

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE APRIL 27, 2011

SENATE BILL

No. 331

Introduced by Senator Padilla
(Principal coauthor: Assembly Member Hill)

February 15, 2011

An act to amend Sections 22973 and 22973.1 of, and to ~~repeal and add Section 22974.8 of~~ *add Section 22960.5 to*, the Business and Professions Code, relating to ~~cigarettes~~ *cigarette* and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 331, as amended, Padilla. Retail tobacco licenses.

The ~~California~~ Cigarette and Tobacco Products Licensing Act of 2003 requires a retailer to obtain a license from the State Board of Equalization to engage in the sale of cigarette and tobacco products in this state, *and specifies instances when the board is not required to issue a license*. Existing law requires an application for a license to be filed on or before April 15, 2004. ~~A retailer owning more than one retail location must obtain a separate license for each retail location.~~

~~The act specifies instances when the board is not required to issue a license and, subject to the results of a prescribed survey, requires the board to take action against a retailer of a licensed location convicted of a violation of either the STAKE Act or a specified prohibition, according to prescribed schedule.~~

Existing law, the Stop Tobacco Access to Kids Enforcement Act, or STAKE Act, establishes various requirements for retailers relating to tobacco sales to minors.

This bill would make the location of a new retail location within 600 feet of a public or private elementary or secondary school a violation

of the STAKE Act, and would prohibit the issuance of a new license for a retail location that is located This bill would delete the April 15, 2004, application deadline and would include the location of a retailer within 600 feet of a public or private elementary school among the instances when the board is not required to issue a license to engage in the sale of cigarette and tobacco products. It would also revise the schedule of actions that the bill would require against a retailer of a licensed location who is convicted of an above-described violation, as specified. This bill would authorize the board to revoke licenses, for retail locations issued after January 1, 2013, if these licenses were wrongfully issued, and would also delete the April 15, 2004, application deadline.

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. (a) In 2007, 20 percent of high school students
- 2 in the United States were current cigarette smokers—approximately
- 3 19 percent of females and 21 percent of males. Among racial and
- 4 ethnic subgroups, approximately 23 percent of white, 17 percent
- 5 of Hispanic, and 12 percent of African American high school
- 6 students were current cigarette smokers in 2007.
- 7 (b) In 2006, approximately 6 percent of middle school students
- 8 in this country were current cigarette smokers, with estimates of
- 9 6 percent for females and 6 percent for males. Among racial and
- 10 ethnic subgroups, approximately 7 percent of white, 7 percent of
- 11 Hispanic, 6 percent of African American, and 3 percent of Asian
- 12 American middle school students were current cigarette smokers
- 13 in 2006.
- 14 (c) Each day in the United States, approximately 3,600 young
- 15 people between 12 and 17 years of age initiate cigarette smoking,
- 16 and an estimated 1,100 young people become daily cigarette
- 17 smokers.
- 18 (d) Lower income areas are more likely to have higher rates of
- 19 underage tobacco sales and to be a hot spot for these sales.
- 20 (e) In more densely populated areas, there is a positive
- 21 relationship between underage tobacco sales and the number of
- 22 schools.

1 (f) In general, where there are more tobacco outlets, there will
2 also be more schools. Densely populated ZIP Code areas are shown
3 to have more schools, more tobacco outlets, and more underage
4 tobacco sales.

5 (g) When examining school proximity and underage sales, gas
6 stations, discount stores, supermarkets, and pharmacies are
7 positively related to increased underage sales, while gas stations
8 with convenient stores are negatively associated.

9 (h) *Section 22971.3 of the Business and Professions Code*
10 *provides that nothing within Division 8.6 (commencing with Section*
11 *22970) of the Business and Professions Code would preempt or*
12 *supersede any local tobacco control laws other than those related*
13 *to the collection of state taxes, and that local licensing laws may*
14 *provide for the suspension or revocation of the local license for*
15 *any violation of a state tobacco control law.*

16 *SEC. 2. Section 22960.5 is added to the Business and*
17 *Professions Code, to read:*

18 *22960.5. (a) It is the intent of the Legislature for this section*
19 *to set forth minimum state restrictions on the sale of cigarette and*
20 *tobacco products from a retail location and not to preempt or*
21 *otherwise prohibit the adoption of a local standard that further*
22 *restricts access to, or reduces the availability of, cigarette and*
23 *tobacco products from a retail location. A local standard that*
24 *imposes additional restrictions shall control in the event of an*
25 *inconsistency between this section and a local standard.*

26 *(b) No retail location shall be located within 600 feet of a public*
27 *or private elementary or secondary school.*

28 *(c) The department shall direct the State Board of Equalization*
29 *to revoke a license issued pursuant to Chapter 2 (commencing*
30 *with Section 22972) of Division 8.6 for any retail location in*
31 *violation of subdivision (a), and the board shall revoke this license*
32 *pursuant to subdivision (b) of Section 22973.1.*

