

AMENDED IN SENATE AUGUST 23, 2004

AMENDED IN SENATE JUNE 16, 2004

AMENDED IN SENATE JUNE 2, 2004

AMENDED IN ASSEMBLY APRIL 14, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 3092

Introduced by Assembly Member Jerome Horton

March 11, 2004

An act to amend ~~Section 25755 of, and to add Section 22974.6 to, Sections 22978.4, 22980.1, and 25755 of, and to add Section 22971.4 to,~~ the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

AB 3092, as amended, Jerome Horton. Cigarettes.

(1) Existing law designates the Director of Alcoholic Beverage Control and persons employed by the Department of Alcoholic Beverage Control for the administration and enforcement of the Alcoholic Beverage Control Act as peace officers in the enforcement of the penal provisions of the act, the rules of the department adopted under the provisions of the act, and any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors. These persons are authorized, while acting as peace officers, to enforce any penal provisions of law while in the course of their employment.

This bill would specify that authority to enforce any penal provision of law while in the course of their employment includes the ~~enforcement~~ *authority to issue citations for violations* of a specified penal provision requiring the posting of a notice relating to the sales or preparation of tobacco and *violations of the Stop Tobacco Access to Kids Enforcement (STAKE) Act, and issuing citations for violations of these provisions. Act.* This bill would delete the requirement that all agents of the department other than agents assigned to the Drug Enforcement Narcotics Team by the director successfully complete a 4-week course on narcotics enforcement, as provided.

~~(2) Existing law authorizes until January 1, 2010, employees of the State Board of Equalization designated by the Executive Director of the State Board of Equalization to exercise the arrest powers of a peace officer in the enforcement of taxes and fees administered by the State Board of Equalization, including taxes with respect to cigarettes and tobacco products.~~

~~This bill would authorize, until that date, these employees of the State Board of Equalization to issue citations for violations of a specified penal provision requiring the posting of a notice relating to the sales or preparation of tobacco and the Stop Tobacco Access to Kids Enforcement (STAKE) Act.~~

~~(3) Existing law provides that every person, firm, or corporation which that sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase a required notice, and any person failing to do so shall, upon conviction, be punished by a fine of \$10 for the first offense and \$50 for each succeeding violation of this provision, or by imprisonment for not more than 30 days.~~

This bill would increase the amounts of those fines to \$50 for the first offense, \$100 for the 2nd offense, \$250 for the 3rd offense, and \$500 for the 4th and each subsequent offense.

(3) The California Cigarette and Tobacco Products Licensing Act of 2003 provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California and prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are in compliance with these licensure requirements.

This bill would exempt from licensure requirements any person or entity that is exempt from regulation under the Cigarette and Tobacco



Products Licensing Act of 2003 by the United States Constitution, federal law, or the California Constitution. This bill would also require a distributor or wholesaler that is subject to that act to specify in each invoice for the sale of tobacco products that all taxes on cigarette and tobacco products are included in the total amount of the invoice.

(4) This bill includes the Legislature’s findings that the amendments made by this bill to provisions for the enforcement of the STAKE Act are in furtherance of California’s public policy to reduce the availability of tobacco products to minors.

(5) The Cigarette and Tobacco Products Tax Law requires that an appropriate stamp be affixed to, or that an appropriate meter impression be made upon, each package of cigarettes prior to distribution. Existing law requires the State Board of Equalization, effective January 1, 2005, to replace the existing stamps and meter impressions with a stamp or meter impression that can be read by a scanning or similar device, and encrypted with specified information. Existing law authorizes the State Board of Equalization to prescribe, by regulation, the method and manner by which the stamps and meter impressions are to be affixed to each package of cigarettes.

This bill states the intent of the Legislature that the State Board of Equalization has the authority to implement these changes by regulation in a manner that does not affect commerce within this state.

(6) This bill would incorporate additional changes made by this act to Section 308 of the Penal Code, as proposed to be made by AB 384, to be operative only if AB 384 and this bill are both enacted and take effect, and this bill is enacted last.

