

AMENDED IN SENATE JUNE 1, 2009
AMENDED IN SENATE MAY 18, 2009
AMENDED IN SENATE APRIL 28, 2009
AMENDED IN SENATE APRIL 15, 2009

SENATE BILL

No. 603

Introduced by Senator Padilla
(Principal coauthor: Assembly Member Beall)
(Coauthors: Senators DeSaulnier, Leno, Oropeza, and Romero)

February 27, 2009

An act to amend Sections 22972 and 22973 of, and to add ~~Section 22973.3~~ *Sections 22973.3 and 22973.4* to, the Business and Professions Code, relating to retail tobacco sales.

LEGISLATIVE COUNSEL'S DIGEST

SB 603, as amended, Padilla. Retail tobacco sales: licenses.

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, ~~and requires a retailer to obtain a separate license for each retail location~~, requires retailer licensees to pay a one-time license fee of \$100, no renewal fee, and a reinstatement fee of \$100 if the license is renewed after lapse, and authorizes the board to suspend or revoke the license of any retailer of tobacco products that is in violation of the act.

Existing law requires all moneys collected pursuant to the act to be deposited in the Cigarette and Tobacco Products Compliance Fund, which is available for appropriation by the Legislature solely for the

purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003.

This bill would specify that a new license may not be issued to a retailer for a retail location that is located within 600 feet of a school, except as specified.

This bill would prohibit the board from issuing a new license to a retailer for a retail location in an area of overconcentration, as defined. The bill would authorize the board to issue a new license if the local governing body of the area in which the applicant's premises are located, or its designated subordinate officer or body, determines that public convenience or necessity would be served by the issuance. The bill would require that determination to be made within 90 days of notification of a completed application, as specified, except that if the local governing body, or its designated subordinate officer or body, did not make a determination within 90 days the license would be deemed denied. The board would be authorized to issue a license if the determination is made within the 90-day period and the applicant shows that public convenience or necessity would be served by the issuance.

~~*This bill would limit the number of new retail licenses available, as specified. The*~~

The bill would set the renewal fee at \$100. This bill would allow, under specified circumstances, a retailer to transfer an existing license to another person for continued use at the same location upon the sale or transfer of the business holding the license, if the business is in an area where the number of current licenses exceeds the specified limit of overconcentration.

This bill would require the Department of Alcoholic Beverage Control and the State Department of Public Health to provide specified information to the board upon request.

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 22972 of the Business and Professions
- 2 Code is amended to read:
- 3 22972. (a) Commencing June 30, 2004, a retailer shall have
- 4 in place and maintain a license to engage in the sale of cigarettes
- 5 or tobacco products. A retailer that owns or controls more than

1 one retail location shall obtain a separate license for each retail
2 location, but may submit a single application for those licenses.

3 (b) The retailer shall conspicuously display the license at each
4 retail location in a manner visible to the public.

5 (c) A license is not assignable or transferable. A person who
6 obtains a license as a retailer who ceases to do business as specified
7 in the license, or who never commenced business, or whose license
8 is suspended or revoked, shall immediately surrender the license
9 to the board.

10 (d) A license shall be valid for a 12-month period upon issuance
11 of the licence pursuant to Section 22973.1, unless surrendered,
12 suspended, or revoked prior to the end of the 12-month period,
13 and may be renewed annually upon payment of the fee prescribed
14 in subdivision (d) of Section 22973.

15 (e) Any subsequent license issued to a retailer that owns or
16 controls more than one retail location shall be valid for a partial
17 year period from the start date of the new license to the end of the
18 12-month period of the initial license. After a partial year period,
19 all licenses held by a retailer that owns or controls more than one
20 retail local shall be valid for the same 12-month period as a
21 retailer's initial license.

22 SEC. 2. Section 22973 of the Business and Professions Code
23 is amended to read:

24 22973. (a) An application for a license shall be filed on or
25 before April 15, 2004, on a form prescribed by the board and shall
26 include the following:

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

28 (2) The business name, address, and telephone number of each
29 retail location. For applicants who control more than one retail
30 location, an address for receipt of correspondence or notices from
31 the board, such as a headquarters or corporate office of the retailer,
32 shall also be included on the application and listed on the license.
33 Citations issued to licensees shall be forwarded to all addressees
34 on the license.

