# STATE BOARD OF EQUALIZATION
# STAFF LEGISLATIVE BILL ANALYSIS

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| Date Amended: | **05/12/10** | Bill No: | **AB 2733** |
| Tax: | **Cigarette and Tobacco Products Licensing Act** | Author: | **Ruskin** |
| Related Bills: | | Position: | **Support as Sponsor** |

## BILL SUMMARY

This bill would make the following changes to the Cigarette and Tobacco Products Licensing Act of 2003 (Licensing Act):

- Require all cigarettes and tobacco products to be removed from clearly and easily visible retail stock during a period of suspension or after a license has been revoked.
- Require a suspended or revoked licensee to post a notice of that suspension or revocation at each public entrance and each cash register, as provided.
- Prohibit licensees who purchased cigarettes or tobacco products for resale under their license from gifting such products during the period of suspension or after a license has been revoked.

## ANALYSIS

### CURRENT LAW

The Licensing Act (Division 8.6 (commencing with Section 22970) of the Business and Professions Code) requires the Board to administer a statewide cigarette and tobacco products license program to regulate the sale of cigarettes and tobacco products in the state. Every retailer, distributor, wholesaler, manufacturer and importer is required to have in place and maintain a license to engage in the sale of cigarettes or tobacco products.

Section 22980.1 contains prohibitions with respect to the purchase and sale of cigarettes and tobacco products. In general, no licensee may purchase from, or sell for resale to, a person not properly licensed or whose license has been suspended or revoked. This prohibition does not include retail sales by a retailer to an end consumer.

Sections 22974.7, 22978.7 and 22979.7 provide that, upon a finding that a retailer, distributor, wholesaler, manufacturer, or importer has violated the Licensing Act, the Board may take one of the following actions:

- First offense: the Board may revoke or suspend the license or licenses, as described.
- Second or any subsequent offense: in addition to the action authorized for the first offense, the Board may impose a civil penalty in an amount not to exceed the greater of five times the retail value of the seized cigarettes or tobacco products, or $5,000.

***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 BOE's formal position.***

Additionally, Section 22980.3 provides that licenses issued pursuant to the Licensing Act are subject to suspension or revocation for violations of the Licensing Act or the Revenue and Taxation Code. Licensees served with a notice of suspension must immediately cease the sale of cigarettes or tobacco products. Continued sales after the notification constitutes a violation of the Licensing Act and will result in the revocation of a license.

And lastly, Section 22980.2 provides that a person or entity that engages in the business of selling cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked is guilty of a misdemeanor, punishable by a fine, as provided. Continued sales of cigarettes or tobacco products by a person without a license or after notification to the person that the license has been suspended or revoked constitutes a Licensing Act violation and will result in the seizure of all cigarettes and tobacco products in the possession of the person.

## PROPOSED LAW

**Gifting and Displaying for Sale.** This bill would amend Business and Professions Code Section 22980.3 to require the Board, upon updating a record for a violation triggering a suspension or revocation, to serve the licensee with a notice of suspension or revocation and order the licensee to cease the sale, gifting, and displaying for sale of cigarettes and tobacco products for the period of the suspension or after the license has been revoked. The notice of suspension must inform the licensee of the effective dates of the suspension or the effective date of the revocation. Continued sales or gifting of cigarettes or tobacco products after the effective date of suspension would result in the revocation of a license.

Section 22980.2 would be amended to provide that continued gifting of cigarettes or tobacco products without a valid license would be subject to specified penalties and result in the seizure by the Board and forfeiture of all cigarettes and tobacco products in the possession of the person.

In addition, the bill would add Section 22980.4 to provide that a person who, after receiving a notice of suspension or revocation, continues to display for sale cigarettes or tobacco products would be subject to a civil penalty of one thousand dollars ($1,000) for each offense and would not be subject to Section 22981.

This bill would amend Section 22971 to alphabetize the defined terms and to define “displaying for sale” and “gifting” to mean the following:

- “Displaying for sale” would mean the placement of cigarettes or tobacco products in a vending machine or in retail stock for the purpose of selling or gifting the cigarettes or tobacco products. For purposes of this definition, the clear and easily visible display of cigarettes or tobacco products would create a rebuttable presumption that either were displayed for sale
- “Gifting” would mean any transfer of title or possession without consideration, exchange, or barter, in any manner or by any means, of cigarettes or tobacco products that have been purchased for resale under a license issued pursuant to the Licensing Act if the transfer occurs while the license is suspended or after the effective date of its revocation.

