

AMENDED IN SENATE JULY 15, 2010

AMENDED IN ASSEMBLY MAY 12, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2733

Introduced by Assembly Member Ruskin

(Coauthor: Senator Padilla)

February 19, 2010

An act to amend Sections 22971, 22973.1, 22977.2, 22979, 22980.2, and 22980.3 of, and to add Sections 22971.5, 22980.4, and 22980.5 to, the Business and Professions Code, relating to cigarette and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 2733, as amended, Ruskin. Cigarettes and tobacco products.

Existing law, 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. The act prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are licensed. The act authorizes the board to suspend or revoke the license of any manufacturer, distributor, wholesaler, importer, or retailer of tobacco products that is in violation of the act's provisions. Violation of the act is a misdemeanor.

This bill would, among other things, prohibit the transfer of title or possession of cigarettes or tobacco products without consideration, exchange, or barter if the cigarettes or tobacco products had been purchased for resale under a license issued pursuant to the act and the

transfer occurs during the suspension or after revocation of the license. It would also prohibit specified displays of cigarettes or tobacco products. It would ~~impose~~ *require* prescribed notices to be posted when a license has been suspended or revoked by the board, and would make violation of these *notice* posting requirements subject to a civil penalty. By adding a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 22971 of the Business and Professions
2 Code is amended to read:
3 22971. For purposes of this division, the following terms shall
4 have the following meanings:
5 (a) “Board” means the State Board of Equalization.
6 (b) “Brand family” has the same meaning as that term is defined
7 in paragraph (2) of subdivision (a) of Section 30165.1 of the
8 Revenue and Taxation Code.
9 (c) “Cigarette” means a cigarette as defined in Section 30003
10 of the Revenue and Taxation Code.
11 (d) (1) “Control” or “controlling” means possession, direct or
12 indirect, of the power:
13 (A) To vote 25 percent or more of any class of the voting
14 securities issued by a person.
15 (B) To direct or cause the direction of the management and
16 policies of a person, whether through the ownership of voting
17 securities, by contract, other than a commercial contract for goods
18 or nonmanagement services, or *as* otherwise provided; however,
19 no individual shall be deemed to control a person solely on account
20 of being a director, officer, or employee of that person.
21 (2) For purposes of subparagraph (B) of paragraph (1), a person
22 who, directly or indirectly, owns, controls, holds, with the power
23 to vote, or holds proxies representing 10 percent or more of the

1 then outstanding voting securities issued by another person, is
2 presumed to control that other person.

3 (3) For purposes of this division, the board may determine
4 whether a person in fact controls another person.

5 (e) “Display for sale” means the placement of cigarettes or
6 tobacco products in a vending machine or in retail stock for the
7 purpose of selling or gifting the cigarettes or tobacco products.
8 For purposes of this definition, the clear and easily visible display
9 of cigarettes or tobacco products shall create a rebuttable
10 presumption that either were displayed for sale.

11 (f) “Distributor” means a distributor as defined in Section 30011
12 of the Revenue and Taxation Code.

13 (g) “Gifting” means any transfer of title or possession without
14 consideration, exchange, or barter, in any manner or by any means,
15 of cigarettes or tobacco products that have been purchased for
16 resale under a license issued pursuant to this division if the transfer
17 occurs while the license is suspended or after the effective date of
18 its revocation.

19 (h) “Importer” means an importer as defined in Section 30019
20 of the Revenue and Taxation Code.

21 (i) “Law enforcement agency” means a sheriff, a police
22 department, or a city, county, or city and county agency or
23 department designated by the governing body of that agency to
24 enforce this chapter or to enforce local smoking and tobacco
25 ordinances and regulations.

26 (j) “License” means a license issued by the board pursuant to
27 this division.

28 (k) “Licensee” means any person holding a license issued by
29 the board pursuant to this division.

30 (l) “Manufacturer” means a manufacturer of cigarettes or
31 tobacco products sold in this state.

32 (m) “Notice” or “notification” means, unless as otherwise
33 provided, the written notice or notification provided to a licensee
34 by the board by either actual delivery to the licensee or by
35 first-class mail addressed to the licensee at the address on the
36 license.

