



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

DRAFT

Date Introduced:	<b>02/27/09</b>	Bill No:	<b><a href="#">SB 601</a></b>
Tax:	<b>Cigarette and Tobacco Products Licensing Act</b>	Author:	<b>Padilla</b>
Related Bills:	<b>SB 602 (Padilla) SB 603 (Padilla)</b>		

**BILL SUMMARY**

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

- Prohibit the Board from issuing a cigarette and tobacco products retail license (retail license) for a location within 1,000 feet of a school; and
- Restricts the issuance of a retail license to “traditional retail locations,” as defined.

**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 cigarette 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 retail license is not assignable or transferable and can not be sold. A person who obtains a retailer license and stops doing business, or never starts doing business, or whose license is suspended or revoked, is required to immediately surrender the license to the Board.

A retailer that owns or controls more than one retail location where cigarette and tobacco products are sold is required to obtain a separate license for each retail location. Each retailer is required to submit a one-time license fee of one hundred dollars (\$100) with each application and may submit a single application for those licenses with a license fee of one hundred dollars (\$100) per location. A "retail location" is defined to mean any building from which cigarettes or tobacco products are sold at retail or a vending machine.

Additionally, Section 22973 authorizes the Board to investigate the truthfulness and completeness of the information provided in a retailer’s application. The Board 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 Board is required to issue a license to a retailer upon receipt of a completed application and payment of the fees, unless otherwise specified. Any person or retailer convicted of a felony under the Cigarette and Tobacco Products Tax Law would not be issued a license, or if that person holds a license, that license would be revoked. Any retailer who is denied a license may petition for a

<sup>1</sup> 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*

redetermination of the Board's denial within 30 days after service upon that retailer of the notice of the denial.

Chapter 3, License for **Wholesalers and Distributors** of Cigarettes and Tobacco Products, of the Licensing Act (commencing with Section 22975) requires that every distributor and wholesaler must annually obtain and maintain a license to engage in the sale of cigarettes or tobacco products. Every distributor and wholesaler must file an initial application and a renewal application accompanied by a fee of \$1,000 for each location. The fee is for a calendar year and may not be prorated. In addition, Chapter 4, License and Administration Fee for **Manufacturers and Importers**, of the Licensing Act (commencing with Section 22979) requires every manufacturer and importer to maintain a license to engage in the sale of cigarettes or tobacco products and to pay a one-time fee.

As provided in Sections 22990 and 22991 all moneys collected pursuant to the Licensing Act are deposited in the Cigarette and Tobacco Products Compliance Fund (Compliance Fund) and are available for expenditure, upon appropriation by the Legislature, solely for the purpose of implementing, enforcing, and administering the Licensing Act.

#### PROPOSED LAW

This bill would add Section 22973.4 to Chapter 2 of the Licensing Act to prohibit the issuance of a retail license for a location within 1,000 feet of a public or private elementary or secondary school. The Board would also be required to limit issuance of a retail license to "traditional retail locations," defined as a grocery store, convenience store, pharmacy, liquor store, or a tobacco or cigar store.

The bill would become operative January 1, 2010.

#### BACKGROUND

In 2003, Assembly Bill 71 (J. Horton, Ch. 890) enacted the Licensing Act, which established a statewide licensure program administered by the Board to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products. Currently, the Board has approximately 38,000 retailers and 1,000 distributors and wholesalers licensed to engage in the sale of cigarettes and tobacco products in California.

#### COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to strengthen California's tobacco control laws and prevent youth from using tobacco.
2. **Board's mission and tasks.** The mission of the Board is to serve the public through fair, effective, and efficient tax administration. The provisions in this bill may represent a departure from our traditional "tax collection" functions. In general, the Board 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. The licensing restrictions that this bill proposes appear to be related to health, public safety, or other non-tax purposes. Is the Licensing Act the proper venue for the proposed changes?

