

AMENDED IN ASSEMBLY JULY 23, 2009

AMENDED IN ASSEMBLY JUNE 23, 2009

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE MAY 21, 2009

AMENDED IN SENATE MAY 12, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 400

Introduced by Senator Corbett

February 26, 2009

An act to amend Sections 22950.5, ~~22962, and 22971~~ and 22962 of the Business and Professions Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 400, as amended, Corbett. Tobacco.

Existing law, the Stop Tobacco Access to Kids Enforcement Act (STAKE Act), establishes various requirements for retailers relating to tobacco sales to minors. ~~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.~~ A violation of this act is a crime.

This bill would, ~~for purposes of both acts,~~ include within the *act's* definition of tobacco product tobacco substitutes, as defined by the bill, and make conforming changes. By changing the definition of an existing 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 22950.5 of the Business and Professions
 2 Code is amended to read:

3 22950.5. For purposes of this division, the following terms
 4 have the following meanings:

5 (a) “Department” means the State Department of Public Health.

6 (b) “Enforcing agency” means the State Department of Public
 7 Health, another state agency, including, but not limited to, the
 8 office of the Attorney General, or a local law enforcement agency,
 9 including, but not limited to, a city attorney, district attorney, or
 10 county counsel.

11 (c) “Tobacco product” means a product containing tobacco leaf,
 12 including, but not limited to, cigarettes, cigars, pipe tobacco, snuff,
 13 chewing tobacco, dipping tobacco, bidis, or other preparation of
 14 tobacco, or a tobacco substitute.

15 (d) “Tobacco substitute” means a battery-powered device that
 16 can provide inhaled doses of nicotine by delivering a vaporized
 17 solution.

18 SEC. 2. Section 22962 of the Business and Professions Code
 19 is amended to read:

20 22962. (a) For purposes of this section, the following terms
 21 have the following meanings:

22 (1) “Self-service display” means the open display of tobacco
 23 products or tobacco paraphernalia in a manner that is accessible
 24 to the general public without the assistance of the retailer or
 25 employee of the retailer.

26 (2) “Tobacco paraphernalia” means cigarette papers or wrappers,
 27 blunt wraps as defined in Section 308 of the Penal Code, pipes,
 28 holders of smoking materials of all types, cigarette rolling
 29 machines, or other instruments or things designed for the smoking
 30 or ingestion of tobacco products.

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

3 (A) Primarily sells tobacco products.

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

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

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

13 (b) (1) (A) Except as permitted in subdivision (b) of Section
14 22960, it is unlawful for a person engaged in the retail sale of
15 tobacco products to sell, offer for sale, or display for sale a tobacco
16 product or tobacco paraphernalia by self-service display. A person
17 who violates this section is subject to those civil penalties specified
18 in the schedule in subdivision (a) of Section 22958.

19 (B) A person who violates this section is subject to those civil
20 penalties specified in the schedule in subdivision (a) of Section
21 22958.

22 (2) It is unlawful for a person engaged in the retail sale of blunt
23 wraps to place or maintain, or to cause to be placed or maintained,
24 a blunt wraps advertising display within two feet of candy, snack,
25 or nonalcoholic beverage displayed inside a store or business.

26 (3) It is unlawful for a person or business to place or maintain,
27 or cause to be placed or maintained, a blunt wrap advertising
28 display that is less than four feet above the floor.

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

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

1 (e) This section does not preempt or otherwise prohibit the
2 adoption of a local standard that imposes greater restrictions on
3 the access to tobacco products than the restrictions imposed by
4 this section. To the extent that there is an inconsistency between
5 this section and a local standard that imposes greater restrictions
6 on the access to tobacco products, the greater restriction on the
7 access to tobacco products in the local standard shall prevail.