37 (n) “Package of cigarettes” means a package as defined in
38 Section 30015 of the Revenue and Taxation Code.

39 (o) “Person” means a person as defined in Section 30010 of the
40 Revenue and Taxation Code.

1 (p) “Retailer” means a person who engages in this state in the
2 sale of cigarettes or tobacco products directly to the public from
3 a retail location. Retailer includes a person who operates vending
4 machines from which cigarettes or tobacco products are sold in
5 this state.

6 (q) “Retail location” means both of the following:

7 (1) Any building from which cigarettes or tobacco products are
8 sold at retail.

9 (2) A vending machine.

10 (r) “Sale” or “sold” means a sale as defined in Section 30006
11 of the Revenue and Taxation Code.

12 (s) “Tobacco products” means tobacco products as defined in
13 subdivision (b) of Section 30121 and subdivision (b) of Section
14 30131.1 of the Revenue and Taxation Code.

15 (t) “Unstamped package of cigarettes” means a package of
16 cigarettes that does not bear a tax stamp as required under Part 13
17 (commencing with Section 30001) of Division 2 of the Revenue
18 and Taxation Code, including a package of cigarettes that bears a
19 tax stamp of another state or taxing jurisdiction, a package of
20 cigarettes that bears a counterfeit tax stamp, or a stamped or
21 unstamped package of cigarettes that is marked “Not for sale in
22 the United States.”

23 (u) “Wholesaler” means a wholesaler as defined in Section
24 30016 of the Revenue and Taxation Code.

25 SEC. 2. Section 22971.5 is added to the Business and
26 Professions Code, to read:

27 22971.5. Any notice required by this division shall be served
28 personally or by mail. If by mail, the notice shall be placed in a
29 sealed envelope, with postage paid, addressed to the licensee at
30 the address as it appears in the records of the board. The giving of
31 notice shall be deemed complete at the time of deposit of the notice
32 in the United States Post Office, or a mailbox, subpost office,
33 substation, or mail chute, or other facility regularly maintained or
34 provided by the United States Postal Service, without extension
35 of time for any reason. In lieu of mailing, a notice may be served
36 personally by delivering to the person to be served and service
37 shall be deemed complete at the time of delivery. Personal service
38 to a corporation may be made by delivery of a notice to any person
39 designated in the Code of Civil Procedure to be served for the
40 corporation with summons and complaints in a civil action.

1 SEC. 3. Section 22973.1 of the Business and Professions Code
2 is amended to read:

3 22973.1. (a) The board shall issue a license to a retailer upon
4 receipt of a completed application and payment of the fees
5 prescribed in Section 22973, unless any of the following apply:

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

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

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

16 (B) The person applying for the license provides the board with
17 documentation demonstrating that the applicant has acquired or is
18 acquiring the premises or business in an arm's length transaction.
19 For purposes of this section, an "arm's length transaction" is
20 defined as a sale in good faith and for valuable consideration that
21 reflects the fair market value in the open market between two
22 informed and willing parties, neither under any compulsion to
23 participate in the transaction. A sale between relatives, related
24 companies or partners, or a sale for the primary purpose of avoiding
25 the effect of the violations of this division that occurred at the retail
26 location, is presumed not to be made at "arm's length."

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

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

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

38 (2) Every petition for redetermination shall be in writing and
39 shall state the specific grounds upon which the petition is founded.
40 The petition may be amended to state additional grounds at anytime

1 prior to the date on which the board issues its order or decision
2 upon the petition for redetermination.

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

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

12 SEC. 4. Section 22977.2 of the Business and Professions Code
13 is amended to read:

14 22977.2. (a) The board shall issue a license to a distributor or
15 a wholesaler upon receipt of a completed application and payment
16 of the fee prescribed in Section 22977.1, unless any of the
17 following apply:

18 (1) The distributor or the wholesaler, or if the distributor or the
19 wholesaler is not an individual, any person controlling the
20 distributor or the wholesaler, has previously been issued a license
21 that is suspended or revoked by the board for violation of any of
22 the provisions of this division.

23 (2) The application is for a license or renewal of a license for a
24 distributor or a wholesaler, whose license is revoked or revocation
25 is pending, unless:

26 (A) It has been more than five years since a distributor's or a
27 wholesaler's previous license was revoked.

