

AMENDED IN ASSEMBLY JUNE 23, 2009

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE MAY 21, 2009

AMENDED IN SENATE MAY 12, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 400

Introduced by Senator Corbett

February 26, 2009

~~An act to amend Section 26003 of the Public Resources Code, relating to energy.~~ *An act to amend Sections 22950.5, 22962, and 22971 of the Business and Professions Code, relating to tobacco.*

LEGISLATIVE COUNSEL'S DIGEST

SB 400, as amended, Corbett. ~~Energy: California green vehicles.~~ *Tobacco.*

Existing law, the Stop Tobacco Access to Kids Enforcement Act (STAKE Act), establishes various requirements for retailers relating to tobacco sales to minors. 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. A violation of this act is a crime.

This bill would, for purposes of both acts, include within the definition of tobacco product tobacco substitutes, as defined by the bill, and make conforming changes. By changing the definition of an existing 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.

~~The California Alternative Energy and Advanced Transportation Financing Authority Act provides industries in the state with alternative methods of financing in providing and promoting the establishment of facilities needed for the development and commercialization of advanced transportation technologies, and other facilities. The act defines “advanced transportation technologies” to include, among other things, electric vehicles and ultralow emission vehicles.~~

~~This bill would additionally define “advanced transportation technologies” to include, among other things, “California green vehicles,” as defined.~~

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 22950.5 of the Business and Professions
- 2 Code is amended to read:
- 3 22950.5. For purposes of this division, the following terms
- 4 have the following meanings:
- 5 (a) “Department” means the State Department of Public Health.
- 6 (b) “Enforcing agency” means the State Department of Public
- 7 Health, another state agency, including, but not limited to, the
- 8 office of the Attorney General, or a local law enforcement agency,
- 9 including, but not limited to, a city attorney, district attorney, or
- 10 county counsel.
- 11 (c) “Tobacco product” means a product containing tobacco
- 12 leaf, including, but not limited to, cigarettes, cigars, pipe tobacco,
- 13 snuff, chewing tobacco, dipping tobacco, bidis, or other
- 14 preparation of tobacco, or a tobacco substitute.
- 15 (d) “Tobacco substitute” means a battery-powered device that
- 16 can provide inhaled doses of nicotine by delivering a vaporized
- 17 solution.
- 18 SEC. 2. Section 22962 of the Business and Professions Code
- 19 is amended to read:
- 20 22962. (a) For purposes of this section, the following terms
- 21 have the following meanings:

1 (1) “Self-service display” means the open display of tobacco
2 products or tobacco paraphernalia in a manner that is accessible
3 to the general public without the assistance of the retailer or
4 employee of the retailer.

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

10 ~~(3) “Tobacco product” means any product containing tobacco~~
11 ~~leaf, including, but not limited to, cigarettes, cigars, pipe tobacco,~~
12 ~~snuff, chewing tobacco, dipping tobacco, bidis, or any other~~
13 ~~preparation of tobacco.~~

14 ~~(4)~~

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

17 (A) Primarily sells tobacco products.

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

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

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

27 (b) (1) (A) Except as permitted in subdivision (b) of Section
28 22960, it is unlawful for a person engaged in the retail sale of
29 tobacco products to sell, offer for sale, or display for sale ~~any~~ a
30 tobacco product or tobacco paraphernalia by self-service display.
31 A person who violates this section is subject to those civil penalties
32 specified in the schedule in subdivision (a) of Section 22958.

33 (B) A person who violates this section is subject to those civil
34 penalties specified in the schedule in subdivision (a) of Section
35 22958.

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

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

4 (c) Subdivision (b) shall not apply to the display in a tobacco
5 store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping
6 tobacco, provided that in the case of cigars they are generally not
7 sold or offered for sale in a sealed package of the manufacturer or
8 importer containing less than six cigars. In ~~any~~ an enforcement
9 action brought pursuant to this division, the retail business that
10 displays any of the items described in this subdivision in a
11 self-service display shall have the burden of proving that it qualifies
12 for the exemption established in this subdivision.

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

15 (e) This section does not preempt or otherwise prohibit the
16 adoption of a local standard that imposes greater restrictions on
17 the access to tobacco products than the restrictions imposed by
18 this section. To the extent that there is an inconsistency between
19 this section and a local standard that imposes greater restrictions
20 on the access to tobacco products, the greater restriction on the
21 access to tobacco products in the local standard shall prevail.

22 *SEC. 3. Section 22971 of the Business and Professions Code*
23 *is amended to read:*

24 22971. For purposes of this division, the following terms shall
25 have the following meanings:

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

27 (b) “Importer” means an importer as defined in Section 30019
28 of the Revenue and Taxation Code.