33 *(d) For purposes of this section the following definitions apply:*

34 *(1) "Retail location" has the meaning set forth in subdivision*
35 *(q) of Section 22971.*

36 *(2) "600 feet" means the distance, measured in a straight line,*
37 *from the closest edge of a retail location to the closest edge of a*
38 *public or private elementary or secondary school, or the closest*
39 *edge of the parking lot of a school, whichever distance is shorter.*

1 (e) *This section does not apply to a retail location that has*
2 *already been licensed pursuant to Chapter 2 (commencing with*
3 *Section 22972) of Division 8.6 before January 1, 2013.*

4 ~~SEC. 2.~~

5 SEC. 3. Section 22973 of the Business and Professions Code
6 is amended to read:

7 22973. (a) An application for a license shall be filed on a form
8 prescribed by the board and shall include the following:

9 (1) The name, address, and telephone number of the applicant.

10 (2) The business name, address, and telephone number of each
11 retail location. For applicants who control more than one retail
12 location, an address for receipt of correspondence or notices from
13 the board, such as a headquarters or corporate office of the retailer,
14 shall also be included on the application and listed on the license.
15 Citations issued to licensees shall be forwarded to all addressees
16 on the license.

17 (3) A statement by the applicant affirming that the applicant
18 has not been convicted of a felony and has not violated and will
19 not violate or cause or permit to be violated any of the provisions
20 of this division or any rule of the board applicable to the applicant
21 or pertaining to the manufacture, sale, or distribution of cigarettes
22 or tobacco products. If the applicant is unable to affirm this
23 statement, the application shall contain a statement by the applicant
24 of the nature of any violation or the reasons that will prevent the
25 applicant from complying with the requirements with respect to
26 the statement.

27 (4) If any other licenses or permits have been issued by the
28 board or the Department of Alcoholic Beverage Control to the
29 applicant, the license or permit number of those licenses or permits
30 then in effect.

31 (5) *A statement by the applicant affirming that each retail*
32 *location is located 600 feet or more from a public or private*
33 *elementary or secondary school, as required pursuant to Section*
34 *22960.5.*

35 ~~(5)~~

36 (6) A statement by the applicant that the contents of the
37 application are complete, true, and correct. Any person who signs
38 a statement pursuant to this subdivision that asserts the truth of
39 any material matter that he or she knows to be false is guilty of a
40 misdemeanor punishable by imprisonment of up to one year in the

1 county jail, or a fine of not more than one thousand dollars
2 (\$1,000), or both the imprisonment and the fine.

3 ~~(6)~~

4 (7) The signature of the applicant.

5 ~~(7)~~

6 (8) Any other information the board may require.

7 (b) The board may investigate to determine the truthfulness and
8 completeness of the information provided in the application. The
9 board may issue a license without further investigation to an
10 applicant for a retail location if the applicant holds a valid license
11 from the Department of Alcoholic Beverage Control for that same
12 location.

13 (c) The board shall provide electronic means for applicants to
14 download and submit applications.

15 (d) (1) A one-time license fee of one hundred dollars (\$100)
16 shall be submitted with each application. An applicant that owns
17 or controls more than one retail location shall obtain a separate
18 license for each retail location, but may submit a single application
19 for those licenses with a one-time license fee of one hundred dollars
20 (\$100) per location.

21 (2) The one-time fee required by this subdivision does not apply
22 to an application for renewal of a license for a retail location for
23 which the one-time license fee has already been paid. If a license
24 is reinstated after its expiration, the retailer, as a condition
25 precedent to its reinstatement, shall pay a reinstatement fee of one
26 hundred dollars (\$100).

27 ~~SEC. 3.~~

28 *SEC. 4.* Section 22973.1 of the Business and Professions Code
29 is amended to read:

30 22973.1. (a) The board shall issue a license to a retailer upon
31 receipt of a completed application and payment of the fees
32 prescribed in Section 22973, unless any of the following apply:

33 (1) The retailer, or if the retailer is not an individual, any person
34 controlling the retailer, has previously been issued a license that
35 is suspended or revoked by the board for violation of any of the
36 provisions of this division.

37 (2) The application is for a license or renewal of a license for a
38 retail location that is the same retail location as that of a retailer
39 whose license was revoked or is subject to revocation proceedings
40 for violation of any of the provisions of this division, unless:

1 (A) It has been more than five years since a previous license
2 for the retail location was revoked.

3 (B) The person applying for the license provides the board with
4 documentation demonstrating that the applicant has acquired or is
5 acquiring the premises or business in an arm's length transaction.
6 For purposes of this section, an "arm's length transaction" is
7 defined as a sale in good faith and for valuable consideration that
8 reflects the fair market value in the open market between two
9 informed and willing parties, neither under any compulsion to
10 participate in the transaction. A sale between relatives, related
11 companies or partners, or a sale for the primary purpose of avoiding
12 the effect of the violations of this division that occurred at the retail
13 location, is presumed not to be made at "arm's length."

