

AMENDED IN SENATE JANUARY 13, 2012

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE APRIL 27, 2011

SENATE BILL

No. 331

Introduced by Senator Padilla
(Principal coauthor: Assembly Member Hill)

February 15, 2011

An act to amend Sections 22973 and 22973.1 of, and to add Section 22960.5 to, the Business and Professions Code, relating to cigarette and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 331, as amended, Padilla. Retail tobacco licenses.

The 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, and specifies instances when the board is not required to issue a license. Existing law requires an application for a license to be filed on or before April 15, 2004. *Existing law makes it a misdemeanor to sign the application if the signer knows the application has false statements.*

Existing law, the Stop Tobacco Access to Kids Enforcement Act, or STAKE Act, establishes various requirements for retailers relating to tobacco sales to minors.

This bill would make the location of a ~~new~~ retail location within 600 feet of a public or private elementary or secondary school *on or after January 1, 2013*, a violation of the STAKE Act, and would prohibit the issuance of a ~~new~~ license for a retail location that is located within 600 feet of a public or private elementary *or secondary* school *on or after*

January 1, 2013. This bill would require the application to include a statement regarding the location. This bill would ~~authorize~~ require the board to ~~revoke~~ cancel licenses; for retail locations issued on or after January 1, 2013, if these licenses were wrongfully issued, ~~and as specified,~~ would ~~also~~ delete the April 15, 2004, application deadline, and would make conforming changes. By changing the definition of a 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: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. ~~(a)~~*The Legislature hereby finds and declares*
2 *all of the following:*
3 (a) In 2007, 20 percent of high school students in the United
4 States were current cigarette smokers—approximately 19 percent
5 of females and 21 percent of males. Among racial and ethnic
6 subgroups, approximately 23 percent of white, 17 percent of
7 Hispanic, and 12 percent of African American high school students
8 were current cigarette smokers in 2007.
9 (b) In 2006, approximately 6 percent of middle school students
10 in this country were current cigarette smokers, with estimates of
11 6 percent for females and 6 percent for males. Among racial and
12 ethnic subgroups, approximately 7 percent of white, 7 percent of
13 Hispanic, 6 percent of African American, and 3 percent of Asian
14 American middle school students were current cigarette smokers
15 in 2006.
16 (c) Each day in the United States, approximately 3,600 young
17 people between 12 and 17 years of age initiate cigarette smoking,
18 and an estimated 1,100 young people become daily cigarette
19 smokers.
20 (d) Lower income areas are more likely to have higher rates of
21 underage tobacco sales and to be a hot spot for these sales.

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

4 (f) In general, where there are more tobacco outlets, there will
5 also be more schools. Densely populated ZIP Code areas are shown
6 to have more schools, more tobacco outlets, and more underage
7 tobacco sales.

8 (g) When examining school proximity and underage sales, gas
9 stations, discount stores, supermarkets, and pharmacies are
10 positively related to increased underage sales, while gas stations
11 with ~~convenient~~ *convenience* stores are negatively associated.

12 (h) Section 22971.3 of the Business and Professions Code
13 provides that nothing within Division 8.6 (commencing with
14 Section 22970) of the Business and Professions Code ~~would~~
15 ~~preempt or supersede~~ *preempts or supersedes* any local tobacco
16 control laws other than those related to the collection of state taxes,
17 and that local licensing laws may provide for the suspension or
18 revocation of the local license for any violation of a state tobacco
19 control law.

20 SEC. 2. Section 22960.5 is added to the Business and
21 Professions Code, to read:

22 22960.5. (a) It is the intent of the Legislature for this section
23 to set forth minimum state restrictions on the sale of cigarette and
24 tobacco products from a retail location and not to preempt or
25 otherwise prohibit the adoption of a local standard that further
26 restricts access to, or reduces the availability of, cigarette and
27 tobacco products from a retail location. A local standard that
28 imposes additional restrictions shall control in the event of an
29 inconsistency between this section and a local standard.

30 (b) No retail location *established on or after January 1, 2013,*
31 shall be located within 600 feet of a public or private elementary
32 or secondary school.

33 (c) The department shall direct the State Board of Equalization
34 to ~~revoke~~ *cancel* a license issued pursuant to Chapter 2
35 (commencing with Section 22972) of Division 8.6 for any retail
36 location in violation of subdivision ~~(a)~~ *(b)*, and the board shall
37 ~~revoke~~ *cancel* this license ~~pursuant to subdivision (b) of Section~~
38 ~~22973.1~~ *after providing notice of the cancellation to the licensee.*
39 *Upon request, the department shall provide the board with all*

1 *relevant information regarding the licensee and the violation to*
2 *enable the board to cancel the license.*

3 (d) For purposes of this section the following definitions apply:

4 (1) “Retail location” has the meaning set forth in subdivision
5 (q) of Section 22971.

6 (2) “600 feet” means the distance, measured in a straight line,
7 from the closest edge of a retail location to the closest edge of a
8 public or private elementary or secondary school, or the closest
9 edge of the parking lot of a school, whichever distance is shorter.

10 (e) This section does not apply to a retail location that ~~has~~
11 ~~already been~~ *was* licensed pursuant to Chapter 2 (commencing
12 with Section 22972) of Division 8.6 before January 1, 2013.