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

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

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *It is an important public policy of the State of California to*
4 *reduce the availability of, and the sale of, tobacco products to*
5 *minors through laws that impose sales restrictions and provide for*
6 *enhanced enforcement activities.*

7 (b) *The State of California should use every available resource*
8 *in the implementation and enforcement of laws enacted to*
9 *discourage the sale of tobacco products to minors. State agencies*



1 and departments with similar responsibilities and duties should
2 coordinate existing resources to the greatest extent possible to
3 streamline functions and costs in achieving the common goals of,
4 and maximizing the effectiveness of, these laws.

5 (c) The Stop Tobacco Access to Kids Enforcement (STAKE) Act
6 has very specific requirements for the posting of warning signs in
7 retail locations to discourage the sale of tobacco-related products
8 to minors. The STAKE Act specifies the information that must be
9 displayed on signs and specifies where these signs must be posted.
10 In addition, the STAKE Act provides a penalty schedule for
11 violations of the laws with respect to the posting and placement of
12 STAKE Act warning signs.

13 (d) It is the intent of the Legislature, through this act, to
14 enhance the effectiveness of the STAKE Act by encouraging the
15 Department of Alcohol and Beverage Control (ABC) to use its
16 existing authority and personnel, while acting in the course of their
17 ordinary business, to enforce the STAKE Act.

18 (e) It is the further intent of the Legislature to increase
19 compliance with the laws of the STAKE Act, with respect to the
20 posting and placement of warning signs, by increasing the
21 penalties for improperly posting STAKE Act warning signs.

22 SEC. 2. Section 22971.4 is added to the Business and
23 Professions Code, to read:

24 22971.4. No person is subject to the requirements of this
25 division if that person is exempt from regulation under the United
26 States Constitution, the laws of the United States, or the California
27 Constitution.

28 SEC. 3. Section 22978.4 of the Business and Professions Code
29 is amended to read:

30 22978.4. (a) Each distributor and each wholesaler shall
31 include the following information on each invoice for the sale of
32 cigarettes or tobacco products:

33 (1) The name, address, and telephone number of the distributor
34 or wholesaler.

35 (2) The license number of the distributor or the wholesaler as
36 provided by the board.

37 (3) ~~The amount of excise taxes due to the board by the~~
38 ~~distributor on the sale of cigarettes and tobacco products. The~~
39 ~~following statement: "All California cigarette and tobacco~~
40 ~~product taxes are included in the total amount of this invoice."~~



1 (4) The name, address, and license number of the retailer,
2 distributor, or wholesaler to whom cigarettes or tobacco products
3 are sold.

4 (5) An itemized listing of the cigarettes or tobacco products
5 sold.

6 (b) Each invoice for the sale of cigarettes or tobacco products
7 shall be legible and readable.

8 (c) Failure to comply with the requirements of this section shall
9 be a misdemeanor subject to penalties pursuant to Section 22981.

10 *SEC. 4. Section 22980.1 of the Business and Professions Code*
11 *is amended to read:*

12 22980.1. (a) No manufacturer shall sell cigarettes to a
13 distributor, wholesaler, importer, retailer, or any other person who
14 is not licensed pursuant to this division or whose license has been
15 suspended or revoked.

16 (b) ~~No~~ (1) *Except as provided in paragraph (2), no* distributor,
17 wholesaler, or importer shall sell cigarettes or tobacco products to
18 a retailer, wholesaler, distributor, or any other person who is not
19 licensed pursuant to this division or whose license has been
20 suspended or revoked.

21 (2) *This subdivision does not apply to the sale of cigarettes or*
22 *tobacco products by a distributor, wholesaler, importer, or any*
23 *other person that the state, pursuant to the United States*
24 *Constitution, the laws of the United States, or the California*
25 *Constitution, is prohibited from regulating.*

26 (c) No retailer, distributor, wholesaler, or importer shall
27 purchase packages of cigarettes from a manufacturer who is not
28 licensed pursuant to this division or whose license has been
29 suspended or revoked.

30 (d) No retailer, distributor, wholesaler, or importer shall
31 purchase cigarettes or tobacco products from any person who is
32 required to be licensed pursuant to this division but who is not
33 licensed or whose license has been suspended or revoked.

