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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 2021                      **Hearing Date:** May 28, 2024  
**Author:** Bauer-Kahan  
**Version:** March 20, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Crimes: selling or furnishing tobacco or related products and paraphernalia to underage persons*

## HISTORY

**Source:** Author

**Prior Legislation:** SB 7-X2 (Hernández), Ch. 8, Stats. 2016  
SB 5-X2 (Leno), Ch. 7, Stats. 2016  
SB 1927 (Hayden), Ch. 1009, Stats. 1994

**Support:** California District Attorneys Association; City of Alameda; CleanEarth4kids.org;  
County Health Executives Association of California

**Opposition:** California Attorneys for Criminal Justice

**Assembly Floor Vote:** 72 - 0

## PURPOSE

*The purpose of this bill is to create a separate fine for firms, corporations, businesses, retailers, or wholesalers that sell or furnish tobacco or tobacco products or paraphernalia to a person who is under 21 years of \$1,000 for the first offense, \$5,000 for the second offense, and \$10,000 for the third offense.*

*Existing law* provides that every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under 21 years of age any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance, is subject to either a criminal action for a misdemeanor or a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of \$200 for the first offense, \$500 for the second offense, and \$1,000 for the third offense. (Pen. Code, § 308, subd. (a)(1)(A)(i).)

*Existing law* requires that 25 percent of each civil and criminal penalty collected be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action. (Pen. Code, § 308, subd. (a)(1)(B).)

*Existing law* provides that for purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location is deemed a separate entity. (Pen. Code, § 308, subd. (c).)

*Existing law*, the Stop Tobacco Access to Kids Enforcement (“STAKE”) Act, declares the Legislature’s intent to reduce and eventually eliminate the illegal purchase and consumption of tobacco products by any person under 21. (Bus. & Prof. Code, § 22950 et seq.)

*Existing law* requires all moneys collected as civil penalties by the Department of Public Health (CPDH) and other state agencies that enforce the STAKE Act to be deposited in the State Treasury to the credit of the Sale of Tobacco to Minors Control Account. (Bus. & Prof. Code, § 22953.)

*Existing law* requires any person engaging in the retail sale of tobacco products check the identification of tobacco purchasers, to establish the age of the purchaser, if the purchaser reasonably appears to be under 21 years of age. (Bus. & Prof. Code, § 22956.)

*Existing law* specifies that the STAKE Act establishes minimum state restrictions with respect to the legal age to purchase or possess tobacco products, but does not preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive legal age to purchase or possess tobacco products. Provides that a local standard that imposes a more restrictive legal age to purchase or possess tobacco products controls in the event of an inconsistency between state law and a local standard. (Bus. & Prof. Code, § 22964.)

*This bill* provides that any business, firm, corporation, retailer, or wholesaler who sells, furnishes, or gives tobacco or tobacco products or paraphernalia, cigarettes, or cigarette papers, blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance to any person under the age of 21, the firm, corporation, retailer, or wholesaler will be subject to either a criminal action for a misdemeanor or a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of one thousand dollars \$1,000 for the first offense, \$5,000 for the second offense, and \$10,000 for the third offense.

## COMMENTS

### 1. Need For This Bill

According to the author

Availability of tobacco based products is continuing to grow and our California youth are becoming its victims. We have a duty as a legislature to create a healthy tobacco free environment for our children. AB 2021 will safeguard our children by increasing penalties for sellers found responsible of selling tobacco products to people under the age of 21. Even with age and flavor constraints, 24,600 high school students in California reported consuming tobacco products. Sellers of tobacco products need to take seriously their mandate to verify buyers are of legal age of purchase and raising penalties will help ensure that happens. It is paramount that we take this next step in continuing the fight for a tobacco free generation.

## 2. Tobacco-Related Enforcement

Existing law includes a wide range of fines on business owners that violate the law by selling or furnishing tobacco products to people under the age of 21. The STAKE Act mandates that anyone selling tobacco products check the purchaser's identification if the person reasonably appears to be under 21. (Bus. & Prof. Code, § 22956.) CPDH is the state governmental agency tasked with primary enforcement responsibility of the STAKE Act. (Bus. & Prof. Code, § 22957.) CDPH may assess civil penalties for any violation of the STAKE Act as follows: (1) a civil penalty of \$400 to \$600 for the first violation, (2) a civil penalty of \$900 to \$1,000 for the second violation within a five-year period, (3) a civil penalty of \$1,200 to \$1,800 for a third violation within a five-year period, (4) a civil penalty of \$3,000 to \$4,000 for a fourth violation within a five-year period, or (5) a civil penalty of \$5,000 to \$6,000 for a fifth violation within a five-year period. (Bus. & Prof. Code, § 22958, subd. (a).) In addition to escalating fines, upon the assessment of a third, fourth, or fifth uncontested violation, CPDH must notify the State Board of Equalization which must then assess a \$250 civil penalty and suspend or revoke the vendor's license to sell tobacco. (Bus. & Prof. Code, § 22958, subd. (b)(1).)

