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INTRODUCED BY    Senator Hayden  
    (Coauthors:    Senators Bergeson, Campbell, Thompson, Torres,  
and Watson)  
    (Coauthors:    Assembly Members Bronshvag and Valerie Brown)

FEBRUARY 25, 1994

An act to add Division 8.5 (commencing with Section 22950) to the Business and Professions Code, and to amend Section 216 of the Health and Safety Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 1927, Hayden. Tobacco: sales.

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 prescribed tobacco-related product, is subject to either a criminal action for a misdemeanor or to a civil action to be brought by a city attorney, a county counsel, or a district attorney. Existing law also requires that every person under the age of 18 years who purchases or receives tobacco or prescribed tobacco-related products, be punished by a fine or community service work.

Under existing law, the Department of Alcoholic Beverage Control issues licenses for, and administers and enforces provisions governing, retail sales of alcoholic beverages.

This bill would establish the Stop Tobacco Access to Kids Enforcement Act or "STAKE" Act and would state the findings and declarations of the Legislature regarding the necessity for reducing and eliminating the consumption of tobacco products by minors, and in this connection, would require the State Department of Health Services to establish and develop a program to reduce the availability of tobacco products to minors, and to establish requirements for posting of related notices by retailers. This bill would provide that primary responsibility

for enforcement of this bill shall be with the department and as part of its enforcement responsibilities, would require the department to conduct random, onsite sting inspections at retail sites with the assistance of minors. It would require the department to adopt and publish guidelines governing the use of persons under the age of 18 years in these inspections, and would specify certain guidelines to be included. In addition, this bill would authorize the department to assess civil penalties in accordance with a defined schedule against persons, firms, or corporations that sell, give, or furnish tobacco or tobacco products to minors.

This bill would establish the Sale of Tobacco to Minors Control Account, and would require all moneys collected as civil penalties pursuant to the STAKE Act, up to \$300,000 annually, in the 1995-96, 1996-97, 1997-98, and 1998-99 fiscal years, to be deposited in the account, to be expended by the department for enforcement and administration of the program upon appropriation by the Legislature. Thereafter, this bill would require that civil penalties collected be deposited in the General Fund.

Under existing law, the State Department of Alcohol and Drug Programs is designated the single state agency authorized to receive certain federal Substance Abuse and Mental Health Services Administration block grant moneys.

For the 1994-95 fiscal year, this bill would transfer \$1,500,000, and annually thereafter in the 1995-96, 1996-97, 1997-98, and 1998-99 fiscal years, \$2,000,000, of a certain portion of that money to the Sale of Tobacco to Minors Control Account to be appropriated by the Legislature to administer and enforce this division.

This bill would require certain distributors and wholesalers of tobacco products to provide, to the department, the names and addresses of those persons to whom they provide tobacco products in order that the department may ensure compliance with the tobacco products retail sales program.

Existing law provides for the designation of inspectors of the Food and Drug Section of the department as peace officers for purposes of the enforcement of certain provisions regulating food and drugs.

This bill would extend certain peace officer powers and immunities granted to the Food and Drug Section inspectors to these inspectors as peace officers for purposes of enforcing this bill.

This bill would provide that persons under 18 years of age that participate, in a defined manner, in an investigation of possible violations of the tobacco products licensing program, are immune from prosecution under these provisions.

This bill would authorize the department to contract with local law enforcement agencies to delegate enforcement duties pursuant to this bill and would require reimbursement from the account.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Division 8.5 (commencing with Section 22950) is

added to the Business and Professions Code, to read:

DIVISION 8.5. STOP TOBACCO ACCESS TO KIDS ENFORCEMENT ACT

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

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.

22952. On or before July 1, 1995, the State Department of Health Services 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 any 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 state 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 state department. In carrying out its enforcement responsibilities, the state 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. Participation in these enforcement activities by a person under 18 years of age shall 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 state 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) The state department and any local law enforcement agency under an enforcement delegation contract with the department 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 department or the local law enforcement agency under an enforcement delegation contract with the department for purposes of verifying appearances.