13 SEC. 3. Section 22973 of the Business and Professions Code
14 is amended to read:

15 22973. (a) An application for a license shall be filed on a form
16 prescribed by the board and shall include the following:

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

18 (2) The business name, address, and telephone number of each
19 retail location. For applicants who control more than one retail
20 location, an address for receipt of correspondence or notices from
21 the board, such as a headquarters or corporate office of the retailer,
22 shall also be included on the application and listed on the license.
23 Citations issued to licensees shall be forwarded to all addressees
24 on the license.

25 (3) A statement by the applicant affirming that the applicant
26 has not been convicted of a felony and has not violated and will
27 not violate or cause or permit to be violated any of the provisions
28 of this division or any rule of the board applicable to the applicant
29 or pertaining to the manufacture, sale, or distribution of cigarettes
30 or tobacco products. If the applicant is unable to affirm this
31 statement, the application shall contain a statement by the applicant
32 of the nature of any violation or the reasons that will prevent the
33 applicant from complying with the requirements with respect to
34 the statement.

35 (4) If any other licenses or permits have been issued by the
36 board or the Department of Alcoholic Beverage Control to the
37 applicant, the license or permit number of those licenses or permits
38 then in effect.

39 (5) A statement by the applicant affirming that each retail
40 location is located 600 feet or more from a public or private

1 elementary or secondary school, as required pursuant to Section
2 22960.5.

3 (6) A statement by the applicant that the contents of the
4 application are complete, true, and correct. Any person who signs
5 a statement pursuant to this subdivision that asserts the truth of
6 any material matter that he or she knows to be false is guilty of a
7 misdemeanor punishable by imprisonment of up to one year in the
8 county jail, or a fine of not more than one thousand dollars
9 (\$1,000), or both the imprisonment and the fine.

10 (7) The signature of the applicant.

11 (8) Any other information the board may require.

12 (b) The board may investigate to determine the truthfulness and
13 completeness of the information provided in the application. The
14 board may issue a license without further investigation to an
15 applicant for a retail location if the applicant holds a valid license
16 from the Department of Alcoholic Beverage Control for that same
17 location.

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

20 (d) (1) A one-time license fee of one hundred dollars (\$100)
21 shall be submitted with each application. An applicant that owns
22 or controls more than one retail location shall obtain a separate
23 license for each retail location, but may submit a single application
24 for those licenses with a one-time license fee of one hundred dollars
25 (\$100) per location.

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

32 SEC. 4. Section 22973.1 of the Business and Professions Code
33 is amended to read:

34 22973.1. (a) The board shall issue a license to a retailer upon
35 receipt of a completed application and payment of the fees
36 prescribed in Section 22973, unless any of the following apply:

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

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

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

7 (B) The person applying for the license provides the board with
8 documentation demonstrating that the applicant has acquired or is
9 acquiring the premises or business in an arm's length transaction.
10 For purposes of this section, an "arm's length transaction" is
11 defined as a sale in good faith and for valuable consideration that
12 reflects the fair market value in the open market between two
13 informed and willing parties, neither under any compulsion to
14 participate in the transaction. A sale between relatives, related
15 companies or partners, or a sale for the primary purpose of avoiding
16 the effect of the violations of this division that occurred at the retail
17 location, is presumed not to be made at "arm's length."

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

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

23 (5) The application is for a new license issued *on or* after
24 January 1, 2013, for a retail location that the applicant does not
25 affirm is located 600 feet or more from a public or private
26 elementary or secondary school, as required under paragraph (5)
27 of subdivision (a) of Section 22973. This paragraph shall not be
28 construed to prohibit the renewal, *reinstatement, or transfer* of a
29 license for a retail location that is within 600 feet of any school
30 *issued prior to January 1, 2013.*

31 (b) The board ~~may revoke~~ *shall cancel* a license issued *on or*
32 after January 1, 2013, for a retail location if it is determined that
33 the application is incorrect, incomplete, or if the license was issued
34 in error. The license shall be invalid when ~~revoked~~ *canceled*, and
35 shall be considered denied for purposes of this chapter.

36 (c) (1) Any retailer who is denied a license may petition for a
37 redetermination of the board's denial of the license within 30 days
38 after service upon that retailer of the notice of the denial of the
39 license. If a petition for redetermination is not filed within the

1 30-day period, the determination of denial becomes final at the
2 expiration of the 30-day period.

3 (2) Every petition for redetermination shall be in writing and
4 shall state the specific grounds upon which the petition is founded.
5 The petition may be amended to state additional grounds at anytime
6 prior to the date on which the board issues its order or decision
7 upon the petition for redetermination.

8 (3) If the petition for redetermination is filed within the 30-day
9 period, the board shall reconsider the determination of the denial
10 and, if the retailer has so requested in the petition, shall grant the
11 retailer an oral hearing and shall give the retailer at least 10 days'
12 notice of the time and place of the hearing. The board may continue
13 the hearing from time to time as may be necessary.

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

17 *SEC. 5. No reimbursement is required by this act pursuant to*
18 *Section 6 of Article XIII B of the California Constitution because*
19 *the only costs that may be incurred by a local agency or school*
20 *district will be incurred because this act creates a new crime or*
21 *infraction, eliminates a crime or infraction, or changes the penalty*
22 *for a crime or infraction, within the meaning of Section 17556 of*
23 *the Government Code, or changes the definition of a crime within*
24 *the meaning of Section 6 of Article XIII B of the California*
25 *Constitution.*