posted in his, her, or their
18 place of business, at each point of purchase within the
19 premises, a sign, no smaller than 8½ by 11 inches, stating
20 the following:

21 NOTICE—SECTION 308 OF THE PENAL CODE
22 PROHIBITS THE SALE OF TOBACCO PRODUCTS
23 TO PERSONS UNDER 18 YEARS OF AGE AND THE
24 PURCHASE OF TOBACCO PRODUCTS BY
25 PERSONS UNDER 18 YEARS OF AGE.

26 Any person failing to do so shall upon conviction be
27 punished by a fine of one hundred dollars (\$100) for the
28 first offense and two hundred dollars (\$200) for each
29 succeeding violation of this provision, or by
30 imprisonment for not more than 30 days.

31 The Secretary of State is hereby authorized to have
32 printed sufficient copies of this sign to enable him or her
33 to furnish dealers in tobacco with copies thereof upon
34 their request for the same. Notwithstanding paragraph
35 (2) of subdivision (a) of Section 30462 of the Revenue and
36 Taxation Code, the cost of printing and furnishing the
37 signs shall be paid from the Cigarette and Tobacco
38 Products Surtax Fund.

39 ~~(e)~~

40 (d) Every person, firm, or corporation that sells, or

1 deals in tobacco or any preparation thereof, shall notify
2 each individual employed by the person, firm, or
3 corporation as a retail sales clerk that state law prohibits
4 the sale of tobacco products to any person under 18 years
5 of age and the purchase of tobacco products by any
6 person under 18 years of age. This notice shall be
7 provided before the individual commences work as a
8 retail sales clerk, or, in the case of an individual employed
9 as a retail sales clerk on the date when this subdivision
10 becomes operative, within 30 days of that date. The
11 individual shall signify that he or she has received the
12 notice required by this subdivision by signing a form
13 stating as follows: "I understand that state law prohibits
14 the sale of tobacco products to persons under the age of
15 18 and the purchase of tobacco products by persons under
16 the age of 18. I promise, as a condition of my employment,
17 to observe this law." Each form signed by an individual
18 shall indicate the date of signature. The employer shall
19 retain the form signed by each individual employed as a
20 retail sales clerk until 120 days after the individual has left
21 the employer's employ. Any employer failing to comply
22 with the requirements of this subdivision with respect to
23 any employee shall upon conviction be punished by a fine
24 of one hundred dollars (\$100) for the first offense and two
25 hundred dollars (\$200) for each succeeding violation of
26 this ~~provision~~ subdivision, or by imprisonment for not
27 more than 30 days.

28 ~~(f) No person shall advertise or cause to be advertised~~
29 ~~tobacco products on any outdoor billboard located within~~
30 ~~500 feet of any public or private elementary school, junior~~
31 ~~high school, or high school. This prohibition shall not~~
32 ~~apply to advertisements erected or maintained at street~~
33 ~~level and affixed to business establishments selling~~
34 ~~tobacco products over the counter at retail.~~

35 ~~(g)~~
36 (e) For purposes of determining the liability of
37 persons, firms, or corporations controlling franchises or
38 business operations in multiple locations for the second
39 and subsequent violations of this section, each individual
40 franchise or business location shall be deemed a separate

1 entity.
 2 ~~(h)~~
 3 (f) The Attorney General, acting through the sheriffs
 4 of the several counties of the state pursuant to Section
 5 12560 of the Government Code, shall annually conduct
 6 random, unannounced inspections at locations where
 7 tobacco products are sold or distributed to ensure
 8 compliance with this section. Persons under 18 years of
 9 age may be enlisted by the sheriffs, or employees thereof,
 10 to test compliance with subdivision (a) except that
 11 persons under 18 years of age may be used to test
 12 compliance with subdivision (a) only if the testing is
 13 conducted under the direct supervision of a sheriff, or
 14 employees thereof, and written parental consent has
 15 been provided. Any other use of persons under 18 years
 16 of age to test compliance with subdivision (a) or any
 17 other prohibition of like or similar import shall be
 18 unlawful and the person or persons responsible for the
 19 use shall be subject to the penalties prescribed in
 20 subdivision (a). The Attorney General shall prepare for
 21 submission annually to the Secretary of the United States
 22 Department of Health and Human Services the report
 23 required by Section 1926 of Subpart I of Part B of Title
 24 XIX of the federal Public Health Service Act (42 U.S.C.
 25 Sec. 300x-26).

26 ~~(i)~~
 27 (g) A fine imposed on a person for a first violation of
 28 this section shall be suspended if the person clearly
 29 establishes that he or she acted in good faith to prevent
 30 the violation and that the violation occurred despite the
 31 person's exercise of due diligence.