35 (3) A statement by the applicant affirming that the applicant
36 has not been convicted of a felony and has not violated and will
37 not violate or cause or permit to be violated any of the provisions
38 of this division or any rule of the board applicable to the applicant
39 or pertaining to the manufacture, sale, or distribution of cigarettes
40 or tobacco products. If the applicant is unable to affirm this

1 statement, the application shall contain a statement by the applicant
2 of the nature of any violation or the reasons that will prevent the
3 applicant from complying with the requirements with respect to
4 the statement.

5 (4) If any other licenses or permits have been issued by the
6 board or the Department of Alcoholic Beverage Control to the
7 applicant, the license or permit number of those licenses or permits
8 then in effect.

9 (5) A statement by the applicant that the contents of the
10 application are complete, true, and correct. Any person who signs
11 a statement pursuant to this subdivision that asserts the truth of
12 any material matter that he or she knows to be false is guilty of a
13 misdemeanor punishable by imprisonment of up to one year in the
14 county jail, or a fine of not more than one thousand dollars
15 (\$1,000), or both the imprisonment and the fine.

16 (6) The signature of the applicant.

17 (7) Any other information the board may require.

18 (b) The board may investigate to determine the truthfulness and
19 completeness of the information provided in the application. The
20 board may issue a license without further investigation to an
21 applicant for a retail location if the applicant holds a valid license
22 from the Department of Alcoholic Beverage Control for that same
23 location.

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

26 (d) (1) A license fee of one hundred dollars (\$100) shall be
27 submitted with each application and application for renewal. An
28 applicant that owns or controls more than one retail location shall
29 obtain a separate license for each retail location, but may submit
30 a single application or application for renewal for those licenses
31 with a license fee of one hundred dollars (\$100) per location. The
32 fee shall not be prorated.

33 (2) If a license is reinstated after its expiration, the retailer, as
34 a condition precedent to its reinstatement, shall also pay a
35 reinstatement fee of one hundred dollars (\$100).

36 (e) An application for renewal shall be in the form as prescribed
37 by the board, which may include, but not be limited to, the name,
38 address, and telephone number of the applicant, business name,
39 address, and telephone number of each retail location, and any

1 other information as the board deems necessary for the proper
2 administration of this division.

3 SEC. 3. Section 22973.3 is added to the Business and
4 Professions Code, to read:

5 ~~22973.3. (a) The number of licenses issued shall be limited to~~
6 ~~one for each 2,500 persons, or fraction thereof, over 18 years of~~
7 ~~age in the county in which the retail facilities are situated. No new~~
8 ~~license shall be issued for a county in which the number of current~~
9 ~~licenses is more than one for every 2,500 persons, or fraction~~
10 ~~thereof, 18 years of age or older. Applications shall be granted, if~~
11 ~~they meet the requirements of this chapter, in the order in which~~
12 ~~they are received. The subdivision shall not preclude the renewal~~
13 ~~of any existing license or the transfer of any existing license.~~

14 *22973.3. (a) The board shall not issue a new license to a*
15 *retailer for a retail location in an area of overconcentration.*

16 *(b) Notwithstanding subdivision (a), the board may issue a new*
17 *license if the local governing body of the area in which the*
18 *applicant's premises are located, or its designated subordinate*
19 *officer or body, determines within 90 days of notification of a*
20 *completed application that public convenience or necessity would*
21 *be served by the issuance. The 90-day period shall commence upon*
22 *receipt by the local governing body of (1) notification by the board*
23 *of an application for licensure, or (2) a completed application*
24 *according to local requirements, if any, whichever is later.*

25 *If the local governing body, or its designated subordinate officer*
26 *or body, does not make a determination within the 90-day period,*
27 *the license shall be deemed denied.*

28 *(c) For purposes of this section:*

29 *(1) "Area of overconcentration" means an area where the ratio*
30 *of retail licenses to population in the census tract is greater than*
31 *the ratio of retail licenses to population in the county overall.*

32 *(2) "Population in census tract" means the population as*
33 *determined by the most recent United States decennial or special*
34 *census. The population determination shall not operate to prevent*
35 *an applicant from establishing that an increase of resident*
36 *population has occurred within the census tract.*

37 *(3) "Population in the county" means the annual population*
38 *estimate for California counties published by the Population*
39 *Research Unit of the Department of Finance.*

1 (d) Notwithstanding subdivision (c) of Section 22972, this
2 section shall not apply to the renewal or transfer of a retail license.