8 ~~SEC. 3.—Section 22971 of the Business and Professions Code~~
9 ~~is amended to read:~~

10 ~~22971. For purposes of this division, the following terms shall~~
11 ~~have the following meanings:~~

12 ~~(a) “Board” means the State Board of Equalization.~~

13 ~~(b) “Importer” means an importer as defined in Section 30019~~
14 ~~of the Revenue and Taxation Code.~~

15 ~~(c) “Distributor” means a distributor as defined in Section 30011~~
16 ~~of the Revenue and Taxation Code.~~

17 ~~(d) “Manufacturer” means a manufacturer of cigarettes or~~
18 ~~tobacco products sold in this state.~~

19 ~~(e) “Retailer” means a person who engages in this state in the~~
20 ~~sale of cigarettes or tobacco products directly to the public from~~
21 ~~a retail location. Retailer includes a person who operates vending~~
22 ~~machines from which cigarettes or tobacco products are sold in~~
23 ~~this state.~~

24 ~~(f) “Retail location” means both of the following:~~

25 ~~(1) A building from which cigarettes or tobacco products are~~
26 ~~sold at retail.~~

27 ~~(2) A vending machine.~~

28 ~~(g) “Wholesaler” means a wholesaler as defined in Section~~
29 ~~30016 of the Revenue and Taxation Code.~~

30 ~~(h) “Cigarette” means a cigarette as defined in Section 30003~~
31 ~~of the Revenue and Taxation Code.~~

32 ~~(i) “License” means a license issued by the board pursuant to~~
33 ~~this division.~~

34 ~~(j) “Licensee” means a person holding a license issued by the~~
35 ~~board pursuant to this division.~~

36 ~~(k) “Sale” or “sold” means a sale as defined in Section 30006~~
37 ~~of the Revenue and Taxation Code.~~

38 ~~(l) “Tobacco products” means tobacco products as defined in~~
39 ~~subdivision (b) of Section 30121 and subdivision (b) of Section~~
40 ~~30131.1 of the Revenue and Taxation Code, or a tobacco substitute.~~

1 (m) “Tobacco substitute” means a battery-powered device that
2 can provide inhaled doses of nicotine by delivering a vaporized
3 solution.

4 (n) “Unstamped package of cigarettes” means a package of
5 cigarettes that does not bear a tax stamp as required under Part 13
6 (commencing with Section 30001) of Division 2 of the Revenue
7 and Taxation Code, including a package of cigarettes that bears a
8 tax stamp of another state or taxing jurisdiction, a package of
9 cigarettes that bears a counterfeit tax stamp, or a stamped or
10 unstamped package of cigarettes that is marked “Not for sale in
11 the United States.”

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

14 (p) “Package of cigarettes” means a package as defined in
15 Section 30015 of the Revenue and Taxation Code.

16 (q) (1) “Control” or “controlling” means possession, direct or
17 indirect, of the power:

18 (A) To vote 25 percent or more of a class of the voting securities
19 issued by a person.

20 (B) To direct or cause the direction of the management and
21 policies of a person, whether through the ownership of voting
22 securities, by contract (other than a commercial contract for goods
23 or nonmanagement services), or otherwise provided; however, no
24 individual shall be deemed to control a person solely on account
25 of being a director, officer, or employee of such person.

26 (2) For purposes of subparagraph (B) of this subdivision, a
27 person who, directly or indirectly, owns, controls, holds, with the
28 power to vote, or holds proxies representing 10 percent or more
29 of the then outstanding voting securities issued by another person,
30 is presumed to control such other person.

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

33 (r) “Law enforcement agency” means a sheriff, a police
34 department, or a city, county, or city and county agency or
35 department designated by the governing body of that agency to
36 enforce this chapter or to enforce local smoking and tobacco
37 ordinances and regulations.

38 (s) “Brand family” has the same meaning as that term is defined
39 in paragraph (2) of subdivision (a) of Section 30165.1 of the
40 Revenue and Taxation Code.

1 ~~(t) The amendments made to this section by the act adding this~~
2 ~~subdivision shall become operative May 1, 2007.~~
3 ~~SEC. 4.~~
4 *SEC. 3.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.