

Senate Bill No. 1173

CHAPTER 812

An act to amend Section 22962 of the Business and Professions Code, relating to tobacco products.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1173, Ortiz. Tobacco products: self-service display.

The existing Stop Tobacco Access to Kids Enforcement (STAKE) Act is designed to reduce the availability of tobacco products to minors through sales restrictions and enforcement activities. The act prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, any person under the age of 18 years and authorizes the assessment of civil penalties for a violation of the act. Specifically, the STAKE Act prohibits a person engaged in the retail sale of tobacco products to sell, offer for sale, or display for sale, cigarettes by self-service display, as defined.

This bill would broaden that prohibition by prohibiting a person engaged in the retail sale of tobacco products from selling, offering for sale, or displaying for sale, any tobacco product or tobacco paraphernalia by self-service display. However, the bill would provide an exemption to that prohibition for the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that, in the case of the cigars, they are generally not sold or offered for sale in a sealed package of the manufacturer or importer containing less than 6 cigars. In the event of an enforcement action brought under the act, the bill would require the retail business that displays any of those items in a self-service display to have the burden of proving that it qualified for the exemption.

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

SECTION 1. Section 22962 of the Business and Professions Code is amended to read:

22962. (a) For purposes of this section, the following terms have the following meanings:

(1) "Self-service display" means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the



general public without the assistance of the retailer or employee of the retailer.

(2) “Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

(3) “Tobacco product” means any product containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(4) “Tobacco store” means a retail business that meets all of the following requirements:

(A) Primarily sells tobacco products.

(B) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.

(C) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person’s parent or legal guardian, as defined in Section 6903 of the Family Code.

(D) Does not sell alcoholic beverages or food for consumption on the premises.

(b) Except as permitted in subdivision (b) of Section 22960, it is unlawful for a person engaged in the retail sale of tobacco products to sell, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by self-service display. A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(c) Subdivision (b) shall not apply to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that in the case of cigars they are generally not sold or offered for sale in a sealed package of the manufacturer or importer containing less than six cigars. In any enforcement action brought pursuant to this division, the retail business that displays any of the items described in this subdivision in a self-service display shall have the burden of proving that it qualifies for the exemption established in this subdivision.

(d) The Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

(e) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco



products, the greater restriction on the access to tobacco products in the local standard shall prevail.

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