28 (B) The person applying for the license provides the board with
29 documentation demonstrating that the applicant has acquired or is
30 acquiring the business in an arm's length transaction. For purposes
31 of this section, an "arm's length transaction" is defined as a sale
32 in good faith and for valuable consideration that reflects the fair
33 market value in the open market between two informed and willing
34 parties, neither under any compulsion to participate in the
35 transaction. A sale of the business between relatives, related
36 companies or partners, or a sale for the primary purpose of avoiding
37 the effect of the violations of state tobacco control laws that were
38 committed by the distributor or wholesaler is presumed not to be
39 made at "arm's length."

1 (3) The distributor or the wholesaler, or if the distributor or the
2 wholesaler is not an individual, any person controlling the
3 distributor or the wholesaler has been convicted of a felony
4 pursuant to Section 30473 or 30480 of the Revenue and Taxation
5 Code.

6 (b) (1) Any distributor or any wholesaler who is denied a license
7 may petition for a redetermination of the board's denial of the
8 license within 30 days after service upon that distributor or that
9 wholesaler of the notice of the denial of the license. If a petition
10 for redetermination is not filed within the 30-day period, the
11 determination of denial becomes final at the expiration of the
12 30-day period.

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

18 (3) If the petition for redetermination is filed within the 30-day
19 period, the board shall reconsider the determination of the denial
20 and, if the distributor or the wholesaler has so requested in the
21 petition, shall grant the distributor or wholesaler an oral hearing
22 and shall give the distributor or the wholesaler at least 10 days'
23 notice of the time and place of the hearing. The board may continue
24 the hearing from time to time as may be necessary.

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

28 SEC. 5. Section 22979 of the Business and Professions Code
29 is amended to read:

30 22979. (a) Every manufacturer and every importer, shall obtain
31 and maintain a license to engage in the sale of cigarettes. In order
32 to be eligible for obtaining and maintaining a license under this
33 division, a manufacturer or importer shall do all of the following
34 in the manner specified by the board:

35 (1) Submit to the board a list of all brand families that they
36 manufacture or import.

37 (2) Update the list of all brand families that they manufacture
38 or import whenever a new or additional brand is manufactured or
39 imported, or a listed brand is no longer manufactured or imported.

1 (3) Consent to jurisdiction of the California courts for the
2 purpose of enforcement of this division and appoint a registered
3 agent for service of process in this state and identify the registered
4 agent to the board.

5 (b) In order to be eligible for obtaining and maintaining a license
6 under this division, a manufacturer or importer that is a “tobacco
7 product manufacturer” in subdivision (i) of Section 104556 of the
8 Health and Safety Code, shall do all of the following in the manner
9 specified by the board:

10 (1) Certify to the board that it is a “participating manufacturer”
11 as defined in subsection II(jj) of the “Master Settlement
12 Agreement” (MSA), or is in full compliance with paragraph (2)
13 of subdivision (a) of Section 104557 of the Health and Safety
14 Code. Any person who makes a certification pursuant to this
15 subdivision that asserts the truth of any material matter that he or
16 she knows to be false is guilty of a misdemeanor punishable by
17 imprisonment of up to one year in the county jail, or a fine of not
18 more than one thousand dollars (\$1,000), or both the imprisonment
19 and the fine.

20 (2) Submit to the board a list of all brand families that fit under
21 the category applicable to the manufacturer or importer, in
22 accordance with the following:

23 (A) Brand families that are to be counted, in the unit volume
24 and market shares determined pursuant to subsections II(z) and
25 II(mm) of the MSA and Exhibit E thereto, in calculating the
26 manufacturer’s annual payments under the MSA.

27 (B) Brand families that are to be counted in calculating the
28 manufacturer’s escrow deposits under paragraph (2) of subdivision
29 (a) of Section 104557 of the Health and Safety Code.

30 (C) The manufacturer or importer shall update the list whenever
31 a new or additional brand is manufactured or imported or a listed
32 brand is no longer manufactured or imported.

