

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, 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, ~~Committee on Governmental Organization~~
Jerome Horton. Cigarettes.

Existing

(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

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, and issuing citations for violations of these provisions. This bill would delete the requirement that agents assigned to the Drug Enforcement Narcotics Team by the director and all other agents of the department 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 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 ~~is punishable~~ 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 ~~fine to \$500 for any violation~~ amounts of those fines to \$50 for the first offense, \$100 for the second offense, \$250 for the third offense, and \$500 for the fourth and each subsequent offense.

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

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

- 1 SECTION 1. *Section 25755 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 25755. (a) The director and the persons employed by the
- 4 department for the administration and enforcement of this division
- 5 are peace officers in the enforcement of the penal provisions of this
- 6 division, the rules of the department adopted under the provisions



1 of this division, and any other penal provisions of law of this state
2 prohibiting or regulating the sale, exposing for sale, use,
3 possession, giving away, adulteration, dilution, misbranding, or
4 mislabeling of alcoholic beverages or intoxicating liquors, and
5 these persons are authorized, while acting as peace officers, to
6 enforce any penal provisions of law while in the course of their
7 employment. *The director and the persons employed by the*
8 *department for the administration of this division are also peace*
9 *officers in the enforcement of Section 308 of the Penal Code and*
10 *the Stop Tobacco Access to Kids Enforcement (STAKE) Act*
11 *(Division 8.5 (commencing with Section 22950)), and may issue*
12 *citations for violations of these provisions.*

13 (b) The director, the persons employed by the department for
14 the administration and enforcement of this division, peace officers
15 listed in Section 830.1 of the Penal Code, and those officers listed
16 in Section 830.6 of the Penal Code while acting in the course and
17 scope of their employment as peace officers may, in enforcing the
18 provisions of this division, visit and inspect the premises of any
19 licensee at any time during which the licensee is exercising the
20 privileges authorized by his or her license on the premises.

21 (c) Peace officers of the Department of the California Highway
22 Patrol, members of the University of California and California
23 State University police departments, and peace officers of the
24 Department of Parks and Recreation, as defined in subdivisions
25 (a), (b), (c), and (f) of Section 830.2 of the Penal Code, may, in
26 enforcing this division, visit and inspect the premises of any
27 licensee located on state property at any time during which the
28 licensee is exercising the privileges authorized by his or her license
29 on the premises.

30 ~~(d) Any agents assigned to the Drug Enforcement Narcotics~~
31 ~~Team by the director shall have successfully completed a~~
32 ~~four-week course on narcotics enforcement approved by the~~
33 ~~Commission on Peace Officer Standards and Training. In addition,~~
34 ~~all other agents of the department shall successfully complete the~~
35 ~~four-week course on narcotics enforcement approved by the~~
36 ~~Commission on Peace Officer Standards and Training by June 1,~~
37 ~~1995.~~

38 *SEC. 2. Section 22974.6 is added to the Business and*
39 *Professions Code, to read:*



1 22974.6. Any board employee granted limited peace office
2 status pursuant to paragraph (6) of subdivision (a) of Section
3 830.11 of the Penal Code may issue citations for violations of
4 Section 308 of the Penal Code and the Stop Tobacco Access to Kids
5 Enforcement (STAKE) Act (Division 8.5 (commencing with
6 Section 22950)).

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

8 308. (a) Every person, firm, or corporation which knowingly
9 or under circumstances in which it has knowledge, or should
10 otherwise have grounds for knowledge, sells, gives, or in any way
11 furnishes to another person who is under the age of 18 years any
12 tobacco, cigarette, or cigarette papers, or any other preparation of
13 tobacco, or any other instrument or paraphernalia that is designed
14 for the smoking or ingestion of tobacco, products prepared from
15 tobacco, or any controlled substance, is subject to either a criminal
16 action for a misdemeanor or to a civil action brought by a city
17 attorney, a county counsel, or a district attorney, punishable by a
18 fine of two hundred dollars (\$200) for the first offense, five
19 hundred dollars (\$500) for the second offense, and one thousand
20 dollars (\$1,000) for the third offense.

21 Notwithstanding Section 1464 or any other provision of law, 25
22 percent of each civil and criminal penalty collected pursuant to this
23 subdivision shall be paid to the office of the city attorney, county
24 counsel, or district attorney, whoever is responsible for bringing
25 the successful action, and 25 percent of each civil and criminal
26 penalty collected pursuant to this subdivision shall be paid to the
27 city or county for the administration and cost of the community
28 service work component provided in subdivision (b).

29 Proof that a defendant, or his or her employee or agent,
30 demanded, was shown, and reasonably relied upon evidence of
31 majority shall be defense to any action brought pursuant to this
32 subdivision. Evidence of majority of a person is a facsimile of or
33 a reasonable likeness of a document issued by a federal, state,
34 county, or municipal government, or subdivision or agency
35 thereof, including, but not limited to, a motor vehicle operator's
36 license, a registration certificate issued under the ~~Federal~~ federal
37 Selective Service Act, or an identification card issued to a member
38 of the Armed Forces.

39 For purposes of this section, the person liable for selling or
40 furnishing tobacco products to minors by a tobacco vending



1 machine shall be the person authorizing the installation or
2 placement of the tobacco vending machine upon premises he or
3 she manages or otherwise controls and under circumstances in
4 which he or she has knowledge, or should otherwise have grounds
5 for knowledge, that the tobacco vending machine will be utilized
6 by minors.

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

14 (c) Every person, firm, or corporation which sells, or deals in
15 tobacco or any preparation thereof, shall post conspicuously and
16 keep so posted in his, her, or their place of business at each point
17 of purchase the notice required pursuant to subdivision (b) of
18 Section 22952 of the Business and Professions Code, and any
19 person failing to do so shall ~~upon conviction~~, *upon conviction*, be
20 punished by a fine of ~~five hundred dollars (\$500)~~ *fifty dollars*
21 *(\$50) for the first offense, one hundred dollars (\$100) for the*
22 *second offense, two hundred fifty dollars (\$250) for the third*
23 *offense, and five hundred dollars (\$500) for the fourth offense and*
24 *each subsequent violation of this provision*, or by imprisonment in
25 a county jail not exceeding 30 days.

26 (d) For purposes of determining the liability of persons, firms,
27 or corporations controlling franchises or business operations in
28 multiple locations for the second and subsequent violations of this
29 section, each individual franchise or business location shall be
30 deemed a separate entity.

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

34 (f) Notwithstanding any other provision of this section, the
35 Director of Corrections may sell or supply tobacco and tobacco
36 products, including cigarettes and cigarette papers, to any person
37 confined in any institution or facility under his or her jurisdiction
38 who has attained the age of 16 years, if the parent or guardian of
39 the person consents thereto, and may permit smoking by the person
40 in any institution or facility. No officer or employee of the



- 1 Department of Corrections shall be considered to have violated
- 2 this section by any act authorized by this subdivision.

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