



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date:	01/04/12	Bill No:	<u>Senate Bill 330</u>
Tax Program:	Cigarette and Tobacco Products Licensing Act	Author:	Padilla
Sponsor:	Author	Code Sections:	BPC 22964
Related Bills:	SB 331 (Padilla) AB 1301 (Hill)	Effective Date:	01/01/13

This analysis only addresses the provisions that impact the BOE.

BILL SUMMARY

This measure requires the Board of Equalization (BOE) to submit to the California Department of Public Health (CDPH) information regarding all penalties assessed against retailers under the Cigarette and Tobacco Products Licensing Act of 2003¹ (Licensing Act).

Summary of Amendments

Since the previous analysis, this bill was amended to delete provisions to impose an additional excise tax on cigarettes and indirectly increase the tax on other tobacco products. The measure now requires the CDPH to establish an electronic database of all retailer violations of any law intended to prevent tobacco sales to minors. The amendments also require enforcing agencies to submit information related to penalties assessed against retailers for violations of these laws.

ANALYSIS

CURRENT LAW

Business and Professions Code Section 22974.8 of the Licensing Act requires the BOE to take action against a retailer convicted of a violation of either the STAKE Act or Penal Code Section 308, according to the following schedule:

- Upon the first conviction of a violation, the retailer receives a warning letter from the BOE that delineates the circumstances under which a retailer's license may be suspended or revoked and the amount of time the license may be suspended or revoked. The retailer and its employees are required to receive training on tobacco control laws from the Department of Health Services upon a first conviction.
- Upon the second conviction of a violation within 12 months, the retailer is subject to a fine of five hundred dollars (\$500).
- Upon the third conviction of a violation within 12 months, the retailer is subject to a fine of one thousand dollars (\$1,000).
- Upon the fourth to the seventh conviction of a violation within 12 months, the BOE is required to suspend the retailer's license to sell cigarette and tobacco products for 90 days.

¹ Division 8.6 (commencing with Section 22970) of the Business and Professions Code.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

- Upon the eighth conviction of a violation within 24 months, the BOE is required to revoke the retailer's license to sell cigarette and tobacco products.

Convictions of violations by a retailer at one retail location are not accumulated against other locations of that same retailer. Furthermore, convictions of violations accumulated against a prior retail owner at a licensed location are not accumulated against a new retail owner at the same retail location.

This provision becomes operative on the date results from the Youth Tobacco Survey are released if the survey finds that 13 percent or more of youth were able to purchase cigarettes (trigger language). The BOE's authority to take action under this provision becomes inoperative on or after the date of the subsequent release of the results from the survey showing that less than 13 percent of youth were able to purchase cigarettes.

PROPOSED LAW

The bill adds Business and Professions Code Section 22964 to the Stop Tobacco Access to Kids Enforcement (STAKE) Act² to require the CDPH to establish and maintain the Tobacco License Query System, which will consist of an electronic database of all violations attributed to a retailer of any federal, state, or local law intended to prevent the illegal sale of tobacco to minors. Among other things, the query system would include all penalties assessed against retailers pursuant to Section 22974.8 (BOE action on a retail license for violations of the STAKE Act or Penal Code 308) by the BOE. The CDPH would be required to make the query system easily accessible to the public and all enforcing agencies on its website by July 1, 2013, and update on a quarterly basis thereafter.

The bill also requires an enforcing agency to submit to the CDPH information regarding all penalties assessed against retailers under specified statutes, including the Licensing Act.

This bill would become effective January 1, 2013.

COMMENTS

1. **Sponsor and Purpose.** This measure is sponsored by the author and is intended to provide a central and publicly accessible database for tracking violations of laws intended to prevent sales of tobacco to minors similar to the Department of Alcoholic Beverage Control's License Query System to track alcohol sale infractions, which has proven to be extremely effective and useful to law enforcement and the public at large.
2. **The January 4, 2012 amendments** add the current provisions and delete the provisions that would have imposed an additional excise tax on cigarettes and indirectly increase the tax on other tobacco products.
3. **Suggested amendments.** With the exception of Section 22974.8, the Licensing Act relates to cigarette and tobacco products tax enforcement. As such, substantially all of the penalties assessed under the Licensing Act would not be related to the purpose of the Tobacco License Query System: *a database of all violations attributable to a retailer of any law to prevent the illegal sale of tobacco to minors.* Accordingly, BOE staff suggested an amendment to limit the Licensing Act penalties submitted to the CDPH to only those related to illegal sales of tobacco to minors.

² Division 8.5 (commencing with Section 22950) of the Business and Professions Code.

The suggested amendment would capture any action taken by the BOE pursuant to Section 22974.8 under existing law and as that section is proposed to be amended by [AB 1301](#) (Hill), and any license cancelled as directed by the CDPH for a retail location located within 600 feet of a school, as proposed by [SB 331](#) (Padilla).

While providing Licensing Act penalty information to the CDPH on a limited basis, as suggested, is not problematic for the BOE, would this information result in duplicate reporting by the BOE? The BOE would not take action on a license for tobacco sales to minors unless directed by the CDPH due to a violation of the STAKE Act. In such case, the CDPH would assess a civil penalty for the violation and notify the BOE of the violation for action on the retailer's license. Accordingly, both the BOE and CDPH penalty would be the result of the same STAKE Act violation.

4. **Related bills.** [SB 331](#) (Padilla) prohibits any retail location newly licensed on and after January 1, 2013 from being located within 600 feet of a public or private elementary or secondary school. The bill also requires an applicant for a new retail Licensing Act license to affirm that each retail location is more than 600 feet from a school. The CDPH would direct the BOE to revoke the license for a location within 600 feet of a school based on the applicant incorrectly affirming on the application that the retail location is more than 600 feet from a school.

[AB 1301](#) (Hill) repeals and adds Section 22974.8 to require the BOE to suspend or revoke the license of a retailer as directed by the CDPH in the case of a third, fourth, or fifth violation of the STAKE Act, if a civil penalty is assessed under that Act.

COST ESTIMATE

The BOE would incur non-absorbable costs related to submitting to the CDPH all penalty information assessed against retailers under the Licensing Act. These costs would be related to programming computers, developing procedures to ensure proper reporting to the CDPH, and staff time to prepare and submit the information to the CDPH.

If the bill is amended to limit the information provided to the CDPH to only those penalties assessed as a result of a STAKE Act violation, these costs would be absorbable. Under existing law, Section 22974.8 is inoperative unless the results from the Youth Tobacco Survey find that 13 percent or more of youth were able to purchase cigarettes. Although the section has become operative twice, the BOE was never notified of a conviction of a violation for action on a retailer's license. Furthermore, if AB 1301 and/or SB 331 are successfully signed into law, it is estimated that the number of CDPH directed-actions on a license would be inconsequential and would also result in absorbable costs.

REVENUE ESTIMATE

This measure would not affect the state's revenues.

Analysis prepared by:	Cindy Wilson	916-445-6036	01/06/12
Contact:	Margaret S. Shedd	916-322-2376	
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