

Introduced by Senator Padilla

February 15, 2011

An act to amend Sections 22973.1 and 22974.8 of, and to add Section 22974.9 to, the Business and Professions Code, relating to cigarettes and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 331, as introduced, Padilla. Retail tobacco 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. A retailer owning more than one retail location must obtain a separate license for each retail location.

The act specifies instances when the board is not required to issue a license and requires the board to take action against a retailer of a licensed location convicted of a violation of either the STAKE Act or a specified prohibition, according to prescribed schedule.

This bill would include the location of a retailer within 600 feet of a public or private elementary school among the instances when the board is not required to issue a license to engage in the sale of cigarette and tobacco products. It would also revise the schedule of actions against a retailer of a licensed location located within 600 feet of a public or private elementary or secondary school and who is convicted of an above-described violation, as specified.

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. (a) In 2007, 20 percent of high school students
2 in the United States were current cigarette smokers-approximately
3 19 percent of females and 21 percent of males. Among racial and
4 ethnic subgroups, approximately 23 percent of white, 17 percent
5 of Hispanic, and 12 percent of African American high school
6 students were current cigarette smokers in 2007.

7 (b) In 2006, approximately 6 percent of middle school students
8 in this country were current cigarette smokers, with estimates of
9 6 percent for females and 6% for males. Among racial and ethnic
10 subgroups, approximately 7 percent of white, 7 percent of Hispanic,
11 6 percent of African American, and 3 percent of Asian American
12 middle school students were current cigarette smokers in 2006.

13 (c) Each day in the United States, approximately 3,600 young
14 people between 12 and 17 years of age initiate cigarette smoking,
15 and an estimated 1,100 young people become daily cigarette
16 smokers.

17 (d) Lower income areas are more likely to have higher rates of
18 underage tobacco sales and to be a hot spot for these sales.

19 (e) In more densely populated areas, there is a positive
20 relationship between underage tobacco sales and the number of
21 schools.

22 (f) In general, where there are more tobacco outlets, there will
23 also be more schools. Densely populated ZIP Code areas are shown
24 to have more schools, more tobacco outlets, and more underage
25 tobacco sales.

26 (g) When examining school proximity and underage sales, gas
27 stations, discount stores, supermarkets, and pharmacies are
28 positively related to increased underage sales, while gas stations
29 with convenient stores are negatively associated.

30 SEC. 2. Section 22973.1 of the Business and Professions Code
31 is amended to read:

32 22973.1. (a) The board shall issue a license to a retailer upon
33 receipt of a completed application and payment of the fees
34 prescribed in Section 22973, unless any of the following apply:

35 (1) The retailer, or if the retailer is not an individual, any person
36 controlling the retailer, has previously been issued a license that
37 is suspended or revoked by the board for violation of any of the
38 provisions of this division.

1 (2) The application is for a license or renewal of a license for a
2 retail location that is the same retail location as that of a retailer
3 whose license was revoked or is subject to revocation proceedings
4 for violation of any of the provisions of this division, unless:

5 (A) It has been more than five years since a previous license
6 for the retail location was revoked.

7 (B) The person applying for the license provides the board with
8 documentation demonstrating that the applicant has acquired or is
9 acquiring the premises or business in an arm's length transaction.
10 For purposes of this section, an "arm's length transaction" is
11 defined as a sale in good faith and for valuable consideration that
12 reflects the fair market value in the open market between two
13 informed and willing parties, neither under any compulsion to
14 participate in the transaction. A sale between relatives, related
15 companies or partners, or a sale for the primary purpose of avoiding
16 the effect of the violations of this division that occurred at the retail
17 location, is presumed not to be made at "arm's length."

18 (3) The retailer, or if the retailer is not an individual, any person
19 controlling the retailer, has been convicted of a felony pursuant to
20 Section 30473 or 30480 of the Revenue and Taxation Code.

21 (4) The retailer does not possess all required permits or licenses
22 required under the Revenue and Taxation Code.

23 (5) *The application is for a license for a retail location that is*
24 *within 600 feet of a public or private elementary or secondary*
25 *school. This paragraph shall not be construed to prohibit the*
26 *renewal or transfer of a license for a retail location that is within*
27 *600 feet of any school.*

28 (b) (1) Any retailer who is denied a license may petition for a
29 redetermination of the board's denial of the license within 30 days
30 after service upon that retailer of the notice of the denial of the
31 license. If a petition for redetermination is not filed within the
32 30-day period, the determination of denial becomes final at the
33 expiration of the 30-day period.

34 (2) Every petition for redetermination shall be in writing and
35 shall state the specific grounds upon which the petition is founded.
36 The petition may be amended to state additional grounds at anytime
37 prior to the date on which the board issues its order or decision
38 upon the petition for redetermination.

39 (3) If the petition for redetermination is filed within the 30-day
40 period, the board shall reconsider the determination of the denial

1 and, if the retailer has so requested in the petition, shall grant the
2 retailer an oral hearing and shall give the retailer at least 10 days'
3 notice of the time and place of the hearing. The board may continue
4 the hearing from time to time as may be necessary.

5 (4) The order or decision of the board upon a petition for
6 redetermination becomes final 30 days after mailing of notice
7 thereof.

8 SEC. 3. Section 22974.8 of the Business and Professions Code
9 is amended to read:

10 22974.8. (a) (1) The board shall take action against a retailer,
11 *at a licensed location that is located more than 600 feet from a*
12 *public or private elementary or secondary school and who is*
13 convicted of a violation of either the Stake Act (Division 8.5
14 (commencing with Section 22950) or Section 308 of the Penal
15 Code, according to the schedule set forth in subdivision (b).