33 (c) The board may not grant or permit the maintenance of a
34 license to any manufacturer or an importer of cigarettes that does
35 not affirmatively certify, both at the time the license is granted and
36 annually thereafter, that all packages of cigarettes manufactured
37 or imported by that person and distributed in this state fully comply
38 with subdivision (b) of Section 30163 of the Revenue and Taxation
39 Code, and that the cigarettes contained in those packages are the
40 subject of filed reports that fully comply with all requirements of

1 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.
2 1331 et seq.) for the reporting of ingredients added to cigarettes.
3 For purposes of the federal Cigarette Labeling and Advertising
4 Act requirement, cigars weighing three pounds or less per 1,000
5 are excluded from the definition of cigarette.

6 (d) A license issued to a manufacturer or an importer under this
7 division is only valid with respect to the manufacturer or importer
8 designated on the license and may not be transferred or assigned
9 to another manufacturer or importer.

10 (e) Any manufacturer or importer that is issued a license under
11 this division that does not commence business in the manner
12 specified or designated in the license, ceases to do business in the
13 manner specified or designated in the license, or is notified that
14 the license is suspended or revoked, shall immediately surrender
15 that license to the board.

16 (f) (1) Any manufacturer or any importer who is denied a
17 license may petition for a redetermination of the board's denial of
18 the license within 30 days after service upon that manufacturer or
19 that importer of the notice of the denial of the license. If a petition
20 for redetermination is not filed within the 30-day period, the
21 determination of denial becomes final at the expiration of the
22 30-day period.

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

28 (3) If the petition for redetermination is filed within the 30-day
29 period, the board shall reconsider the determination of the denial
30 and, if the manufacturer or the importer has so requested in the
31 petition, shall grant an oral hearing and shall give the manufacturer
32 or the importer at least 10 days' notice of the time and place of the
33 hearing. The board may continue the hearing from time to time as
34 may be necessary.

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

38 SEC. 6. Section 22980.2 of the Business and Professions Code
39 is amended to read:

1 22980.2. (a) A person or entity that engages in the business
2 of selling cigarettes or tobacco products in this state *either* without
3 a valid license *or after a license has been suspended or revoked* ,
4 and each officer of any corporation that so engages in this business,
5 is guilty of a misdemeanor punishable as provided in Section
6 22981.

7 (b) Each day after notification by the board or by a law
8 enforcement agency that a manufacturer, wholesaler, distributor,
9 importer, retailer, or any other person required to be licensed under
10 this division offers cigarette and tobacco products for sale or
11 exchange without a valid license for the location from which they
12 are offered for sale shall constitute a separate violation.

13 (c) Continued sales or ~~continued gifting~~ *gifting of cigarettes*
14 *and tobacco products either* without a valid license ~~shall be subject~~
15 ~~to the penalty provided in Section 22981, or after a notification~~
16 *of suspension or revocation shall constitute a violation punishable*
17 *as provided in Section 22981*, and shall result in the seizure of all
18 cigarettes and tobacco products in the possession of the person by
19 the board or a law enforcement agency. Any cigarettes and tobacco
20 products seized by the board or by a law enforcement agency shall
21 be deemed forfeited.

22 SEC. 7. Section 22980.3 of the Business and Professions Code
23 is amended to read:

24 22980.3. (a) Licenses issued pursuant to this division shall be
25 subject to suspension or revocation for violations of this division
26 or the Revenue and Taxation Code as provided in this section.

27 (1) In addition to any applicable fines or penalties for a violation,
28 upon first conviction of a violation, a licensee shall receive a
29 written notice from the board detailing the suspension and
30 revocation provisions of this division. At its discretion, the board
31 may also suspend a license for up to 30 days.

32 (2) In addition to any applicable fines or penalties for a violation,
33 upon a second conviction of a violation within four years of a
34 previous violation, the license shall be revoked.

35 (b) The date of the occurrence of a violation shall be used to
36 calculate the duration between subsequent violations. A violation
37 shall be noted in the license record at the board only after judicial
38 conviction or final adjudication of a violation.

39 (c) Upon updating a record for a violation triggering a
40 suspension, the board shall serve the licensee with a notice of

1 suspension and shall order the licensee to cease the sale, gifting,
2 ~~and~~ or displaying for sale of cigarettes or tobacco products for the
3 period of the suspension. The notice of suspension shall inform
4 the licensee of the effective dates of the suspension.

