

AMENDED IN SENATE APRIL 21, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 602

Introduced by Senator Padilla
(Coauthors: Senators *Alquist, DeSaulnier, Leno, Oropeza, and*
***Romero*)**

February 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 amended, 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~~ a 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. The bill would authorize the ~~State Board of Equalization~~ *board* to issue a new license if the local governing body of the area, ~~or its designated subordinate officer or body~~, in which the applicant premises are located, *or its designated subordinate officer or body* determines that public convenience or necessity would be served by the issuance. The bill would require that determination to be made within 90 days of notification of a completed application, as specified, except that if the local governing body, or its designated subordinate officer or body, did not make a determination within 90 days, the State Board of Equalization

would be authorized to issue a license if the applicant shows that public convenience or necessity would be served by the issuance.

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 require the board to take appropriate action upon that notification. This bill 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) Notwithstanding subdivision (a), the State Board of
7 Equalization may issue a new license if the local governing body
8 of the area in which the applicant's premises are located, or its
9 designated subordinate officer or body, determines within 90 days
10 of notification of a completed application that public convenience
11 or necessity would be served by the issuance. The 90-day period
12 shall commence upon receipt by the local governing body of (A)
13 notification by the State Board of Equalization of an application

1 for licensure, or (B) a completed application according to local
2 requirements, if any, whichever is later.

3 If the local governing body, or its designated subordinate officer
4 or body, does not make a determination within the 90-day period,
5 then the State Board of Equalization may issue a license if the
6 applicant shows the State Board of Equalization that public
7 convenience or necessity would be served by the issuance. In
8 making its determination, the State Board of Equalization shall
9 not attribute any weight to the failure of the local governing body,
10 or its designated subordinate officer or body, to make a
11 determination regarding public convenience or necessity within
12 the 90-day period.

13 (c) For purposes of this section “area of overconcentration”
14 means an area where the ratio of retail licenses to population in
15 the census tract is greater than the ratio of retail licenses to
16 population in the county overall.

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

19 22974.8. (a) (1) The board shall take action against a retailer,
20 convicted of a violation of either the STAKE Act (Division 8.5
21 (commencing with Section 22950) or Section 308 of the Penal
22 Code, according to the schedule set forth in subdivision (b).

23 (2) Convictions of violations by a retailer at one retail location
24 may not be accumulated against other locations of that same
25 retailer.

26 (3) Convictions of violations accumulated against a prior retail
27 owner at a licensed location may not be accumulated against a
28 new retail owner at the same retail location.

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

33 (b) (1) Upon the first conviction of a violation of either the
34 STAKE Act (Division 8.5 (commencing with Section 22950) or
35 Section 308 of the Penal Code, the retailer shall receive a warning
36 letter from the board that delineates the circumstances under which
37 a retailer’s license may be suspended or revoked and the amount
38 of time the license may be suspended or revoked. The retailer and
39 its employees shall receive training on tobacco control laws from
40 the State Department of Public Health upon a first conviction.

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

5 (3) Upon the third conviction of a violation of either the STAKE
6 Act (Division 8.5 (commencing with Section 22950)) or Section
7 308 of the Penal Code within 12 months, the retailer shall be
8 subject to a fine of one thousand dollars (\$1,000).

9 (4) Upon the fourth to the seventh conviction of a violation of
10 either the STAKE Act (Division 8.5 (commencing with Section
11 22950)) or Section 308 of the Penal Code within 12 months, the
12 board shall suspend the retailer's license to sell cigarette and
13 tobacco products for 90 days.

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

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

22 (d) For any conviction of a violation of either the STAKE Act
23 (Division 8.5 (commencing with Section 22950)) or Section 308
24 of the Penal Code, the State Department of Public Health or other
25 enforcing agency shall notify the board of the conviction in a timely
26 manner, and the board shall take appropriate action pursuant to
27 that notification. *If a state or local law enforcement agency does*
28 *not timely notify the board, the board may take action against a*
29 *retailer for the violation.*

30 (e) *For purposes of this section, "conviction of a violation"*
31 *includes a conviction under Section 308 of the Penal Code, or a*
32 *final administrative adjudication imposing a civil penalty under*
33 *the STAKE Act.*