

Introduced by Senator Wieckowski

February 19, 2016

An act to amend Section 22971 of the Business and Professions Code, relating to cigarette and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, as introduced, Wieckowski. Retail tobacco licenses.

Existing law, 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 defines a retailer as a person who engages in this state in the sale of cigarettes or tobacco products directly to the public from a retail location. The act defines a "retail location" as both any building from which cigarettes or tobacco products are sold at retail and a vending machine.

This bill would revise the definition of a "retail location" to mean a tobacco store that is a retail business that, among other things, generates more than 60% of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.

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 22971 of the Business and Professions
- 2 Code is amended to read:
- 3 22971. For purposes of this division, the following terms shall
- 4 have the following meanings:
- 5 (a) "Board" means the State Board of Equalization.

1 (b) “Brand family” has the same meaning as that term is defined
2 in paragraph (2) of subdivision (a) of Section 30165.1 of the
3 Revenue and Taxation Code.

4 (c) “Cigarette” means a cigarette as defined in Section 30003
5 of the Revenue and Taxation Code.

6 (d) (1) “Control” or “controlling” means possession, direct or
7 indirect, of the power:

8 (A) To vote 25 percent or more of any class of the voting
9 securities issued by a person.

10 (B) To direct or cause the direction of the management and
11 policies of a person, whether through the ownership of voting
12 securities, by contract, other than a commercial contract for goods
13 or nonmanagement services, or as otherwise provided; however,
14 no individual shall be deemed to control a person solely on account
15 of being a director, officer, or employee of that person.

16 (2) For purposes of subparagraph (B) of paragraph (1), a person
17 who, directly or indirectly, owns, controls, holds, with the power
18 to vote, or holds proxies representing 10 percent or more of the
19 then outstanding voting securities issued by another person, is
20 presumed to control that other person.

21 (3) For purposes of this division, the board may determine
22 whether a person in fact controls another person.

23 (e) “Display for sale” means the placement of cigarettes or
24 tobacco products in a vending machine or in retail stock for the
25 purpose of selling or gifting the cigarettes or tobacco products.
26 For purposes of this definition, the clear and easily visible display
27 of cigarettes or tobacco products shall create a rebuttable
28 presumption that either were displayed for sale.

29 (f) “Distributor” means a distributor as defined in Section 30011
30 of the Revenue and Taxation Code.

31 (g) “Gifting” means any transfer of title or possession without
32 consideration, exchange, or barter, in any manner or by any means,
33 of cigarettes or tobacco products that have been purchased for
34 resale under a license issued pursuant to this division if the transfer
35 occurs while the license is suspended or after the effective date of
36 its revocation.

37 (h) “Importer” means an importer as defined in Section 30019
38 of the Revenue and Taxation Code.

39 (i) “Law enforcement agency” means a sheriff, a police
40 department, or a city, county, or city and county agency or

1 department designated by the governing body of that agency to
2 enforce this chapter or to enforce local smoking and tobacco
3 ordinances and regulations.

4 (j) “License” means a license issued by the board pursuant to
5 this division.

6 (k) “Licensee” means any person holding a license issued by
7 the board pursuant to this division.

8 (l) “Manufacturer” means a manufacturer of cigarettes or
9 tobacco products sold in this state.

10 (m) “Notice” or “notification” means, unless as otherwise
11 provided, the written notice or notification provided to a licensee
12 by the board by either actual delivery to the licensee or by
13 first-class mail addressed to the licensee at the address on the
14 license.

15 (n) “Package of cigarettes” means a package as defined in
16 Section 30015 of the Revenue and Taxation Code.

17 (o) “Person” means a person as defined in Section 30010 of the
18 Revenue and Taxation Code.

19 (p) “Retailer” means a person who engages in this state in the
20 sale of cigarettes or tobacco products directly to the public from
21 a retail location. Retailer includes a person who operates vending
22 machines from which cigarettes or tobacco products are sold in
23 this state.

24 (q) “Retail location” means ~~both of the following: a tobacco~~
25 ~~store as defined in Section 22962.~~

26 ~~(1) Any building from which cigarettes or tobacco products are~~
27 ~~sold at retail.~~

28 ~~(2) A vending machine.~~

29 (r) “Sale” or “sold” means a sale as defined in Section 30006
30 of the Revenue and Taxation Code.

31 (s) “Tobacco products” means tobacco products as defined in
32 subdivision (b) of Section 30121 and subdivision (b) of Section
33 30131.1 of the Revenue and Taxation Code.

34 (t) “Unstamped package of cigarettes” means a package of
35 cigarettes that does not bear a tax stamp as required under Part 13
36 (commencing with Section 30001) of Division 2 of the Revenue
37 and Taxation Code, including a package of cigarettes that bears a
38 tax stamp of another state or taxing jurisdiction, a package of
39 cigarettes that bears a counterfeit tax stamp, or a stamped or

- 1 unstamped package of cigarettes that is marked “Not for sale in
- 2 the United States.”
- 3 (u) “Wholesaler” means a wholesaler as defined in Section
- 4 30016 of the Revenue and Taxation Code.

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