

AMENDED IN SENATE MAY 18, 2009
AMENDED IN SENATE APRIL 28, 2009
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 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 board to issue a new license if the local governing body of the area 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. This bill would also modify the schedule of actions taken by the board for violations.

This bill would require the Department of Alcoholic Beverage Control and the State Department of Public Health to provide specified information to the board upon request.

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

1 of the area in which the applicant’s premises are located, or its
2 designated subordinate officer or body, determines within 90 days
3 of notification of a completed application that public convenience
4 or necessity would be served by the issuance. The 90-day period
5 shall commence upon receipt by the local governing body of (1)
6 notification by the State Board of Equalization of an application
7 for licensure, or (2) a completed application according to local
8 requirements, if any, whichever is later.

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

19 ~~(e) For purposes of this section “area of overconcentration”~~
20 ~~means an area where the ratio of retail licenses to population in~~
21 ~~the census tract is greater than the ratio of retail licenses to~~
22 ~~population in the county overall. *the license shall be deemed*~~
23 ~~*denied.*~~

24 *(c) For purposes of this section:*

25 *(1) “Area of overconcentration” means an area where the ratio*
26 *of retail licenses to population in the census tract is greater than*
27 *the ratio of retail licenses to population in the county overall.*

28 *(2) “Population in census tract” means the population as*
29 *determined by the most recent United States decennial or special*
30 *census. The population determination shall not operate to prevent*
31 *an applicant from establishing that an increase of resident*
32 *population has occurred within the census tract.*

33 *(3) “Population in the county” means the annual population*
34 *estimate for California counties published by the Population*
35 *Research Unit of the Department of Finance.*

36 (d) Notwithstanding subdivision (c) of Section 22972, this
37 section shall not apply to the renewal or transfer of a retail license.

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

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

5 (2) Convictions of violations by a retailer at one retail location
6 may not be accumulated against other locations of that same
7 retailer.

8 (3) Convictions of violations accumulated against a prior retail
9 owner at a licensed location may not be accumulated against a
10 new retail owner at the same retail location.

11 (4) Prior to suspending or revoking a retailer's license to sell
12 cigarette and tobacco products, the board shall notify the retailer.
13 The notice shall include instructions for appealing the license
14 suspension or revocation.

15 (b) (1) Upon the first conviction of a violation of either the
16 STAKE Act (Division 8.5 (commencing with Section 22950) or
17 Section 308 of the Penal Code, the retailer shall receive a warning
18 letter from the board that delineates the circumstances under which
19 a retailer's license may be suspended or revoked and the amount
20 of time the license may be suspended or revoked. The retailer and
21 its employees shall receive training on tobacco control laws from
22 the State Department of Public Health upon a first conviction. The
23 retailer shall also be assessed a penalty of ____ dollars (\$____).

24 (2) Upon the second conviction of a violation of either the
25 STAKE Act (Division 8.5 (commencing with Section 22950)) or
26 Section 308 of the Penal Code, the retailer shall be subject to a
27 fine of ____ dollars (\$____). *The board shall suspend the retailer's*
28 *license to sell cigarette and tobacco products for 25 days.*

29 (3) Upon the third conviction of a violation of either the STAKE
30 Act (Division 8.5 (commencing with Section 22950)) or Section
31 308 of the Penal Code, the board shall revoke the retailer's license
32 to sell cigarette and tobacco products.

33 (c) For any conviction of a violation of either the STAKE Act
34 (Division 8.5 (commencing with Section 22950) or Section 308
35 of the Penal Code, the State Department of Public Health or other
36 enforcing agency shall notify the board of the conviction in a timely
37 manner, and the board shall take appropriate action pursuant to
38 that notification. If a state or local law enforcement agency does
39 not timely notify the board, the board may take action against a
40 retailer for the violation. *For purposes of this subdivision, "timely*

1 *manner” means when the conviction is obtained and all appeal*
2 *rights are exhausted.*

3 (d) (1) Notwithstanding any other provision of this division,
4 no licensee may petition the board for an offer in compromise for
5 a third or any subsequent violation of either the STAKE Act
6 (Division 8.5 (commencing with Section 22950)) or Section 308
7 of the Penal Code that occurs within 36 months of the initial
8 violation.

9 (2) Notwithstanding any other law, the board may revoke a
10 license for a third violation of either the STAKE Act (Division 8.5
11 (commencing with Section 22950)) or Section 308 of the Penal
12 Code that occurs within any 36-month period. This paragraph shall
13 not be construed to limit the board’s authority and discretion to
14 revoke a license prior to a third violation when the circumstances
15 warrant that penalty.

16 (3) For purposes of this subdivision, no violation may be
17 considered for purposes of determination of the penalty until it has
18 become final.

19 ~~(e) For purposes of this act, the State Board of Equalization, the~~
20 ~~State Department of Public Health, and the Department of~~
21 ~~Alcoholic Beverage Control shall share all information in regards~~
22 ~~to retailers necessary to implement this act.~~

23 *(e) The Department of Alcoholic Beverage Control shall, upon*
24 *request, provide to the board any licensure information, including,*
25 *but not limited to, applications, license issuance, license transfers,*
26 *license denials, or any other information necessary to administer*
27 *this chapter. The State Department of Public Health shall, upon*
28 *request, provide to the board any information, including, but not*
29 *limited to, statewide information on the annual Youth Tobacco*
30 *Purchase Survey, STAKE compliance checks, California retailers*
31 *and youth tobacco control laws, or any other information necessary*
32 *to administer this chapter.*

33 (f) For purposes of this section, “conviction of a violation”
34 includes a conviction under Section 308 of the Penal Code, or a
35 final administrative adjudication imposing a civil penalty under
36 the STAKE Act.