34 (e) Each separate sale to, or by, a retailer, wholesaler,
35 distributor, importer, manufacturer, or any other person who is not
36 licensed pursuant to this division shall constitute a separate
37 violation.

38 (f) No manufacturer, distributor, wholesaler, or importer may
39 sell cigarette or tobacco products to any retailer or wholesaler
40 whose license has been suspended or revoked unless all



1 outstanding debts of that retailer or wholesaler that are owed to a
2 wholesaler or distributor for cigarette or tobacco products are paid
3 and the license of that retailer or wholesaler has been reinstated by
4 the board. Any payment received from a retailer or wholesaler
5 shall be credited first to the outstanding debt for cigarettes or
6 tobacco products and must be immediately reported to the board.
7 The board shall determine the debt status of a suspended retailer
8 or wholesaler licensee 25 days prior to the reinstatement of the
9 license.

10 (g) No importer, distributor, or wholesaler, or distributor
11 functioning as a wholesaler, or retailer, shall purchase, obtain, or
12 otherwise acquire any package of cigarettes to which a stamp or
13 meter impression may not be affixed in accordance with
14 subdivision (b) of Section 30163 of the Revenue and Taxation
15 Code, or any cigarettes obtained from a manufacturer or importer
16 that cannot demonstrate full compliance with all requirements of
17 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.
18 13335a et seq.) for the reporting of ingredients added to cigarettes.

19 (h) Failure to comply with the provisions of this section shall
20 be a misdemeanor subject to penalties pursuant to Section 22981.

21 *SEC. 5.* Section 25755 of the Business and Professions Code
22 is amended to read:

23 25755. (a) The director and the persons employed by the
24 department for the administration and enforcement of this division
25 are peace officers in the enforcement of the penal provisions of this
26 division, the rules of the department adopted under the provisions
27 of this division, and any other penal provisions of law of this state
28 prohibiting or regulating the sale, exposing for sale, use,
29 possession, giving away, adulteration, dilution, misbranding, or
30 mislabeling of alcoholic beverages or intoxicating liquors, and
31 these persons are authorized, while acting as peace officers, to
32 enforce any penal provisions of law while in the course of their
33 employment. The director and the persons employed by the
34 department for the administration of this division ~~are also peace~~
35 ~~officers in the enforcement~~ *may issue citations for violations of*
36 *Section 308 of the Penal Code and the Stop Tobacco Access to*
37 *Kids Enforcement (STAKE) Act (Division 8.5 (commencing with*
38 *Section 22950)), and may issue citations for violations of these*
39 *provisions. 22950)).*



1 (b) The director, the persons employed by the department for
2 the administration and enforcement of this division, peace officers
3 listed in Section 830.1 of the Penal Code, and those officers listed
4 in Section 830.6 of the Penal Code while acting in the course and
5 scope of their employment as peace officers may, in enforcing the
6 provisions of this division, visit and inspect the premises of any
7 licensee at any time during which the licensee is exercising the
8 privileges authorized by his or her license on the premises.

9 (c) Peace officers of the Department of the California Highway
10 Patrol, members of the University of California and California
11 State University police departments, and peace officers of the
12 Department of Parks and Recreation, as defined in subdivisions
13 (a), (b), (c), and (f) of Section 830.2 of the Penal Code, may, in
14 enforcing this division, visit and inspect the premises of any
15 licensee located on state property at any time during which the
16 licensee is exercising the privileges authorized by his or her license
17 on the premises.

18 (d) Any agents assigned to the Drug Enforcement Narcotics
19 Team by the director shall have successfully completed a
20 four-week course on narcotics enforcement approved by the
21 Commission on Peace Officer Standards and Training.

