

AMENDED IN ASSEMBLY MAY 1, 1995
AMENDED IN ASSEMBLY APRIL 17, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 686

Introduced by Assembly Member Tucker

February 21, 1995

An act to amend Section 22958 of, and to add Section 22960 to, the Business and Professions Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

AB 686, as amended, Tucker. Tobacco: vending machines.

Existing law, the Stop Tobacco Access to Kids Enforcement Act or the STAKE Act, among other things, requires the State Department of Health Services to develop a program to reduce the availability of tobacco products to persons under 18 years of age. The STAKE Act requires that all persons engaging in the retail sale of tobacco products check the identification of tobacco purchasers to determine the purchaser's age if the purchaser appears to be under age 18. The STAKE Act authorizes the department to assess civil penalties in accordance with a schedule against any person, firm, or corporation that sells tobacco products or other controlled substances to persons who are under age 18.

This bill would prohibit the sale or distribution of tobacco products from vending machines or other similar devices except when located at least 15 feet away from the entrance, as defined, of either premises issued an on-sale public

premises license, as defined, to sell alcoholic beverages or establishments issued a retailer’s on-sale license and operating as a bona fide public eating place, as defined, where the machines *are located in an area used primarily for the sale and service of alcoholic beverages* and can only be operated by the activation of an electronic switch by the licensee or his or her employee prior to each purchase. This bill would authorize the department to assess civil penalties against any person, firm, or corporation that sells or distributes tobacco products from a vending machine or against any person, firm, or corporation that leases, furnishes, or services these machines. The bill would state that its restrictions on the sale of tobacco products from vending machines do not preempt local standards that impose a complete ban on the sale of cigarettes or tobacco products from vending machines or devices.

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 22958 of the Business and
 2 Professions Code is amended to read:
 3 22958. (a) The state department may assess civil
 4 penalties against any person, firm, or corporation that
 5 sells, gives, or in any way furnishes to another person who
 6 is under the age of 18 years, any tobacco, cigarette, or
 7 cigarette papers, or any other instrument or
 8 paraphernalia that is designed for the smoking or
 9 ingestion of tobacco, products prepared from tobacco, or
 10 any controlled substance, according to the following
 11 schedule: (1) a civil penalty of from two hundred dollars
 12 (\$200) to three hundred dollars (\$300) for the first
 13 violation, (2) a civil penalty of from six hundred dollars
 14 (\$600) to nine hundred dollars (\$900) for the second
 15 violation within a five-year period, (3) a civil penalty of
 16 from one thousand two hundred dollars (\$1,200) to one
 17 thousand eight hundred dollars (\$1,800) for a third
 18 violation within a five-year period, (4) a civil penalty of
 19 from three thousand dollars (\$3,000) to four thousand
 20 dollars (\$4,000) for a fourth violation within a five-year



1 period, or (5) a civil penalty of from five thousand dollars
2 (\$5,000) to six thousand dollars (\$6,000) for a fifth or
3 subsequent violation within a five-year period.

4 (b) The state department shall assess penalties in
5 accordance with the schedule set forth in subdivision (a)
6 against any person, firm, or corporation that sells, offers
7 for sale, or distributes tobacco products from a cigarette
8 or tobacco products vending machine, or any person,
9 firm, or corporation that leases, furnishes, or services
10 these machines in violation of Section 22960.

11 (c) If a civil penalty has been assessed pursuant to this
12 section against any person, firm, or corporation for a
13 single, specific violation of this division, the person, firm,
14 or corporation shall not be prosecuted under Section 308
15 of the Penal Code for a violation based on the same facts
16 or specific incident for which the civil penalty was
17 assessed. If any person, firm, or corporation has been
18 prosecuted for a single, specific violation of Section 308 of
19 the Penal Code, the person, firm, or corporation shall not
20 be assessed a civil penalty under this section based on the
21 same facts or specific incident upon which the
22 prosecution under Section 308 of the Penal Code was
23 based.

24 (d) (1) In the case of a corporation or business with
25 more than one retail location, to determine the number
26 of accumulated violations for purposes of the penalty
27 schedule set forth in subdivision (a), violations of this
28 division by one retail location shall not be accumulated
29 against other retail locations of that same corporation or
30 business.

31 (2) In the case of a retail location that operates
32 pursuant to a franchise as defined in Section 20001 of the
33 Business and Professions Code, violations of this division
34 accumulated and assessed against a prior owner of a single
35 franchise location shall not be accumulated against a new
36 owner of the same single franchise location for purposes
37 of the penalty schedule set forth in subdivision (a).

38 (e) Proceedings under this section shall be conducted
39 in accordance with Chapter 5 (commencing with Section



1 11500) of Part 1 of Division 3 of Title 2 of the Government
2 Code.

3 SEC. 2. Section 22960 is added to the Business and
4 Professions Code, to read:

5 22960. (a) Except as provided in subdivision (b), no
6 cigarette or tobacco product shall be sold, offered for sale,
7 or distributed from a vending machine or appliance, or
8 any other coin or token operated mechanical device
9 designed or used for vending purposes, including, but not
10 limited to, machines or devices that use remote control
11 locking mechanisms.

12 (b) This section shall not apply to either of the
13 following:

14 (1) Cigarette or tobacco product vending machines or
15 appliances located at least 15 feet away from the entrance
16 of a premise issued an on-sale public premises license as
17 defined in Section 23039 by the Department of Alcoholic
18 Beverage Control to sell alcoholic beverages.

19 (2) Cigarette or tobacco product and vending
20 machines or appliances located at least 15 feet away from
21 the entrance of a premise issued a retailer’s on-sale license
22 pursuant to Section 23024 and operating as a bona fide
23 public eating place as defined in Section 23038, not
24 including those bona fide public eating places described
25 in Sections 23038.1 and 23038.2, and only if the vending
26 machine *is located in the area of the premise used*
27 *primarily for the sale and service of alcoholic beverages*
28 *and the service of food in this area is incidental to the sale*
29 *of alcoholic beverages and the vending machine can be*
30 operated exclusively by the activation of an electronic
31 switch by the licensee or an employee of the licensee
32 prior to each purchase.

33 (3) As used in this subdivision “at least 15 feet away
34 from the entrance” means within the premises of the
35 licensed establishment and not outside those premises.

36 (c) This section and subdivision (b) of Section 22958
37 set forth minimum state restrictions on the sale of
38 cigarettes or tobacco products from vending machines or
39 devices and does not preempt or otherwise prohibit the
40 adoption of a local standard that imposes a complete ban



1 on the sale of cigarettes or tobacco products from vending
2 machines or devices. A local standard that imposes a
3 complete ban on the sale of cigarettes or tobacco products
4 from vending machines or devices shall control in the
5 event of an inconsistency between this section and a local
6 standard.

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