

AMENDED IN ASSEMBLY JUNE 21, 2016

AMENDED IN SENATE MAY 31, 2016

SENATE BILL

No. 1400

Introduced by Senator Wieckowski

February 19, 2016

An act to *amend Section 22962 of, and to amend, repeal, and add Section 22971-of of, the Business and Professions Code, relating to cigarette and tobacco products.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, as amended, Wieckowski. ~~Retail tobacco licenses. Tobacco.~~

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, imposes civil penalties for a person engaged in the retail sale of tobacco products who sells, offers for sale, or displays for sale any tobacco product or tobacco paraphernalia by self-service display, except as specified. Existing law makes these penalties inapplicable to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, as provided, and defines "tobacco store" to mean a retail business that meets specified requirements, including that it does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian.

This bill would revise the definition of "tobacco store" by raising the age of persons not permitted to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian, from 18 to 21 years of age.

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 cigarettes 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. *The act also defines “tobacco products” to include, but not be limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50%, tobacco, but does not include cigarettes. A violation of these provisions is a crime.*

This bill ~~would~~, would expand the definition of “tobacco products” to include a product containing, made, or derived from tobacco or nicotine, as specified, an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, and any component, part, or accessory of a tobacco product. The bill would, beginning January 1, 2019, 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. By expanding 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. Section 22962 of the Business and Professions
- 2 Code is amended to read:
- 3 22962. (a) For purposes of this section, the following terms
- 4 have the following meanings:
- 5 (1) “Self-service display” means the open display of tobacco
- 6 products or tobacco paraphernalia in a manner that is accessible
- 7 to the general public without the assistance of the retailer or
- 8 employee of the retailer.

(2) “Tobacco paraphernalia” means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

(3) “Tobacco product” means a product or device as defined in subdivision (d) of Section 22950.5 of the Business and Professions Code.

(4) “Tobacco store” means a retail business that meets all of the following requirements:

(A) Primarily sells tobacco products.

(B) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.

(C) Does not permit any person under ~~18~~ 21 years of age to be present or enter the premises at any time, unless accompanied by the person’s parent or legal guardian, as defined in Section 6903 of the Family Code.

(D) Does not sell alcoholic beverages or food for consumption on the premises.

(b) (1) (A) Except as permitted in subdivision (b) of Section 22960, it is unlawful for a person engaged in the retail sale of tobacco products to sell, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by self-service display. A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(B) A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(2) It is unlawful for a person engaged in the retail sale of blunt wraps to place or maintain, or to cause to be placed or maintained, any blunt wraps advertising display within two feet of candy, snack, or nonalcoholic beverage displayed inside any store or business.

(3) It is unlawful for any person or business to place or maintain, or cause to be placed or maintained, any blunt wrap advertising display that is less than four feet above the floor.

(c) Subdivision (b) shall not apply to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that in the case of cigars they are generally not

1 sold or offered for sale in a sealed package of the manufacturer or
2 importer containing less than six cigars. In any enforcement action
3 brought pursuant to this division, the retail business that displays
4 any of the items described in this subdivision in a self-service
5 display shall have the burden of proving that it qualifies for the
6 exemption established in this subdivision.

7 (d) The Attorney General, a city attorney, a county counsel, or
8 a district attorney may bring a civil action to enforce this section.

9 (e) This section does not preempt or otherwise prohibit the
10 adoption of a local standard that imposes greater restrictions on
11 the access to tobacco products than the restrictions imposed by
12 this section. To the extent that there is an inconsistency between
13 this section and a local standard that imposes greater restrictions
14 on the access to tobacco products, the greater restriction on the
15 access to tobacco products in the local standard shall prevail.

16 ~~SECTION 4.~~

17 *SEC. 2.* Section 22971 of the Business and Professions Code
18 is amended to read:

19 22971. For purposes of this division, the following terms shall
20 have the following meanings:

21 (a) “Board” means the State Board of Equalization.

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

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

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

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

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

37 (2) For purposes of subparagraph (B) of paragraph (1), a person
38 who, directly or indirectly, owns, controls, holds, with the power
39 to vote, or holds proxies representing 10 percent or more of the

1 then outstanding voting securities issued by another person, is
2 presumed to control that other person.

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

5 (e) “Display for sale” means the placement of cigarettes or
6 tobacco products in a vending machine or in retail stock for the
7 purpose of selling or gifting the cigarettes or tobacco products.
8 For purposes of this definition, the clear and easily visible display
9 of cigarettes or tobacco products shall create a rebuttable
10 presumption that either were displayed for sale.

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

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

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

21 (i) “Law enforcement agency” means a sheriff, a police
22 department, or a city, county, or city and county agency or
23 department designated by the governing body of that agency to
24 enforce this chapter or to enforce local smoking and tobacco
25 ordinances and regulations.

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

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

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

32 (m) “Notice” or “notification” means, unless as otherwise
33 provided, the written notice or notification provided to a licensee
34 by the board by either actual delivery to the licensee or by
35 first-class mail addressed to the licensee at the address on the
36 license.