22 ~~SEC. 2. Section 22974.6 is added to the Business and~~
23 ~~Professions Code, to read:~~

24 ~~22974.6. Any board employee granted limited peace officer~~
25 ~~status pursuant to paragraph (6) of subdivision (a) of Section~~
26 ~~830.11 of the Penal Code may issue citations for violations of~~
27 ~~Section 308 of the Penal Code and the Stop Tobacco Access to~~
28 ~~Kids Enforcement (STAKE) Act (Division 8.5 (commencing with~~
29 ~~Section 22950)).~~

30 ~~SEC. 3.—~~

31 ~~SEC. 6. Section 308 of the Penal Code is amended to read:~~

32 308. (a) Every person, firm, or corporation which knowingly
33 or under circumstances in which it has knowledge, or should
34 otherwise have grounds for knowledge, sells, gives, or in any way
35 furnishes to another person who is under the age of 18 years any
36 tobacco, cigarette, or cigarette papers, or any other preparation of
37 tobacco, or any other instrument or paraphernalia that is designed
38 for the smoking or ingestion of tobacco, products prepared from
39 tobacco, or any controlled substance, is subject to either a criminal
40 action for a misdemeanor or to a civil action brought by a city



1 attorney, a county counsel, or a district attorney, punishable by a
2 fine of two hundred dollars (\$200) for the first offense, five
3 hundred dollars (\$500) for the second offense, and one thousand
4 dollars (\$1,000) for the third offense.

5 Notwithstanding Section 1464 or any other provision of law, 25
6 percent of each civil and criminal penalty collected pursuant to this
7 subdivision shall be paid to the office of the city attorney, county
8 counsel, or district attorney, whoever is responsible for bringing
9 the successful action, and 25 percent of each civil and criminal
10 penalty collected pursuant to this subdivision shall be paid to the
11 city or county for the administration and cost of the community
12 service work component provided in subdivision (b).

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

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

31 (b) Every person under the age of 18 years who purchases,
32 receives, or possesses any tobacco, cigarette, or cigarette papers,
33 or any other preparation of tobacco, or any other instrument or
34 paraphernalia that is designed for the smoking of tobacco,
35 products prepared from tobacco, or any controlled substance shall,
36 upon conviction, be punished by a fine of seventy-five dollars
37 (\$75) or 30 hours of community service work.

38 (c) Every person, firm, or corporation ~~which~~ *that* sells, or deals
39 in tobacco or any preparation thereof, shall post conspicuously and
40 keep so posted in his, her, or their place of business at each point



1 of purchase the notice required pursuant to subdivision (b) of
2 Section 22952 of the Business and Professions Code, and any
3 person failing to do so shall, upon conviction, be punished by a fine
4 of fifty dollars (\$50) for the first offense, one hundred dollars
5 (\$100) for the second offense, two hundred fifty dollars (\$250) for
6 the third offense, and five hundred dollars (\$500) for the fourth
7 offense and each subsequent violation of this provision, or by
8 imprisonment in a county jail not exceeding 30 days.

9 (d) For purposes of determining the liability of persons, firms,
10 or corporations controlling franchises or business operations in
11 multiple locations for the second and subsequent violations of this
12 section, each individual franchise or business location shall be
13 deemed a separate entity.

14 (e) It is the Legislature's intent to regulate the subject matter of
15 this section. As a result, no city, county, or city and county shall
16 adopt any ordinance or regulation inconsistent with this section.

17 (f) Notwithstanding any other provision of this section, the
18 Director of Corrections may sell or supply tobacco and tobacco
19 products, including cigarettes and cigarette papers, to any person
20 confined in any institution or facility under his or her jurisdiction
21 who has attained the age of 16 years, if the parent or guardian of
22 the person consents thereto, and may permit smoking by the person
23 in any institution or facility. No officer or employee of the
24 Department of Corrections shall be considered to have violated
25 this section by any act authorized by this subdivision.

26 *SEC. 7. Section 308 of the Penal Code is amended to read:*

27 308. (a) Every person, firm, or corporation ~~which~~ *that*
28 knowingly or under circumstances in which it has knowledge, or
29 should otherwise have grounds for knowledge, sells, gives, or in
30 any way furnishes to another person who is under the age of 18
31 years any tobacco, cigarette, or cigarette papers, or any other
32 preparation of tobacco, or any other instrument or paraphernalia
33 that is designed for the smoking or ingestion of tobacco, products
34 prepared from tobacco, or any controlled substance, is subject to
35 either a criminal action for a misdemeanor or to a civil action
36 brought by a city attorney, a county counsel, or a district attorney,
37 punishable by a fine of two hundred dollars (\$200) for the first
38 offense, five hundred dollars (\$500) for the second offense, and
39 one thousand dollars (\$1,000) for the third offense.



