



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

Date:	<b>01/04/12</b>	Bill No:	<b><a href="#">Senate Bill 331</a></b>
Tax Program:	<b>Cigarette and Tobacco Products Licensing Act of 2003</b>	Author:	<b>Padilla</b>
Sponsor:	<b>Author</b>	Code Sections:	<b>BPC 22360.5, 22973, &amp; 22973.1</b>
Related Bills:		Effective Date:	<b>01/01/13</b>

***This analysis only addresses the provisions that impact the BOE.***

**BILL SUMMARY**

This bill makes the following changes to the Cigarette and Tobacco Products Licensing Act of 2003<sup>1</sup> (Licensing Act):

- Prohibits the Board of Equalization (BOE) from issuing a cigarette and tobacco products retail license upon receipt of a completed application and payment of the fees if the application is for a retail location that the applicant does not affirm is located within 600 feet or more from a public or private elementary or secondary school.
- Authorizes the BOE to revoke a license for a retail location if it is found that the application for that license is incorrect, incomplete, or if the license was issued in error.

**Summary of Amendments**

Since the previous analysis, this bill was amended to delete the proposed changes to the Licensing Act that would have revised the provisions requiring the BOE to take action against a retailer who violates laws related to sales of cigarettes or tobacco products to a person under the age of 18, add a requirement that a retail license applicant affirm that each location is located 600 feet or more from a school, and authorize the BOE to revoke a license for a retail license issued based on an incorrect or incomplete application, or if the license was issued in error.

**ANALYSIS**

**CURRENT LAW**

Chapter 2, *License for Retailers of Cigarettes and Tobacco Products*, of the Licensing Act (commencing with Section 22972) provides that a retailer who sells cigarettes and tobacco products in this state is required to have in place a license to engage in the sale of cigarettes and tobacco products and conspicuously display the license at each retail location in a manner visible to the public. A retailer that owns or controls more than one

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

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retail location where cigarettes and tobacco products are sold is required to obtain a separate license for each retail location.

Section 22973 requires that an application for a license be filed on a form prescribed by the BOE, which must include specified information. The BOE is authorized to investigate the truthfulness and completeness of the information provided in a retailer's application. The BOE may also issue a license without further investigation to an applicant for a retail location if that applicant holds a valid license from the Department of Alcoholic Beverage Control (ABC) for that same location. A license is valid for a 12-month period, and is renewed annually.

Section 22973.1 provides that the BOE is required to issue a license to a retailer upon receipt of a completed application and payment of the fees, unless any of the following apply:

- The retailer has previously been issued a licensed that is suspended or revoked for a violation of the Licensing Act;
- The application is for a retail location that is the same retail location as that of a retailer whose license was revoked or is subject to revocation proceedings for a violation of the Licensing Act, as specified;
- The retailer has been convicted of a felony pursuant to specified sections of the Cigarette and Tobacco Products Tax Law;
- The retailer does not possess all required permits or licenses required under the Revenue and Taxation Code.

Any retailer who is denied a license may petition for a redetermination of the BOE's denial within 30 days after service upon that retailer of the notice of the denial.

Section 22974.8 of the Licensing Act requires the BOE to take action against a retailer convicted of a violation of either the Stop Tobacco Access to Kids Enforcement (STAKE) Act<sup>2</sup> 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.
- 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.

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

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.

**STAKE Act.** The STAKE Act (Division 8.5 (commencing with Section 22950) of the Business and Professions Code) established a statewide enforcement program to take action against businesses that illegally sell tobacco to minors. In general, the STAKE Act requires the Department of Public Health (DPH) to:

- Implement an enforcement program to reduce the availability of tobacco products to minors and to conduct sting operations using 15 and 16 year old minors granted immunity;
- Establish requirements for tobacco product retailers to conspicuously post a notice stating that selling tobacco products to a person under 18 years of age is illegal and subject to penalties;
- Assess civil penalties ranging from \$200 to \$6,000 against the store owner for violations; and
- Comply with the Synar Amendment (Section 1926 of Title XIX of the federal Public Health Service Act) and prepare an annual report regarding enforcement activities and their effectiveness for the federal government, Legislature, and Governor.

