

AMENDED IN SENATE APRIL 27, 2011

SENATE BILL

No. 331

Introduced by Senator Padilla

February 15, 2011

~~An act to amend Sections 22973.1 and 22974.8 of, and to add Section 22974.9 to,~~ *An act to amend Sections 22973 and 22973.1 of, and to repeal and add Section 22974.8 of,* the Business and Professions Code, relating to cigarettes and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 331, as amended, Padilla. Retail tobacco 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. *Existing law requires an application for a license to be filed on or before April 15, 2004.* A retailer owning more than one retail location must obtain a separate license for each retail location.

The act specifies instances when the board is not required to issue a license and, *subject to the results of a prescribed survey,* requires the board to take action against a retailer of a licensed location convicted of a violation of either the STAKE Act or a specified prohibition, according to prescribed schedule.

This bill would *delete the April 15, 2004, application deadline and would* include the location of a retailer within 600 feet of a public or private elementary school among the instances when the board is not required to issue a license to engage in the sale of cigarette and tobacco products. It would also revise the schedule of actions *that the bill would require* against a retailer of a licensed location ~~located within 600 feet~~

of a public or private elementary or secondary school and who is convicted of an above-described violation, as specified.

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. (a) In 2007, 20 percent of high school students
2 in the United States were current cigarette smokers—approximately
3 19 percent of females and 21 percent of males. Among racial and
4 ethnic subgroups, approximately 23 percent of white, 17 percent
5 of Hispanic, and 12 percent of African American high school
6 students were current cigarette smokers in 2007.

7 (b) In 2006, approximately 6 percent of middle school students
8 in this country were current cigarette smokers, with estimates of
9 6 percent for females and 6 percent for males. Among racial and
10 ethnic subgroups, approximately 7 percent of white, 7 percent of
11 Hispanic, 6 percent of African American, and 3 percent of Asian
12 American middle school students were current cigarette smokers
13 in 2006.

14 (c) Each day in the United States, approximately 3,600 young
15 people between 12 and 17 years of age initiate cigarette smoking,
16 and an estimated 1,100 young people become daily cigarette
17 smokers.

18 (d) Lower income areas are more likely to have higher rates of
19 underage tobacco sales and to be a hot spot for these sales.

20 (e) In more densely populated areas, there is a positive
21 relationship between underage tobacco sales and the number of
22 schools.

23 (f) In general, where there are more tobacco outlets, there will
24 also be more schools. Densely populated ZIP Code areas are shown
25 to have more schools, more tobacco outlets, and more underage
26 tobacco sales.

27 (g) When examining school proximity and underage sales, gas
28 stations, discount stores, supermarkets, and pharmacies are
29 positively related to increased underage sales, while gas stations
30 with convenient stores are negatively associated.

31 *SEC. 2. Section 22973 of the Business and Professions Code*
32 *is amended to read:*

1 22973. (a) An application for a license shall be filed on ~~or~~
2 before April 15, 2004, on a form prescribed by the board and shall
3 include the following:

4 (1) The name, address, and telephone number of the applicant.

5 (2) The business name, address, and telephone number of each
6 retail location. For applicants who control more than one retail
7 location, an address for receipt of correspondence or notices from
8 the board, such as a headquarters or corporate office of the retailer,
9 shall also be included on the application and listed on the license.
10 Citations issued to licensees shall be forwarded to all addressees
11 on the license.

12 (3) A statement by the applicant affirming that the applicant
13 has not been convicted of a felony and has not violated and will
14 not violate or cause or permit to be violated any of the provisions
15 of this division or any rule of the board applicable to the applicant
16 or pertaining to the manufacture, sale, or distribution of cigarettes
17 or tobacco products. If the applicant is unable to affirm this
18 statement, the application shall contain a statement by the applicant
19 of the nature of any violation or the reasons that will prevent the
20 applicant from complying with the requirements with respect to
21 the statement.

22 (4) If any other licenses or permits have been issued by the
23 board or the Department of Alcoholic Beverage Control to the
24 applicant, the license or permit number of those licenses or permits
25 then in effect.

26 (5) A statement by the applicant that the contents of the
27 application are complete, true, and correct. Any person who signs
28 a statement pursuant to this subdivision that asserts the truth of
29 any material matter that he or she knows to be false is guilty of a
30 misdemeanor punishable by imprisonment of up to one year in the
31 county jail, or a fine of not more than one thousand dollars
32 (\$1,000), or both the imprisonment and the fine.

33 (6) The signature of the applicant.

34 (7) Any other information the board may require.

35 (b) The board may investigate to determine the truthfulness and
36 completeness of the information provided in the application. The
37 board may issue a license without further investigation to an
38 applicant for a retail location if the applicant holds a valid license
39 from the Department of Alcoholic Beverage Control for that same
40 location.