1 Notwithstanding Section 1464 or any other provision of law, 25
2 percent of each civil and criminal penalty collected pursuant to this
3 subdivision shall be paid to the office of the city attorney, county
4 counsel, or district attorney, whoever is responsible for bringing
5 the successful action, and 25 percent of each civil and criminal
6 penalty collected pursuant to this subdivision shall be paid to the
7 city or county for the administration and cost of the community
8 service work component provided in subdivision (b).

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

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

27 (b) Every person under the age of 18 years who purchases,
28 receives, or possesses any tobacco, cigarette, or cigarette papers,
29 or any other preparation of tobacco, or any other instrument or
30 paraphernalia that is designed for the smoking of tobacco,
31 products prepared from tobacco, or any controlled substance shall,
32 upon conviction, be punished by a fine of seventy-five dollars
33 (\$75) or 30 hours of community service work.

34 (c) Every person, firm, or corporation ~~which~~ *that* sells, or deals
35 in tobacco or any preparation thereof, shall post conspicuously and
36 keep so posted in his, her, or their place of business at each point
37 of purchase the notice required pursuant to subdivision (b) of
38 Section 22952 of the Business and Professions Code, and any
39 person failing to do so shall, upon conviction, be punished by a
40 fine of ~~ten dollars (\$10)~~ *fifty dollars (\$50)* for the first ~~offense and~~



1 ~~fifty dollars (\$50) for each succeeding offense, one hundred~~
2 ~~dollars (\$100) for the second offense, two hundred fifty dollars~~
3 ~~(\$250) for the third offense, and five hundred dollars (\$500) for the~~
4 ~~fourth offense and each subsequent violation of this provision, or~~
5 ~~by imprisonment for in a county jail not more than exceeding 30~~
6 ~~days.~~

7 (d) For purposes of determining the liability of persons, firms,
8 or corporations controlling franchises or business operations in
9 multiple locations for the second and subsequent violations of this
10 section, each individual franchise or business location shall be
11 deemed a separate entity.

12 (e) It is the Legislature's intent to regulate the subject matter of
13 this section. As a result, no city, county, or city and county shall
14 adopt any ordinance or regulation inconsistent with this section.

15 ~~(f) Notwithstanding any other provision of this section, the~~
16 ~~Director of Corrections may sell or supply tobacco and tobacco~~
17 ~~products, including cigarettes and cigarette papers, to any person~~
18 ~~confined in any institution or facility under his or her jurisdiction~~
19 ~~who has attained the age of 16 years, if the parent or guardian of~~
20 ~~the person consents thereto, and may permit smoking by the person~~
21 ~~in any institution or facility. No officer or employee of the~~
22 ~~Department of Corrections shall be considered to have violated~~
23 ~~this section by any act authorized by this subdivision.~~

24 *SEC. 8. It is the intent of the Legislature that the State Board*
25 *of Equalization is authorized to exercise its authority, as set forth*
26 *in subdivision (a) of Section 30162 of the Revenue and Taxation*
27 *Code, as amended by Section 1 of Chapter 881 of the Statutes of*
28 *2002, and as set forth in subdivision (b) of Section 30162 of the*
29 *Revenue and Taxation Code, as added by Section 2 of Chapter 881*
30 *of the Statutes of 2002, with regard to cigarette stamps and meter*
31 *impressions in a manner that does not affect commerce within this*
32 *state.*

33 *SEC. 9. Section 7 of this bill incorporates amendments to*
34 *Section 308 of the Penal Code proposed by both this bill and AB*
35 *384. It shall only become operative if (1) both bills are enacted and*
36 *become effective on or before January 1, 2005, (2) each bill*
37 *amends Section 308 of the Penal Code, and (3) this bill is enacted*



1 *after AB 384, in which case Section 6 of this bill shall not become*
2 *operative.*

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