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

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

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

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

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

(2) A vending machine.

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

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

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

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

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

(l) “Tobacco products” means tobacco products as defined in subdivision (b) of Section 30121 and subdivision (b) of Section 30131.1 of the Revenue and Taxation Code, *or a tobacco substitute*.

(m) *“Tobacco substitute” means a battery-powered device that can provide inhaled doses of nicotine by delivering a vaporized solution.*

~~(m)~~

(n) “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.”

~~(n)~~

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

~~(o)~~

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

~~(p)~~

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

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

(B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting

1 securities, by contract (other than a commercial contract for goods
2 or nonmanagement services), or otherwise provided; however, no
3 individual shall be deemed to control a person solely on account
4 of being a director, officer, or employee of such person.

5 (2) For purposes of subparagraph (B) of this subdivision, a
6 person who, directly or indirectly, owns, controls, holds, with the
7 power to vote, or holds proxies representing 10 percent or more
8 of the then outstanding voting securities issued by another person,
9 is presumed to control such other person.

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

12 (q)

13 (r) “Law enforcement agency” means a sheriff, a police
14 department, or a city, county, or city and county agency or
15 department designated by the governing body of that agency to
16 enforce this chapter or to enforce local smoking and tobacco
17 ordinances and regulations.

18 (r)

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

22 (s)

23 (t) The amendments made to this section by the act adding this
24 subdivision shall become operative May 1, 2007.

25 *SEC. 4. No reimbursement is required by this act pursuant to*
26 *Section 6 of Article XIII B of the California Constitution because*
27 *the only costs that may be incurred by a local agency or school*
28 *district will be incurred because this act creates a new crime or*
29 *infraction, eliminates a crime or infraction, or changes the penalty*
30 *for a crime or infraction, within the meaning of Section 17556 of*
31 *the Government Code, or changes the definition of a crime within*
32 *the meaning of Section 6 of Article XIII B of the California*
33 *Constitution.*

34 ~~SECTION 1. Section 26003 of the Public Resources Code is~~
35 ~~amended to read:~~

36 ~~26003. As used in this division, unless the context otherwise~~
37 ~~requires:~~

38 ~~(a) “Authority” means the California Alternative Energy and~~
39 ~~Advanced Transportation Financing Authority established pursuant~~
40 ~~to Section 26004, and any board, commission, department, or~~

1 officer succeeding to the functions of the authority, or to which
2 the powers conferred upon the authority by this division shall be
3 given.

4 (b) “Cost” as applied to a project or portion thereof financed
5 under this division means all or part of the cost of construction
6 and acquisition of all lands, structures, real or personal property
7 or an interest therein, rights, rights-of-way, franchises, easements,
8 and interests acquired or used for a project; the cost of demolishing
9 or removing any buildings or structures on land so acquired,
10 including the cost of acquiring any lands to which those buildings
11 or structures may be moved; the cost of all machinery, equipment,
12 and furnishings, financing charges, interest prior to, during, and
13 for a period after, completion of construction as determined by the
14 authority; the cost of the purchase or sale of energy derived from
15 an alternative source pursuant to subdivision (g) of Section 26011;
16 provisions for working capital; reserves for principal and interest
17 and for extensions, enlargements, additions, replacements,
18 renovations, and improvements; the cost of architectural,
19 engineering, financial, accounting, auditing and legal services;
20 plans, specifications, estimates, administrative expenses, and other
21 expenses necessary or incident to determining the feasibility of
22 constructing any project or incident to the construction, acquisition,
23 or financing of a project.

24 (c) (1) “Alternative sources” means the application of
25 cogeneration technology, as defined in Section 25134; the
26 conservation of energy; or the use of solar, biomass, wind,
27 geothermal, hydroelectricity under 30 megawatts, or any other
28 source of energy, the efficient use of which will reduce the use of
29 fossil and nuclear fuels, and is intended primarily to offset part or
30 all of the customer’s own electrical requirements.

31 (2) “Alternative sources” does not include a hydroelectric facility
32 that does not meet state laws pertaining to the control,
33 appropriation, use, and distribution of water, including, but not
34 limited to, the obtaining of applicable licenses and permits.

35 (d) “Advanced transportation technologies” means emerging
36 commercially competitive transportation-related technologies
37 identified by the authority as capable of creating long-term,
38 high-value-added jobs for Californians while enhancing the state’s
39 commitment to energy conservation, pollution reduction, and

1 transportation efficiency. Those technologies may include, but are
2 not limited to, any of the following:

- 3 (1) Intelligent vehicle highway systems.
- 4 (2) Advanced telecommunications for transportation.
- 5 (3) Command, control, and communications for public transit
- 6 vehicles and systems.
- 7 (4) Electric vehicles and ultra-low-emission vehicles.
- 8 (5) California green vehicles.
- 9 (6) High-speed rail and magnetic levitation passenger systems.
- 10 (7) Fuel cells.