1 (c) The board shall provide electronic means for applicants to
2 download and submit applications.

3 (d) (1) A one-time license fee of one hundred dollars (\$100)
4 shall be submitted with each application. An applicant that owns
5 or controls more than one retail location shall obtain a separate
6 license for each retail location, but may submit a single application
7 for those licenses with a one-time license fee of one hundred dollars
8 (\$100) per location.

9 (2) The one-time fee required by this subdivision does not apply
10 to an application for renewal of a license for a retail location for
11 which the one-time license fee has already been paid. If a license
12 is reinstated after its expiration, the retailer, as a condition
13 precedent to its reinstatement, shall pay a reinstatement fee of one
14 hundred dollars (\$100).

15 ~~SEC. 2.~~

16 *SEC. 3.* Section 22973.1 of the Business and Professions Code
17 is amended to read:

18 22973.1. (a) The board shall issue a license to a retailer upon
19 receipt of a completed application and payment of the fees
20 prescribed in Section 22973, unless any of the following apply:

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

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

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

31 (B) The person applying for the license provides the board with
32 documentation demonstrating that the applicant has acquired or is
33 acquiring the premises or business in an arm's length transaction.
34 For purposes of this section, an "arm's length transaction" is
35 defined as a sale in good faith and for valuable consideration that
36 reflects the fair market value in the open market between two
37 informed and willing parties, neither under any compulsion to
38 participate in the transaction. A sale between relatives, related
39 companies or partners, or a sale for the primary purpose of avoiding

1 the effect of the violations of this division that occurred at the retail
2 location, is presumed not to be made at “arm’s length.”

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

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

8 (5) The application is for a license for a retail location that is
9 within 600 feet of a public or private elementary or secondary
10 school. This paragraph shall not be construed to prohibit the
11 renewal or transfer of a license for a retail location that is within
12 600 feet of any school.

13 (b) (1) Any retailer who is denied a license may petition for a
14 redetermination of the board’s denial of the license within 30 days
15 after service upon that retailer of the notice of the denial of the
16 license. If a petition for redetermination is not filed within the
17 30-day period, the determination of denial becomes final at the
18 expiration of the 30-day period.

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

24 (3) If the petition for redetermination is filed within the 30-day
25 period, the board shall reconsider the determination of the denial
26 and, if the retailer has so requested in the petition, shall grant the
27 retailer an oral hearing and shall give the retailer at least 10 days’
28 notice of the time and place of the hearing. The board may continue
29 the hearing from time to time as may be necessary.

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

33 ~~SEC. 3. Section 22974.8 of the Business and Professions Code~~
34 ~~is amended to read:~~

35 ~~22974.8. (a) (1) The board shall take action against a retailer,~~
36 ~~at a licensed location that is located more than 600 feet from a~~
37 ~~public or private elementary or secondary school and who is~~
38 ~~convicted of a violation of either the STAKE Act (Division 8.5~~
39 ~~(commencing with Section 22950) or Section 308 of the Penal~~
40 ~~Code, according to the schedule set forth in subdivision (b).~~

1 ~~(2) Convictions of violations by a retailer at one retail location~~
2 ~~may not be accumulated against other locations of that same~~
3 ~~retailer.~~

4 ~~(3) Convictions of violations accumulated against a prior retail~~
5 ~~owner at a licensed location may not be accumulated against a~~
6 ~~new retail owner at the same retail location.~~

7 ~~(4) Prior to suspending or revoking a retailer's license to sell~~
8 ~~cigarette and tobacco products, the board shall notify the retailer.~~
9 ~~The notice shall include instructions for appealing the license~~
10 ~~suspension or revocation.~~

11 ~~(b) (1) Upon the first conviction of a violation of either the~~
12 ~~STAKE Act (Division 8.5 (commencing with Section 22950)) or~~
13 ~~Section 308 of the Penal Code, the retailer shall receive a warning~~
14 ~~letter from the board that delineates the circumstances under which~~
15 ~~a retailer's license may be suspended or revoked and the amount~~
16 ~~of time the license may be suspended or revoked. The retailer and~~
17 ~~its employees shall receive training on tobacco control laws from~~
18 ~~the State Department of Public Health upon a first conviction.~~

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

23 ~~(3) Upon the third conviction of a violation of either the STAKE~~
24 ~~Act (Division 8.5 (commencing with Section 22950)) or Section~~
25 ~~308 of the Penal Code within 12 months, the retailer shall be~~
26 ~~subject to a fine of one thousand dollars (\$1,000).~~