Additionally, federal law applies to the sale of tobacco. The Tobacco Control Act imposes fines as follows for the illegal sale of tobacco to a person under 21: (a) a warning for the first violation; (b) up to \$279 for a second violation within a one-year period; (c) fines may increase for subsequent violations up to \$11,182 and may include a no-tobacco-sale order which prohibits a vendor from selling tobacco for a specified period or permanently. (21 U.S.C. § 387 et seq.)

## 3. Penalty Assessments

When an individual or business is assessed a criminal fine, the amount owed is the amount specified in the statute in addition to penalty assessments. As such, penalty assessments will make the proposed fines in this bill much higher. For example, the \$1,000 fine proposed in this bill for a first violation will result in total amount in excess of \$4,000 once the penalty assessments are accounted for. The chart below describes how fines are assessed.

For a base fine of \$1,000:

Penal Code § 1464 state penalty on fines	\$1,000 (\$10 for every \$10)
Penal Code § 1465.7 state surcharge	\$200 (20%)
Penal Code § 1465.8 court operations assessment	\$40 (\$40 per criminal conviction)
Government Code § 70372 court construction penalty	\$500 (\$5 for every \$10)
Government Code § 70373 court facilities assessment	\$30 (\$30 for any felony or misdemeanor)
Government Code § 76000 county penalty	\$700 (\$7 for every \$10)
Government Code § 76000.5 county EMS penalty	\$200 (\$2 for every \$10)
Government Code § 76104.6 Prop 69 DNA fund penalty	\$100 (\$1 for every \$10)
Government Code § 76104.7 state penalty	\$400 (\$4 for every \$10)
<b>Total Fine with Assessments:</b>	<b>\$4,170</b>

The total amount owed increases depending on the amount of the base fine. The current penalty assessments essentially triple the base fine. Notably, the fines in Penal Code section 308 could be imposed in addition to the civil fines and penalties listed in Business and Professions Code section 22958 which levies fines up to \$6,000.

#### 4. Argument in Support

The County Health Executives Association of California writes:

According to the U.S. Centers for Disease Control and Prevention (CDC), in 2023, 2.8 million middle school and high school students reported current use of any tobacco products. From 2022 to 2023, the CDC found a decline in current e-cigarette use among high school students ... while no statistically significant change occurred among middle school students. Although a slight decline has occurred, youth tobacco use in the United States remains a major public health concern. Further, the CDC finds that youth who use multiple tobacco products are at higher risk for developing nicotine dependence and may be more likely to continue using into adulthood. Additionally, individuals who use tobacco products are at a significantly higher risk of developing severe health conditions, including cancer, heart disease, emphysema, and chronic bronchitis.

In addition, the CDC finds national, state, and local program activities have been shown to reduce and prevent youth tobacco product use when implemented together. Increasing penalties on tobacco products is a promising step toward protecting youth from lifelong harm caused by tobacco.

#### 5. Argument in Opposition

According to the California Attorneys for Criminal Justice:

The fine increase proposed by this bill ranges from five-fold to ten-fold for certain violations. While the State has a compelling interest in restricting tobacco use to adults who have reached 21 years of age, the considerable fine increase has great potential to harm small business owners who may not have had knowledge of the violation when it occurred. Under the theory of *respondeat superior*, a small business owner would face possible punishment and fine for the actions of a reckless employee working a register. A minimum fine of \$1,000.00 represents the profit margin for weeks of sales for some corner stores. The maximum fine of \$10,000.00 has the potential to bring financial strain to small business owners, many of whom operate in marginalized communities with underserved populations. Moreover, the potential for uneven enforcement in communities of color is high given the history of saturation patrols and disparate policing.

The fines imposed in Penal Code Section 308 have remained unchanged for a number of decades and an increase commensurate with inflation may be warranted. However, the ten-fold increase for the maximum fine and other increases under AB 2021 are excessive. In comparison, a \$10,000.00 fine eclipses the maximum fines allowable for many felony offenses. The increase proposed by AB 2021 has the potential to catastrophically impact small business

owners, including those found in underserved and economically challenged communities.

While AB 2021 is well intentioned to bolster prevention of sales of tobacco and tobacco-related products to those under the age of 21, the proposed fine increase is jarring and excessive in the context of the conduct covered by the statute.

**-- END --**