**Notification.** With respect to notices, this bill would add Section 22971.5 to consolidate the Board’s notice requirements currently provided in Sections 22973.1(b)(5), 22977.2(b)(5), and 22979(f)(5). Section 22971 would define "notice" or "notification" to

mean, unless as otherwise provided, the written notice or notification provided to a licensee by the Board by either actual delivery to the licensee or by first-class mail addressed to the licensee at the address on the license.

**Post a Notice or Suspension or Revocation.** The bill would add Section 22980.5 to require a suspended or revoked retailer to post a notice of that suspension or revocation at each public entrance and each cash register, as specified. A retailer whose license was suspended would be required to post the notice at the retail location that was the subject of the suspension for the duration of the suspension, while a retailer whose license was revoked would be required to post the notice at the retail location that was the subject of the revocation for a 30-day period from the effective date of the revocation. A violation of these provisions would subject the suspended or revoked retailer to a one thousand dollar ($1,000) penalty.

This bill also includes non-substantive housekeeping amendments to the Licensing Act.

This bill would become effective on January 1, 2011.

## BACKGROUND

When a license has been suspended or revoked for violations of the Licensing Act, the licensee is served with a notice of suspension or revocation. Such notice states that the suspended or revoked licensee must cease the sale of cigarettes or tobacco products on the effective date of the suspension or revocation. The notice also asks that cigarette and tobacco products be removed from the retail sales area. To ensure compliance, the Board's Investigations Division follows up on suspended and revoked licenses by inspecting locations where the license has been suspended or revoked to verify cigarettes or tobacco products are no longer being sold.

During these inspections, there have been instances in which cigarettes or tobacco products are found to be in retail stock and clearly visible to customers. In such cases, Board investigators will make a purchase of these cigarettes or tobacco products as evidence of a sale during suspension or revocation, which is a violation of the Licensing Act and subjects all of the suspended licensee's cigarettes and tobacco products to seizure and forfeiture. When appealing the violation, the suspended license holder typically argues that no sale occurred because it was a mistake by their employee. In order to prevent a dispute over an issue of fact that is in the control of the licensee, this bill would provide a presumption that cigarettes or tobacco products are displayed for sale if they remain clearly visible to a retail customer in retail stock otherwise held for sale on the premises during a period of suspension or after revocation.

Board staff has also received inquiries from licensees about furnishing cigarettes or tobacco products to persons without consideration or combined with another product or service during a period of suspension. For example, staff was asked if a suspended licensee could furnish cigars at no additional cost at a wine tasting party, which attendees paid $10 per person to attend. Such a transfer constitutes a sale and is a violation of the Licensing Act; however, it is not clear to licensees that such a transfer is a violation that would cause the products to be subject to seizure and forfeiture. Board investigators have also witnessed suspended or revoked licensees furnishing free sticks of cigarettes to customers as an incentive to continue patronizing their retail locations. In addition to violating Penal Code Section 308.2, which provides that no person may sell one or more cigarettes other than in a sealed and properly labeled package, the licensee should not be engaging in the sale or any other transfer of cigarettes or tobacco products while the license is suspended or revoked.

## COMMENTS

1. **Sponsor and purpose.** The bill is sponsored by the Board and is intended to prevent unintended sales or gifting of cigarettes or tobacco products during periods of license suspension or revocation, thereby avoiding further violations of the Licensing Act. Such violations are punishable, in part, by the seizure and forfeiture of all cigarettes and tobacco products, which could have a substantial financial impact on the licensee. In addition, the bill is intended to prohibit any transfer of cigarettes or tobacco products while the license is suspended or after revocation.

2. **Preventing mistaken sales during suspension or after revocation of a license.** As previously explained, selling cigarettes or tobacco products during suspension or after revocation of a license is a violation of the Licensing Act and subjects such products to seizure.

   When appealing the violation, the suspended retail license holder typically argues that no sale occurred because it was a mistake by their employee. To forestall such arguments, this bill would require all cigarettes and tobacco products to be removed from being clearly and easily visible as retail stock, which would indicate that such products are being displayed for sale. Furthermore, this bill would require a suspended or revoked licensee to post a notice of that suspension or revocation at each public entrance and each cash register to make it clear to both employees and customers that cigarettes or tobacco products cannot be sold while the license is suspended or after a license has been revoked.

3. **All transfers of cigarettes and tobacco products should cease during suspension and after revocation of a license.** This bill would prohibit licensees who purchased cigarettes or tobacco products for resale under their Licensing Act license from gifting such products during the period of suspension or after a license has been revoked. This would address cases in which suspended or revoked licensees continue to engage in transferring cigarettes or tobacco products combined with other products or to their customers without compensation for those cigarettes or tobacco products as an incentive to continue patronizing their business.

## COST ESTIMATE

Enactment of this provision would not impact the Board's administrative costs.

## REVENUE ESTIMATE

This provision would not affect the state's revenues.


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