3 ~~(b)~~

4 (e) (1) Notwithstanding any other law, subject to approval by
5 the board, in an area where the number of current licenses exceeds
6 the amount allowed by subdivision (a) of overconcentration, a
7 retailer may transfer an existing license to another person only for
8 the continued use at the same location upon the sale or transfer of
9 the business holding the license, only to a person who otherwise
10 meets the requirements for the issuance of a new license, and only
11 after first providing 30 days notice to the board together with an
12 application for transfer, all transfer documents, and evidence that
13 the transferee would meet the requirements for the issuance of a
14 new license.

15 (2) The application for transfer shall be in the form as prescribed
16 by the board and contain any information that the board may
17 require. A transfer fee of _____ dollars (\$_____) one hundred dollars
18 (\$100) shall be submitted with each application.

19 ~~(c) (1) Notwithstanding subdivision (a), the State Board of~~
20 ~~Equalization may issue a new license if the local governing body~~
21 ~~of the area in which the applicant's premises are located, or its~~
22 ~~designated subordinate officer or body, determines within 90 days~~
23 ~~of notification of a completed application that public convenience~~
24 ~~or necessity would be served by the issuance. The 90-day period~~
25 ~~shall commence upon receipt by the local governing body of either~~
26 ~~of the following:~~

27 ~~(A) Notification by the State Board of Equalization of an~~
28 ~~application for a license.~~

29 ~~(B) A completed application according to local requirements,~~
30 ~~if any, whichever is later.~~

31 ~~(2) If the local governing body, or its designated subordinate~~
32 ~~officer or body, does not make a determination within the 90-day~~
33 ~~period, the license shall be deemed denied.~~

34 ~~(d)~~

35 (f) This section shall not preempt a local jurisdiction from
36 adopting an ordinance that is more restrictive than this section with
37 regard to retailers.

38 ~~(e) The population in a county shall be determined by the annual~~
39 ~~population estimate for California counties published by the~~
40 ~~Population Research Unit of the Department of Finance.~~

(f)

(g) In an area where the number of current licenses exceeds the number allowed by subdivision (a) of overconcentration, the board may reinstate an expired license within six months after its expiration.

(g)

(h) The Department of Alcoholic Beverage Control shall, upon request, provide to the board any licensure information, including, but not limited to, applications, license issuance, license transfers, license denials, or any other information necessary to administer this chapter. The State Department of Public Health shall, upon request, provide to the board any information, including, but not limited to, statewide information on the annual Youth Tobacco Purchase Survey, STAKE Act compliance checks, California retailers and youth tobacco control laws, or any other information necessary to administer this chapter.

SEC. 4. Section 22973.4 is added to the Business and Professions Code, to read:

22973.4. (a) The board shall not issue a new retail license to a retailer for a retail location that is located within 600 feet of a public or private elementary or secondary school.

(b) (1) Notwithstanding subdivision (a), the board may issue a new retail license to a retailer for a retail location that is located within 600 feet of a public or private elementary school if the local governing body of the area in which the applicant's premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of either of the following:

(A) Notification by the board of an application for licensure.

(B) A completed application according to local requirements, if any, whichever is later.

(2) If the local governing body, or its designated subordinate officer or body, does not make a determination within the 90-day period, the license shall be deemed denied.

(c) This section shall not preempt a local jurisdiction from adopting an ordinance that is more restrictive than this section with regard to retailers or proximity to a school.

1 (d) *The Department of Alcoholic Beverage Control, shall, upon*
2 *request, provide to the board any licensure information, including,*
3 *but not limited to, applications, license issuance, license transfers,*
4 *license denials, or any other information necessary to administer*
5 *this chapter. The State Department of Public Health, shall, upon*
6 *request, provide to the board any information, including, but not*
7 *limited to, statewide information on the annual Youth Tobacco*
8 *Purchase Survey, Stop Tobacco Access to Kids Enforcement Act*
9 *(STAKE ACT) (Division 8.5 (commencing with Section 229550)*
10 *compliance checks, California retailers and youth tobacco control*
11 *laws, or any other information necessary to administer this chapter.*