

Introduced by Senator PadillaFebruary 27, 2009

An act to amend Section 22974.8 of, and to add Section 22973.3 to, the Business and Professions Code, relating to retail tobacco sales.

LEGISLATIVE COUNSEL'S DIGEST

SB 602, as introduced, Padilla. Retail tobacco sales: 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, requires a retailer to obtain a separate license for each retail location, and authorizes the board to suspend or revoke the license of any retailer that is in violation of the act.

This bill would prohibit the board from issuing a new license to a retailer for a retail location in an area of overconcentration, as defined.

Existing law, the Stop Tobacco Access to Kids Enforcement Act or STAKE Act, establishes various requirements for retailers relating to tobacco sales to minors. Existing law also makes it a misdemeanor for a retailer to knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sell, give, or in any way furnish a minor with tobacco products or paraphernalia. Under existing law, violation of the STAKE Act or the misdemeanor provision result in board action, on a set schedule, relating to the licensure of the retailer when the youth purchase survey finds that 13% or more of youth are able to purchase cigarettes, and makes the board's authority inoperative when a youth purchase survey shows less than 13% of youth were able to purchase cigarettes.

This bill would allow the board to take action relating to the licensure of retailers who have violated the STAKE Act and misdemeanor

provisions at any time, would require the enforcing agency to notify the board of a conviction of a violation in a timely manner, and would delete the provision conditioning the board’s authority to take action against retailers on the results of a youth purchase survey.

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. Section 22973.3 is added to the Business and
2 Professions Code, to read:

3 22973.3. (a) The State Board of Equalization shall not issue
4 a new license to a retailer for a retail location in an area of
5 overconcentration.

6 (b) For purposes of this section “area of overconcentration”
7 means an area where the ratio of retail licenses to population in
8 the census tract is greater than the ratio of retail licenses to
9 population in the county overall.

10 SEC. 2. Section 22974.8 of the Business and Professions Code
11 is amended to read:

12 22974.8. (a) (1) The board shall take action against a retailer,
13 convicted of a violation of either the ~~Stake~~ STAKE Act (Division
14 8.5 (commencing with Section 22950) or Section 308 of the Penal
15 Code, according to the schedule set forth in subdivision (b).

16 (2) Convictions of violations by a retailer at one retail location
17 may not be accumulated against other locations of that same
18 retailer.

19 (3) Convictions of violations accumulated against a prior retail
20 owner at a licensed location may not be accumulated against a
21 new retail owner at the same retail location.

22 (4) Prior to suspending or revoking a retailer’s license to sell
23 cigarette and tobacco products, the board shall notify the retailer.
24 The notice shall include instructions for appealing the license
25 suspension or revocation.

26 (b) (1) Upon the first conviction of a violation of either the
27 STAKE Act (Division 8.5 (commencing with Section 22950) or
28 Section 308 of the Penal Code, the retailer shall receive a warning
29 letter from the board that delineates the circumstances under which
30 a retailer’s license may be suspended or revoked and the amount
31 of time the license may be suspended or revoked. The retailer and

1 its employees shall receive training on tobacco control laws from
2 the *State* Department of *Public Health*—~~Services~~ upon a first
3 conviction.

4 (2) Upon the second conviction of a violation of either the
5 STAKE Act (Division 8.5 (commencing with Section 22950)) or
6 Section 308 of the Penal Code within 12 months, the retailer shall
7 be subject to a fine of five hundred dollars (\$500).

8 (3) Upon the third conviction of a violation of either the STAKE
9 Act (Division 8.5 (commencing with Section 22950)) or Section
10 308 of the Penal Code within 12 months, the retailer shall be
11 subject to a fine of one thousand dollars (\$1,000).

12 (4) Upon the fourth to the seventh conviction of a violation of
13 either the STAKE Act (Division 8.5 (commencing with Section
14 22950)) or Section 308 of the Penal Code within 12 months, the
15 board shall suspend the retailer’s license to sell cigarette and
16 tobacco products for 90 days.

17 (5) Upon the eighth conviction of a violation of the STAKE Act
18 (Division 8.5 (commencing with Section 22950)) or Section 308
19 of the Penal Code within 24 months, the board shall revoke the
20 retailer’s license to sell cigarette and tobacco products.

21 (c) The decision of the board to suspend or revoke the retailer’s
22 license may be appealed to the board within 30 days after the notice
23 of suspension or revocation. All appeals shall be submitted in
24 writing.

25 ~~(d) The board’s authority to take action against retailers, as set
26 forth in this section, commences on the date of the release of the
27 results from the survey undertaken by the Department of Health
28 Services pursuant to Section 22952 of the Business and Professions
29 Code Section 22952 to comply with Section 1926 of Title XIX of
30 the federal Public Health Service Act (42 U.S.C. 300x-26), and
31 any implementing regulations adopted in relation thereto by the
32 United States Department of Health and Human Services, showing
33 that the youth purchase survey finds that 13 percent or more of
34 youth were able to purchase cigarettes. The board’s authority to
35 take action under this section is inoperative on or after the date of
36 the subsequent release of the results from the survey showing that
37 less than 13 percent of youth were able to purchase cigarettes.~~

38 *(d) For any conviction of a violation of either the STAKE Act*
39 *(Division 8.5 (commencing with Section 22950)) or Section 308 of*
40 *the Penal Code, the State Department of Public Health or other*

1 *enforcing agency shall notify the board of the conviction in a timely*
2 *manner.*

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