Furthermore, the STAKE Act:

- Requires all persons engaging in the retail sale of tobacco products to check the identification of tobacco purchasers if the purchaser reasonably appears to be under 18 years of age.
- Prohibits any person, firm, or corporation from selling, giving, or in any way furnishing to another person who is under the age of 18 years any tobacco, cigarette, cigarette papers, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance.
- Prohibits the selling, offering for sale, or distributing tobacco products from a cigarette or tobacco products vending machine unless such vending machines or appliances are located at least 15 feet away from the entrance of a premise issued an on-sale public premise license, as defined.
- Prohibits advertising of any tobacco product on any outdoor billboard, as specified.
- Prohibits a person engaged in the retail sale of: 1) tobacco products to sell, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by self-service display, except as permitted, or 2) blunt wraps to place or maintain, or to cause to be placed or maintained, any blunt wraps advertising display within two feet of candy, snack, or nonalcoholic beverage displayed inside any store or business or that is less than four feet above the floor.

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- Prohibits the distributing or selling of tobacco products directly or indirectly to any person under the age of 18 years through the United State Postal Service or through any other public or private postal or package delivery service, as described.

#### **PROPOSED LAW**

This bill adds Section 22960.5 to the STAKE Act to prohibit 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.

This bill also amends Section 22973 of the Licensing Act to require that an application for a new license for a retail location include a statement by the applicant affirming that each retail location is located 600 feet or more from a public or private elementary or secondary school. If the applicant does not affirm that the retail location is located 600 feet or more from a school, the BOE would not issue the new retail license upon receipt of the license application and payment of the prescribed fees pursuant to Section 22973.1. Section 22973.1 would also provide the BOE the authority to revoke a license issued for a retail location if it is determined that the application is incorrect, incomplete, or if the license was issued in error. The license would be invalid when revoked and considered denied.

If the California Department of Public Health (CDPH) finds that a retail location that is newly licensed on and after January 1, 2013 is located within 600 feet of a public or private elementary or secondary school, Section 22960.5 authorizes the CDPH to direct the BOE to revoke the license for that retail location. The BOE would revoke the license pursuant to Section 22973.1 based on the applicant providing incorrect information on the license application affirming that the retail location is located 600 feet or more from a school.

And lastly, Section 22973 is amended to make a non-substantive, housekeeping correction that removes an obsolete reference to “on or before April 15, 2004, on” that pertained to the initial application due date for retailers.

This bill would become effective January 1, 2013.

#### **BACKGROUND**

In 2003, Assembly Bill 71 (J. Horton, Ch. 890) enacted the Licensing Act, which established a statewide licensure program administered by the BOE to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products. Currently, the BOE has approximately 37,000 retailers and 1,000 distributors and wholesalers licensed to engage in the sale of cigarettes and tobacco products in California.

In 2009, Senate Bill 601 (Padilla) and Senate Bill 603 (Padilla) would have, among other things, amended the Licensing Act to prohibit the issuance of a license for retail locations in close proximity to schools. SB 601 was held under submission in the Senate Appropriations Committee, and SB 603 was referred to the Assembly Governmental Organization Committee, but was never heard.

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**COMMENTS**

1. **Sponsor and Purpose.** This bill is sponsored by the author and is intended to restrict new retailer cigarette and tobacco products licenses within 600 feet of schools and toughen penalties for selling tobacco to kids.
2. **Summary of amendments.** The **January 4, 2012 amendments** delete the proposed changes to the Licensing Act that would have revised the provisions requiring the BOE to take action against a retailer who violates laws related to sales of cigarettes or tobacco products to a person under the age of 18. The bill now requires an applicant of a license for a retail location to affirm that each location is located 600 feet or more from a school, and authorizes the BOE to revoke a license for a retail license issued based on an incorrect or incomplete application, or the license was issued in error. The amendments also add Section 22960.5 to the STAKE Act to prohibit any newly licensed retail location from being located within 600 feet of a school, and if found to be located within that proximity, the CDPH would be authorized to direct the BOE to revoke the license for that retail location, and add a co-author.