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

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

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

(q) “Retail location” means both of the following:

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

(2) A vending machine.

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

(s) “Tobacco products” means tobacco products as defined in *subdivision (d) of Section 22950.5 and* subdivision (b) of Section 30121 and subdivision (b) of Section 30131.1 of the Revenue and Taxation Code.

(t) “Unstamped package of cigarettes” means a package of cigarettes that does not bear a tax stamp as required under Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, including a package of cigarettes that bears a tax stamp of another state or taxing jurisdiction, a package of cigarettes that bears a counterfeit tax stamp, or a stamped or unstamped package of cigarettes that is marked “Not for sale in the United States.”

(u) “Wholesaler” means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

(v) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

~~SEC. 2.~~

SEC. 3. Section 22971 is added to the Business and Professions Code, to read:

22971. (a) For purposes of this division, the following terms shall have the following meanings:

(1) “Board” means the State Board of Equalization.

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

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

1 (4) (A) “Control” or “controlling” means possession, direct or
2 indirect, of the power:

3 (i) To vote 25 percent or more of any class of the voting
4 securities issued by a person.

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

11 (B) For purposes of clause (ii) of subparagraph (A), a person
12 who, directly or indirectly, owns, controls, holds, with the power
13 to vote, or holds proxies representing 10 percent or more of the
14 then outstanding voting securities issued by another person, is
15 presumed to control that other person.

16 (C) For purposes of this division, the board may determine
17 whether a person in fact controls another person.

18 (5) “Display for sale” means the placement of cigarettes or
19 tobacco products in a vending machine or in retail stock for the
20 purpose of selling or gifting the cigarettes or tobacco products.
21 For purposes of this definition, the clear and easily visible display
22 of cigarettes or tobacco products shall create a rebuttable
23 presumption that either were displayed for sale.

24 (6) “Distributor” means a distributor as defined in Section 30011
25 of the Revenue and Taxation Code.

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

32 (8) “Importer” means an importer as defined in Section 30019
33 of the Revenue and Taxation Code.

34 (9) “Law enforcement agency” means a sheriff, a police
35 department, or a city, county, or city and county agency or
36 department designated by the governing body of that agency to
37 enforce this chapter or to enforce local smoking and tobacco
38 ordinances and regulations.

39 (10) “License” means a license issued by the board pursuant to
40 this division.

1 (11) “Licensee” means any person holding a license issued by
2 the board pursuant to this division.

3 (12) “Manufacturer” means a manufacturer of cigarettes or
4 tobacco products sold in this state.

5 (13) “Notice” or “notification” means, unless as otherwise
6 provided, the written notice or notification provided to a licensee
7 by the board by either actual delivery to the licensee or by
8 first-class mail addressed to the licensee at the address on the
9 license.

10 (14) “Package of cigarettes” means a package as defined in
11 Section 30015 of the Revenue and Taxation Code.

12 (15) “Person” means a person as defined in Section 30010 of
13 the Revenue and Taxation Code.

14 (16) “Retailer” means a person who engages in this state in the
15 sale of cigarettes or tobacco products directly to the public from
16 a retail location. Retailer includes a person who operates vending
17 machines from which cigarettes or tobacco products are sold in
18 this state.

19 (17) “Retail location” means a tobacco store as defined in
20 Section 22962.

21 (18) “Sale” or “sold” means a sale as defined in Section 30006
22 of the Revenue and Taxation Code.

23 (19) “Tobacco products” means tobacco products as defined in
24 *subdivision (d) of Section 22950.5 and subdivision (b) of Section*
25 *30121 and subdivision (b) of Section 30131.1 of the Revenue and*
26 *Taxation Code.*

27 (20) “Unstamped package of cigarettes” means a package of
28 cigarettes that does not bear a tax stamp as required under Part 13
29 (commencing with Section 30001) of Division 2 of the Revenue
30 and Taxation Code, including a package of cigarettes that bears a
31 tax stamp of another state or taxing jurisdiction, a package of
32 cigarettes that bears a counterfeit tax stamp, or a stamped or
33 unstamped package of cigarettes that is marked “Not for sale in
34 the United States.”

35 (21) “Wholesaler” means a wholesaler as defined in Section
36 30016 of the Revenue and Taxation Code.

37 (b) This section shall become operative on January 1, 2019.

38 *SEC. 4. No reimbursement is required by this act pursuant to*
39 *Section 6 of Article XIII B of the California Constitution because*
40 *the only costs that may be incurred by a local agency or school*

1 *district will be incurred because this act creates a new crime or*
2 *infraction, eliminates a crime or infraction, or changes the penalty*
3 *for a crime or infraction, within the meaning of Section 17556 of*
4 *the Government Code, or changes the definition of a crime within*
5 *the meaning of Section 6 of Article XIII B of the California*
6 *Constitution.*

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