(3) The state department or a local law enforcement agency under an enforcement delegation contract with the department 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, shall state his or her actual age and 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 any 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 the department or a local law enforcement agency under an enforcement delegation contract with the department shall display the appearance of a person under 18 years of age. It shall be a defense to any 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, or attempted sale, the peace officer accompanying the person under 18 years of age shall reenter the retail establishment and inform the seller of the random inspection and identify the person under 18 years of age to the seller.

(8) Failure to comply with the procedures set forth in this subdivision shall be a defense to any 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. 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. (a) Except as provided in subdivision (b), all moneys collected as civil penalties pursuant to this division in the 1995-96, 1996-97, 1997-98, and 1998-99 fiscal years shall be deposited in the State Treasury to the credit of the Sale of Tobacco to Minors Control Account that is hereby established. Thereafter, these civil penalties shall be deposited in the General Fund.

(b) Notwithstanding subdivision (a), all funds collected within any one fiscal year as civil penalties pursuant to this division that exceed the sum of three hundred thousand dollars (\$300,000) shall be deposited in the General Fund.

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 216 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) The state department may enter into an agreement with local law enforcement agencies for delegation of the enforcement of this division within their local jurisdictions. The contract shall require the enforcement activities of the local law enforcement agencies to comply with this division and with all applicable laws and the guidelines developed pursuant to Section 22951.

(b) In cases where enforcement has been delegated to local law enforcement agencies pursuant to this section, any enforcement by the state department in those jurisdictions shall be coordinated with the local law enforcement agencies and the state department may not duplicate enforcement activities, so as to result in a duplication of civil penalties or assessments under this division.

(c) The state department shall reimburse local law enforcement agencies for enforcement costs pursuant to delegation contracts, not to exceed the projected costs to the department for enforcement of this division in those jurisdictions. Reimbursements shall be made from the Sale of Tobacco to Minors Control Account.

22958. (a) The state department 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, or cigarette papers, or 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 two hundred dollars (\$200) to three hundred dollars (\$300) for the first violation, (2) a civil penalty of from six hundred dollars (\$600) to nine hundred dollars (\$900) 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) If a civil penalty has been assessed pursuant to this section against any 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 any 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.

(c) (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 of the Business and Professions Code, 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).

(d) Proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

22959. (a) The sum of one million five hundred thousand dollars (\$1,500,000) in the 1994-95 fiscal year and the sum of two million dollars (\$2,000,000) in the 1995-96, 1996-97, 1997-98, and 1998-99 fiscal years 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.

SEC. 2. Section 216 of the Health and Safety Code is amended to read:

216. (a) The chief and those inspectors of the Food and Drug Section as he or she may designate, are peace officers for the purpose only of carrying out the duties of their employment. The authority of the peace officer shall extend to any place in the state as to any public offense committed, or which there is reasonable cause to believe has been committed, within this state that is a violation of any provision of Division 8.5 (commencing with Section 22950) of the Business and Professions Code, Division 21 (commencing with Section 26000), or Division 22 (commencing with Section 27000) of this code, or Chapter 4 (commencing with Section 41301) of Division 16 of the Food and Agricultural Code. This authority shall further extend to violations of any penal provision of this code, the Business and Professions Code, or the Penal Code, that are discovered in the course of and arise in connection with the employment of these officers.

(b) Any inspector of the Food and Drug Section shall have the authority, as a public officer, to arrest, without a warrant, any person who, in his or her presence, has violated, or as to whom there is probable cause to believe has violated, any provision of Division 21 (commencing with Section 26000) or Division 22 (commencing with Section 27000) of this code, or Chapter 4 (commencing with Section 41301) of Division 16 of the Food and Agricultural Code.

In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting inspector may, instead of taking the person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(c) There shall be no civil liability on the part of and no cause of action shall arise against any person, acting pursuant to subdivision (b) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest that is lawful or that the arresting inspector, at the time of the arrest, had reasonable cause to believe was lawful. No inspector shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

(d) The chief and inspectors of the Food and Drug Section may serve all processes and notices throughout the state.