27 ~~(4) Upon the fourth to the seventh conviction of a violation of~~
28 ~~either the STAKE Act (Division 8.5 (commencing with Section~~
29 ~~22950)) or Section 308 of the Penal Code within 12 months, the~~
30 ~~board shall suspend the retailer's license to sell cigarette and~~
31 ~~tobacco products for 90 days.~~

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

36 ~~(e) The decision of the board to suspend or revoke the retailer's~~
37 ~~license may be appealed to the board within 30 days after the notice~~
38 ~~of suspension or revocation. All appeals shall be submitted in~~
39 ~~writing.~~

1 ~~(d) The board's authority to take action against retailers, as set~~
2 ~~forth in this section, commences on the date of the release of the~~
3 ~~results from the survey undertaken by the State Department of~~
4 ~~Public Health pursuant to Section 22952 of the Business and~~
5 ~~Professions Code Section 22952 to comply with Section 1926 of~~
6 ~~Title XIX of the federal Public Health Service Act (42 U.S.C.~~
7 ~~300x-26), and any implementing regulations adopted in relation~~
8 ~~thereto by the United States Department of Health and Human~~
9 ~~Services, showing that the youth purchase survey finds that 13~~
10 ~~percent or more of youth were able to purchase cigarettes. The~~
11 ~~board's authority to take action under this section is inoperative~~
12 ~~on or after the date of the subsequent release of the results from~~
13 ~~the survey showing that less than 13 percent of youth were able~~
14 ~~to purchase cigarettes.~~

15 ~~(e) This section shall not preempt or supersede any local tobacco~~
16 ~~control laws other than those related to the collection of state taxes.~~
17 ~~Local licensing laws may provide for the suspension or revocation~~
18 ~~of the local license for any violation of a state tobacco control law.~~

19 *SEC. 4. Section 22974.8 of the Business and Professions Code*
20 *is repealed.*

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

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

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

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

35 ~~(b) (1) Upon the first conviction of a violation of either the~~
36 ~~STAKE Act (Division 8.5 (commencing with Section 22950) or~~
37 ~~Section 308 of the Penal Code, the retailer shall receive a warning~~
38 ~~letter from the board that delineates the circumstances under which~~
39 ~~a retailer's license may be suspended or revoked and the amount~~
40 ~~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 Department of Health Services upon a first conviction.

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

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

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

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

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

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

37 SEC. 4.

38 SEC. 5. Section 22974.9 22974.8 is added to the Health and
39 Safety Code, to read:

1 ~~22974.9.~~

2 22974.8. (a) (1) The board shall take action against a retailer
3 ~~of a licensed location that is located 600 feet or less of a public or~~
4 ~~private elementary or secondary school and who is convicted of a~~
5 *of a licensed location who is convicted of a* violation of either the
6 STAKE Act (Division 8.5 (commencing with Section 22950) or
7 Section 308 of the Penal Code, according to the schedule set forth
8 in subdivision (b).

9 (2) Convictions of violations by a retailer at one retail location
10 may not be accumulated against other locations of that same
11 retailer.

12 (3) Convictions of violations accumulated against a prior retail
13 owner at a licensed location may not be accumulated against a
14 new retail owner at the same retail location.

15 (4) Prior to revoking a retailer's license to sell cigarette and
16 tobacco products, the board shall notify the retailer. The notice
17 shall include instructions for appealing the license revocation.

18 (b) (1) Upon the first conviction of a violation of either the
19 STAKE Act (Division 8.5 (commencing with Section 22950)) or
20 Section 308 of the Penal Code, the retailer shall receive a warning
21 letter from the board that delineates the circumstances under which
22 a retailer's license may be revoked. The retailer and its employees
23 shall receive training on tobacco control laws from the State
24 Department of Public Health upon a first conviction. *The retailer*
25 *shall also be subject to a fine of seven hundred fifty dollars (\$750).*

26 (2) Upon the second 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 within 12 months, the retailer shall
29 ~~be subject to a fine of five hundred dollars (\$500);~~ *be subject to a*
30 *fine of one thousand five hundred dollars (\$1,500) and suspension*
31 *of the license for 25 days.*

32 (3) Upon the third conviction of a violation of either the STAKE
33 Act (Division 8.5 (commencing with Section 22950)) or Section
34 308 of the Penal Code within 12 months, the board shall revoke
35 the retailer's license to sell cigarette and tobacco products.

36 (c) The decision of the board to revoke the retailer's license
37 may be appealed to the board within 30 days after the notice of
38 revocation. All appeals shall be submitted in writing.

39 (d) This section shall not preempt or supersede any local tobacco
40 control laws other than those related to the collection of state taxes.

- 1 Local licensing laws may provide for the suspension or revocation
- 2 of the local license for any violation of a state tobacco control law.

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