The **April 27, 2011 amendments** (1) deleted the “trigger” language that makes the provisions of the Licensing Act related to sales to minors operative and inoperative based on the results of the Youth Tobacco Survey, (2) revised the Licensing Act penalty structure for a conviction of a violation of laws related to sales to minors, and (3) deleted an obsolete date reference.

3. **As proposed to be amended.** The BOE staff requested amendments to this bill that would allow the BOE to cancel, rather than revoke, a license if it is determined that the application for that license is incomplete or incorrect, or if the license was issued in error. BOE staff understands that the bill will be amended to replace the term “revoke” with “cancel” and to add adequate notification by the BOE of that cancellation to the retailer. Such cancellation would follow the appeal procedures set forth for an applicant denied a retail license for not affirming the location is more than 600 feet from a school (Section 22973.1(b)). The proposed amendments would also clarify that the BOE would allow a license for a retail location to be renewed or reinstated after its expiration regardless of whether the applicant affirms that the retail location is 600 feet or more from a school. Under existing law, a license can only be reinstated after expiration if there is no change in ownership. If the ownership changes, the new owner must apply for a new license for that retail location and would be required to affirm that the retail location is more than 600 feet from a school.

BOE staff also understands that the bill will be amended to require the CDPH to provide, upon request, supporting documentation to the BOE for retail location in violation of the 600 foot requirement for which the CDPH has directed the BOE to revoke that license.

4. **How does the retail proximity to a school restriction affect existing retailers and locations?** If enacted, the proposed retail license restriction related to a retail location’s proximity to a school would apply only to applications for new retail locations. As such, those retail locations that are currently licensed would be able to renew their license despite the possibility of being located within 600 feet of a school. However, this bill would prohibit the issuance of a new license for a

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previously licensed location (such as a change in ownership) if that retail location is within 600 feet of a school.

But what if a school is built within 600 feet of an existing retail location? Would the CDPH be authorized to direct the BOE to cancel a license for a retail location that was established and licensed prior to the school being built? Regardless of the answer, the BOE would not revoke such a license since at the time of application for the original license the retail location was not located within 600 feet from a school, and that was correctly affirmed by the applicant on the license application.

5. **BOE's mission and tasks.** The mission of the BOE is to serve the public through fair, effective, and efficient tax administration. The provisions in this bill represent a departure from our traditional "tax collection" functions. In general, the BOE requires a license, permit, or registration for the various tax and fee programs that we administer. Essentially, the purpose of the licensing/registration/permit is to ensure collection of vital revenues for the state.

According to the legislative findings in the Licensing Act, the licensing of manufacturers, importers, wholesalers, distributors, and retailers was a comprehensive program to reduce untaxed distribution and illegal sales of cigarette and other tobacco products in California. Although the Licensing Act provided stricter retailer licensing requirements, compared to permit requirements for sales and use tax, the stricter standards were established to support the overall goal of improving tax collection.

While the licensing restrictions that this bill proposes are intended to relate to health, public safety, or other non-tax purposes, it does not interfere with the BOE's mission of tax administration by simply requiring the BOE to revoke (cancel) a license if a newly licensed retail location is within 600 feet of a school, as directed by the CDPH.

## **COST ESTIMATE**

The BOE would incur costs to administer this bill in its current form if the CDPH is authorized to direct the BOE to revoke, rather than cancel, a license for a new retail location that is found to be located within 600 feet of a school. These costs would be mainly attributable to the revocation process. However, if the bill is amended as proposed, the BOE costs would be minor and absorbable. These costs would be associated with revising applications and publications, developing procedures to cancel a license, and staff time necessary to hear appeals related to a cancelled license.

## **REVENUE ESTIMATE**

This measure would not affect the state's revenues.

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