14 (3) The retailer, or if the retailer is not an individual, any person
15 controlling the retailer, has been convicted of a felony pursuant to
16 Section 30473 or 30480 of the Revenue and Taxation Code.

17 (4) The retailer does not possess all required permits or licenses
18 required under the Revenue and Taxation Code.

19 (5) The application is for a ~~license for a retail location that is~~
20 ~~within 600 feet of a public or private elementary or secondary~~
21 ~~school~~ *new license issued after January 1, 2013, for a retail*
22 *location that the applicant does not affirm is located 600 feet or*
23 *more from a public or private elementary or secondary school, as*
24 *required under paragraph (5) of subdivision (a) of Section 22973.*
25 This paragraph shall not be construed to prohibit the renewal ~~or~~
26 ~~transfer~~ of a license for a retail location that is within 600 feet of
27 any school.

28 *(b) The board may revoke a license issued after January 1,*
29 *2013, for a retail location if it is determined that the application*
30 *is incorrect, incomplete, or if the license was issued in error. The*
31 *license shall be invalid when revoked, and shall be considered*
32 *denied for purposes of this chapter.*

33 ~~(b)~~

34 (c) (1) Any retailer who is denied a license may petition for a
35 redetermination of the board's denial of the license within 30 days
36 after service upon that retailer of the notice of the denial of the
37 license. If a petition for redetermination is not filed within the
38 30-day period, the determination of denial becomes final at the
39 expiration of the 30-day period.

1 (2) Every petition for redetermination shall be in writing and
2 shall state the specific grounds upon which the petition is founded.
3 The petition may be amended to state additional grounds at anytime
4 prior to the date on which the board issues its order or decision
5 upon the petition for redetermination.

6 (3) If the petition for redetermination is filed within the 30-day
7 period, the board shall reconsider the determination of the denial
8 and, if the retailer has so requested in the petition, shall grant the
9 retailer an oral hearing and shall give the retailer at least 10 days'
10 notice of the time and place of the hearing. The board may continue
11 the hearing from time to time as may be necessary.

12 (4) The order or decision of the board upon a petition for
13 redetermination becomes final 30 days after mailing of notice
14 thereof.

15 ~~SEC. 4. Section 22974.8 of the Business and Professions Code~~
16 ~~is repealed.~~

17 ~~SEC. 5. Section 22974.8 is added to the Health and Safety~~
18 ~~Code, to read:~~

19 ~~22974.8. (a) (1) The board shall take action against a retailer~~
20 ~~of a licensed location who is convicted of a violation of either the~~
21 ~~STAKE Act (Division 8.5 (commencing with Section 22950)) or~~
22 ~~Section 308 of the Penal Code, according to the schedule set forth~~
23 ~~in subdivision (b):~~

24 ~~(2) Convictions of violations by a retailer at one retail location~~
25 ~~may not be accumulated against other locations of that same~~
26 ~~retailer.~~

27 ~~(3) Convictions of violations accumulated against a prior retail~~
28 ~~owner at a licensed location may not be accumulated against a~~
29 ~~new retail owner at the same retail location.~~

30 ~~(4) Prior to revoking a retailer's license to sell cigarette and~~
31 ~~tobacco products, the board shall notify the retailer. The notice~~
32 ~~shall include instructions for appealing the license revocation.~~

33 ~~(b) (1) Upon the first conviction of a violation of either the~~
34 ~~STAKE Act (Division 8.5 (commencing with Section 22950)) or~~
35 ~~Section 308 of the Penal Code, the retailer shall receive a warning~~
36 ~~letter from the board that delineates the circumstances under which~~
37 ~~a retailer's license may be revoked. The retailer and its employees~~
38 ~~shall receive training on tobacco control laws from the State~~
39 ~~Department of Public Health upon a first conviction. The retailer~~
40 ~~shall also be subject to a fine of seven hundred fifty dollars (\$750).~~

1 ~~(2) Upon the second conviction of a violation of either the~~
 2 ~~STAKE Act (Division 8.5 (commencing with Section 22950)) or~~
 3 ~~Section 308 of the Penal Code within 12 months, the retailer shall~~
 4 ~~be subject to a fine of one thousand five hundred dollars (\$1,500)~~
 5 ~~and suspension of the license for 25 days.~~

6 ~~(3) Upon the third conviction of a violation of either the STAKE~~
 7 ~~Act (Division 8.5 (commencing with Section 22950)) or Section~~
 8 ~~308 of the Penal Code within 12 months, the board shall revoke~~
 9 ~~the retailer's license to sell cigarette and tobacco products.~~

10 ~~(e) The decision of the board to revoke the retailer's license~~
 11 ~~may be appealed to the board within 30 days after the notice of~~
 12 ~~revocation. All appeals shall be submitted in writing.~~

13 ~~(d) This section shall not preempt or supersede any local tobacco~~
 14 ~~control laws other than those related to the collection of state taxes.~~
 15 ~~Local licensing laws may provide for the suspension or revocation~~
 16 ~~of the local license for any violation of a state tobacco control law.~~

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CORRECTIONS:
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