32 SEC. 4. Section 30101 of the Revenue and Taxation
 33 Code is amended to read:

34 30101. (a) Every distributor shall pay a tax upon his or
 35 her distributions of cigarettes at the rate of one and
 36 one-half mills (\$0.0015) for the distribution after 4 o'clock
 37 a.m. on July 1, 1959, of each cigarette until 12:01 o'clock
 38 a.m. on August 1, 1967, at the rate of three and one-half
 39 mills (\$0.0035) for the distribution of each cigarette on
 40 and after August 1, 1967, until 12:01 o'clock a.m. on

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1 October 1, 1967, at the rate of five mills (\$0.005) for the
2 distribution of each cigarette on and after 12:01 o'clock
3 a.m. on October 1, 1967, until 12:01 a.m. on the operative
4 date specified in subdivision (b), at the rate of seven and
5 one-half mills (\$0.0075) for the distribution of each
6 cigarette on and after 12:01 a.m. on that date, until 12:01
7 a.m. on January 1, 1994, at the rate of ten mills (\$0.01) for
8 the distribution of each cigarette on and after 12:01 a.m.
9 on January 1, 1994, until July 1, 1994, and at the rate of
10 twelve and one-half mills (\$0.0125) for the distribution of
11 each cigarette on and after 12:01 a.m. on July 1, 1994.

12 (b) The amendments made to this section by the act
13 adding this subdivision shall be operative on the first day
14 of the first calendar month commencing more than 30
15 days after the effective date of the act.

16 (c) The taxes imposed by the act adding this
17 subdivision shall not be imposed upon tobacco products
18 as defined in subdivision (b) of Section 30121 and subject
19 to a tax calculated under subdivision (b) of Section 30123
20 nor shall those taxes be considered in the calculation of
21 an equivalent tax rate under subdivision (b) of Section
22 30123.

23 *SEC. 5. The Legislature finds and declares all of the*
24 *following:*

25 (a) *The need for uniform statewide regulation, as set*
26 *forth in this act, is a matter of statewide concern and*
27 *uniform statewide regulation is required to maximize*
28 *public awareness of and compliance with this act and*
29 *warranted because the activities regulated by this act do*
30 *not vary from county to county or city to city.*

31 (b) *Uniform statewide regulation, as set forth in this*
32 *act, guarantees that all persons engaging in the same*
33 *activities are subject to the same rules throughout the*
34 *state, and ensures that businesses in a city or county do*
35 *not enjoy no unfair competitive or other advantages with*
36 *respect to the activities covered by this act.*

37 *SEC. 6. (a) This act shall apply, without limitation,*
38 *a city, county, and city and county, including a charter*
39 *city, charter county, or charter city and county, and in*
40 *the Legislature's intent to regulate the subject matter*

1 *this act comprehensively and to occupy the field to the*
2 *exclusion of local action. Notwithstanding any other*
3 *provision of law, no ordinance or regulation of any city,*
4 *county, city and county, including a charter city, or*
5 *charter city and county, or other political subdivision of*
6 *this state, or any local ordinance or regulation adopted by*
7 *the use of an initiative or other ballot measure, shall*
8 *prohibit or in any way attempt to regulate the sale,*
9 *distribution, advertising, sampling, promotion, or display*
10 *of tobacco products, smoking in public places,*
11 *restaurants, bars, or workplaces, or take any action with*
12 *respect to an employee or a prospective employee based*
13 *on use or nonuse of tobacco.*

14 *(b) Notwithstanding subdivision (a), this act shall not*
15 *supersede any prohibition or limitation, as in effect on*
16 *April 1, 1993, imposed by an otherwise valid local*
17 *ordinance or regulation, unless the prohibition or*
18 *limitation is less restrictive than the corresponding*
19 *prohibition or limitation imposed by this act.*

20 **SEC. 7.** *If any provision of this act or its application*
21 *to any person or circumstance is held invalid, this shall*
22 *not affect other provisions or applications of this act that*
23 *can be given effect without the invalid application and to*
24 *this end the provisions of the act are severable.*

25 **SEC. 6.**

26 **SEC. 8.** *No reimbursement is required by this act*
27 *pursuant to Section 6 of Article XIII B of the California*
28 *Constitution because the only costs which may be*
29 *incurred by a local agency or school district will be*
30 *incurred because this act creates a new crime or*
31 *infraction, changes the definition of a crime or infraction,*
32 *changes the penalty for a crime or infraction, or*
33 *eliminates a crime or infraction. Notwithstanding Section*
34 *17580 of the Government Code, unless otherwise*
35 *specified in this act, the provisions of this act shall become*
36 *operative on the same date that the act takes effect*
37 *pursuant to the California Constitution.*