11 (e) A “California green vehicle” means a motor vehicle that
12 meets either of the following criteria:

13 (1) Meets or exceeds California’s super-ultralow emission
14 vehicle standard of exhaust emissions and the federal inherently
15 low-emission vehicle evaporative emission, as defined in Part 88
16 (commencing with Section 88.101-94) of Title 40 of the Code of
17 Federal Regulations.

18 (2) Meets or exceeds the California advanced technology partial
19 zero-emission vehicle standard for criteria pollutant emissions and
20 that is rated at 45 miles per gallon or greater according to the
21 federal highway fuel economy test procedure.

22 (f) “Financial assistance” includes, but is not limited to, either,
23 or any combination, of the following:

24 (1) Loans, loan loss reserves, interest rate reductions, proceeds
25 of bonds issued by the authority, insurance, guarantees or other
26 credit enhancements or liquidity facilities, contributions of money,
27 property, labor, or other items of value, or any combination thereof,
28 as determined by, and approved by the resolution of, the board.

29 (2) Any other type of assistance the authority determines is
30 appropriate.

31 (g) “Participating party” means either of the following:

32 (1) A person or an entity or group of entities engaged in business
33 or operations in the state, whether organized for profit or not for
34 profit, that does either of the following:

35 (A) Applies for financial assistance from the authority for the
36 purpose of implementing a project in a manner prescribed by the
37 authority.

38 (B) Participates in the purchase or sale of energy derived from
39 an alternative source pursuant to subdivision (g) of Section 26011.

1 ~~(2) A public agency or nonprofit corporation that does either of~~
2 ~~the following:~~

3 ~~(A) Applies for financial assistance from the authority for the~~
4 ~~purpose of implementing a project in a manner prescribed by the~~
5 ~~authority.~~

6 ~~(B) Participates in the purchase or sale of energy derived from~~
7 ~~an alternative source pursuant to subdivision (g) of Section 26011.~~

8 ~~(h) “Project” means a land, building, improvement to the land~~
9 ~~or building, rehabilitation, work, property, or structure, real or~~
10 ~~personal, stationary or mobile, including, but not limited to,~~
11 ~~machinery and equipment, whether or not in existence or under~~
12 ~~construction, that utilizes, or is designed to utilize, an alternative~~
13 ~~source, or that is utilized for the design, technology transfer,~~
14 ~~manufacture, production, assembly, distribution, or service of~~
15 ~~advanced transportation technologies, or an arrangement for the~~
16 ~~purchase, including prepayment, or sale of energy derived from~~
17 ~~an alternative source pursuant to subdivision (g) of Section 26011.~~

18 ~~(i) “Public agency” means a federal or state agency, department,~~
19 ~~board, authority, state or community college, university, or~~
20 ~~commission, or a county, city and county, city, regional agency,~~
21 ~~public district, school district, or other political entity.~~

22 ~~(j) (1) “Renewable energy” means a device or technology that~~
23 ~~conserves or produces heat, processes heat, space heating, water~~
24 ~~heating, steam, space cooling, refrigeration, mechanical energy,~~
25 ~~electricity, or energy in any form convertible to these uses, that~~
26 ~~does not expend or use conventional energy fuels, and that uses~~
27 ~~any of the following electrical generation technologies:~~

28 ~~(A) Biomass.~~

29 ~~(B) Solar thermal.~~

30 ~~(C) Photovoltaic.~~

31 ~~(D) Wind.~~

32 ~~(E) Geothermal.~~

33 ~~(2) For purposes of this subdivision, “conventional energy fuel”~~
34 ~~means any fuel derived from petroleum deposits, including, but~~
35 ~~not limited to, oil, heating oil, gasoline, fuel oil, or natural gas,~~
36 ~~including liquefied natural gas, or nuclear fissionable materials.~~

37 ~~(3) Notwithstanding paragraph (1), for purposes of this section,~~
38 ~~“renewable energy” also means ultralow-emission equipment for~~
39 ~~energy generation based on thermal energy systems such as natural~~
40 ~~gas turbines and fuel cells.~~

1 (k) ~~“Revenue” means all rents, receipts, purchase payments,~~
2 ~~loan repayments, and all other income or receipts derived by the~~
3 ~~authority from a project, or the sale, lease, or other disposition of~~
4 ~~alternative source or advanced transportation technology facilities,~~
5 ~~or the making of loans to finance alternative source or advanced~~
6 ~~transportation technology facilities, and any income or revenue~~
7 ~~derived from the investment of money in any fund or account of~~
8 ~~the authority.~~

O