5 (d) Continued sales or gifting of cigarettes or tobacco products
6 after the effective date of the suspension shall *constitute a violation*
7 *of this division and* result in the revocation of a license.

8 (e) Upon completion of a suspension period, a license shall be
9 reinstated by the board upon certification that all outstanding debts
10 of that retailer or wholesaler that are owed to a wholesaler or
11 distributor for the purchase of ~~cigarette~~ *cigarettes* and tobacco
12 products are paid.

13 (f) Upon updating a record for a violation triggering a
14 revocation, the board shall serve the licensee with a notice of
15 revocation and shall order the licensee to cease the sale, gifting,
16 ~~and~~ or displaying for sale of cigarettes or tobacco products on and
17 after the effective date of the revocation. The notice of revocation
18 shall inform the licensee of the effective date of the revocation.

19 (g) After a revocation, a previously licensed applicant may apply
20 for a new license after six months. The board may, at its discretion,
21 issue a new license.

22 (h) Upon updating a license record for a violation, suspension,
23 or revocation to a license of a person or entity that owns or controls
24 more than one location, the board shall send notice in writing of
25 the violations, suspensions, or revocations within 15 days of the
26 board's action to the address included in the application and listed
27 on the license for receipt of correspondence or notices from the
28 board.

29 (i) Upon suspension or revocation of a license pursuant to this
30 section, the board shall notify all licensed distributors and
31 wholesalers by electronic mail within 48 hours of the suspension
32 or revocation of that license. All licensed distributors and
33 wholesalers shall provide the board and shall update, as necessary,
34 an electronic mail address that the board can use for purposes of
35 making the notifications required by this subdivision.

36 (j) Violations by a licensee at one location may not be
37 accumulated against other locations of that same licensee.
38 Violations accumulated against a prior owner at a licensed location
39 may not be accumulated against a new owner at the same licensed
40 location.

1 (k) For purposes of this section, a violation includes violations
2 of the Revenue and Taxation Code relating to cigarettes and
3 tobacco products, and violations of this division. Only one violation
4 per discrete action shall be counted ~~towards~~ *toward* a suspension
5 or revocation of a license.

6 SEC. 8. Section 22980.4 is added to the Business and
7 Professions Code, to read:

8 22980.4. A person who, after receiving a notice of suspension
9 or revocation, continues to display for sale cigarettes or tobacco
10 products shall be subject to a civil penalty of one thousand dollars
11 ~~(\$1,000) for each offense. A violation of this section shall not be~~
12 ~~(\$1,000) for each offense, and shall not be~~ subject to Section
13 22981.

14 SEC. 9. Section 22980.5 is added to the Business and
15 Professions Code, to read:

16 22980.5. (a) A retailer whose license has been suspended or
17 revoked by order of the board shall conspicuously post a notice at
18 both of the following locations:

19 (1) Each public entrance to the retail location. The notice shall
20 directly face any person who enters the retail location and shall
21 not be obstructed from view or placed at a height of less than four
22 feet or greater than nine feet from the floor.

23 (2) Each cash register and other point of retail sale. The notice
24 shall be posted so as to be readily viewable by a person standing
25 at or approaching the cash register or other point of retail sale. The
26 notice shall directly face the purchaser and shall not be obstructed
27 from view or placed at a height of less than four feet or greater
28 than nine feet from the floor.

29 (b) The notices described in this section shall be in the size and
30 form prescribed by the board. The notice shall be provided by the
31 board and may be reproduced in the same size and form in order
32 to comply with subdivision (a).

33 (c) A retailer whose license was suspended shall post the notice
34 at the retail location that was the subject of the suspension for the
35 duration of the suspension.

36 (d) A retailer whose license was revoked shall post the notice
37 at the retail location that was the subject of the revocation for a
38 30-day period from the effective date of the revocation.

39 (e) Every retailer who fails to post the notices as required by
40 this section, who alters the notice provided by the board, or who

1 removes the notice before the posting period required in
2 subdivision (c) or (d), as appropriate, expires, shall be subject,
3 notwithstanding Section 22981, to a civil penalty of one thousand
4 dollars (\$1,000) for each offense.

5 SEC. 10. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.