16 (2) Convictions of violations by a retailer at one retail location
17 may not be accumulated against other locations of that same
18 retailer.

19 (3) Convictions of violations accumulated against a prior retail
20 owner at a licensed location may not be accumulated against a
21 new retail owner at the same retail location.

22 (4) Prior to suspending or revoking a retailer's license to sell
23 cigarette and tobacco products, the board shall notify the retailer.
24 The notice shall include instructions for appealing the license
25 suspension or revocation.

26 (b) (1) Upon the first conviction of a violation of either the
27 STAKE Act (Division 8.5 (commencing with Section 22950) or
28 Section 308 of the Penal Code, the retailer shall receive a warning
29 letter from the board that delineates the circumstances under which
30 a retailer's license may ~~by~~ be suspended or revoked and the amount
31 of time the license may be suspended or revoked. The retailer and
32 its employees shall receive training on tobacco control laws from
33 the *State Department of Public Health—Services* upon a first
34 conviction.

35 (2) Upon the second conviction of a violation of either the
36 STAKE Act (Division 8.5 (commencing with Section 22950)) or
37 Section 308 of the Penal Code within 12 months, the retailer shall
38 be subject to a fine of five hundred dollars (\$500).

39 (3) Upon the third conviction of a violation of either the STAKE
40 Act (Division 8.5 (commencing with Section 22950)) or Section

1 308 of the Penal Code within 12 months, the retailer shall be
2 subject to a fine of one thousand dollars (\$1,000).

3 (4) Upon the fourth to the seventh conviction of a violation of
4 either the STAKE Act (Division 8.5 (commencing with Section
5 22950)) or Section 308 of the Penal Code within 12 months, the
6 board shall suspend the retailer's license to sell cigarette and
7 tobacco products for 90 days.

8 (5) Upon the eighth conviction of a violation of the STAKE Act
9 (Division 8.5 (commencing with Section 22950) or Section 308
10 of the Penal Code within 24 months, the board shall revoke the
11 retailer's license to sell cigarette and tobacco products.

12 (c) The decision of the board to suspend or revoke the retailer's
13 license may be appealed to the board within 30 days after the notice
14 of suspension or revocation. All appeals shall be submitted in
15 writing.

16 (d) The board's authority to take action against retailers, as set
17 forth in this section, commences on the date of the release of the
18 results from the survey undertaken by the *State* Department of
19 *Public Health Services* pursuant to Section 22952 of the Business
20 and Professions Code Section 22952 to comply with Section 1926
21 of Title XIX of the federal Public Health Service Act (42 U.S.C.
22 300x-26), and any implementing regulations adopted in relation
23 thereto by the United States Department of Health and Human
24 Services, showing that the youth purchase survey finds that 13
25 percent or more of youth were able to purchase cigarettes. The
26 board's authority to take action under this section is inoperative
27 on or after the date of the subsequent release of the results from
28 the survey showing that less than 13 percent of youth were able
29 to purchase cigarettes.

30 (e) *This section shall not preempt or supersede any local tobacco*
31 *control laws other than those related to the collection of state*
32 *taxes. Local licensing laws may provide for the suspension or*
33 *revocation of the local license for any violation of a state tobacco*
34 *control law.*

35 SEC. 4. Section 22974.9 is added to the Health and Safety
36 Code, to read:

37 22974.9. (a) (1) The board shall take action against a retailer
38 of a licensed location that is located 600 feet or less of a public or
39 private elementary or secondary school and who is convicted of a
40 violation of either the Stake Act (Division 8.5 (commencing with

1 Section 22950) or Section 308 of the Penal Code, according to the
2 schedule set forth in subdivision (b).

3 (2) Convictions of violations by a retailer at one retail location
4 may not be accumulated against other locations of that same
5 retailer.

6 (3) Convictions of violations accumulated against a prior retail
7 owner at a licensed location may not be accumulated against a
8 new retail owner at the same retail location.

9 (4) Prior to revoking a retailer's license to sell cigarette and
10 tobacco products, the board shall notify the retailer. The notice
11 shall include instructions for appealing the license revocation.

12 (b) (1) Upon the first conviction of a violation of either the
13 STAKE Act (Division 8.5 (commencing with Section 22950)) or
14 Section 308 of the Penal Code, the retailer shall receive a warning
15 letter from the board that delineates the circumstances under which
16 a retailer's license may be revoked. The retailer and its employees
17 shall receive training on tobacco control laws from the State
18 Department of Public Health upon a first conviction.

19 (2) Upon the second conviction of a violation of either the
20 STAKE Act (Division 8.5 (commencing with Section 22950)) or
21 Section 308 of the Penal Code within 12 months, the retailer shall
22 be subject to a fine of five hundred dollars (\$500).

23 (3) Upon the third conviction of a violation of either the STAKE
24 Act (Division 8.5 (commencing with Section 22950)) or Section
25 308 of the Penal Code within 12 months, the board shall revoke
26 the retailer's license to sell cigarette and tobacco products.

27 (c) The decision of the board to revoke the retailer's license
28 may be appealed to the board within 30 days after the notice of
29 revocation. All appeals shall be submitted in writing.

30 (d) This section shall not preempt or supersede any local tobacco
31 control laws other than those related to the collection of state taxes.
32 Local licensing laws may provide for the suspension or revocation
33 of the local license for any violation of a state tobacco control law.