3. **The proposed distance in the Licensing Act is not the same as in the Alcohol Beverage Control Act.** Section 22973(b) of the Licensing Act provides that the Board may issue a retail license without further investigation if the retail location is also licensed by the ABC. Section 23789 allows ABC to refuse issuance of an alcohol permit for a retail location within 600 feet of a church, school, or playground. Since this bill proposes a stricter standard (1,000 ft.) than imposed on retailers of alcohol, then the Board would need to conduct its own investigation and could not rely on the ABC license.
4. **A “traditional” retail location would be defined as** a grocery store, convenience store, pharmacy, liquor store, or a tobacco or cigar store. Limiting licenses to traditional retail locations may result in a substantial number of retail locations being considered “non-traditional.” A “non-traditional” retail location may include, but not be limited to: a donut shop, video store, laundromat, deli, beauty salon, auto repair shop, gift/novelty store, “dollar” store, warehouse club store (unless licensed as a wholesaler/distributor), mass-merchandise store (without a pharmacy), furniture store, eating and drinking place, hardware store, book store, florist, pet shops, sporting goods store, and auto supply store.

What is considered non-traditional in one area of the state may not apply to all areas of the state. How would rural areas be affected? Is there any consideration for local governments to determine if a license should be issued for public convenience or necessity?

5. **How does this bill affect existing retailers and locations?** If enacted, this bill would be effective January 1, 2010, and would be prospective – meaning going forward. The plain language of the bill states that the Board would only issue a retail license for a “traditional retail location.” Does that mean that an existing “non-traditional” retail location would be denied a license upon renewal or reinstatement of a license? Is the measure meant to affect only new applications after the effective date, excluding reinstatements and renewals for businesses licensed prior to the enactment of the bill? The author should clarify the intent of the provisions so that existing retailers would know how they will be affected by the provisions.
6. **What effect would this bill have on the Cigarette and Tobacco Products Compliance Fund?** Currently, the Board’s enforcement costs exceed the amount of revenues from the licensing fees with the shortfall made up by the various cigarette and tobacco products tax funds (comprised of payments made to the state for the excise taxes on the distribution of cigarettes and tobacco products). If the number of retail licenses decreases and the Board has additional licensing investigation duties, then this may result in additional shortfalls in funding from the Compliance Fund.

As Assembly Bill 71 was developed and made its way through the Legislature, it was determined that the licensure fees would not permanently sustain the Licensing Act program. Since the Licensing Act enforces the Cigarette and Tobacco Products Tax Law and directly benefits the funds established pursuant to that program, the funding

for the Licensing Act would eventually shift to the cigarette and tobacco products tax funds. AB 71 also included uncodified language to clarify that all revenues and expenses generated by the Licensing Act are to be allocated in the same manner as those revenues and expenses are allocated under the Cigarette and Tobacco Products Tax Law to make sure no one cigarette and tobacco products fund benefited or was burdened when the funding shift took place. Since this measure is intended to address youth smoking and not the administration and collection of cigarette and tobacco products taxes, it is unclear how this measure would be funded. While the Licensing Act provides that all moneys in the Compliance Fund are to be used for the purpose of implementing, enforcing and administering the Licensing Act, this measure could result in a significantly larger shortfall in the Fund, thus shifting a larger burden of the expense to the cigarette and tobacco products tax funds. As such, it could be construed that the cigarette and tobacco products funds, which existing law requires to be used for the administration and collection of the cigarette and tobacco products taxes<sup>2</sup>, are being used to fund enforcement of youth smoking.

7. **Local retailer licensing requirements and possible preemption issues.** Many local cities and counties in California have adopted local tobacco retailer licensing laws, which require a retailer to pay an annual licensing fee and be subject to suspension or revocation of that license if they are found selling tobacco to minors. Therefore, California retailers engaged in the sale of cigarettes or tobacco products and located in a city or county that has adopted local tobacco retailer licensing laws have two licenses (state and city/county). This also means that some retailers may have local licensing requirements and restrictions unrelated to payment of excise taxes. For example, Los Angeles county has a tobacco retail license program in which they indicate the necessity of having both a state and county license:

**I already have a state tobacco license issued by the California Board of Equalization. Why do I need a tobacco license from the County?**

The tobacco license issued by the California Board of Equalization is meant to curb tobacco tax fraud and the counterfeiting of tobacco products. That license does not preempt local jurisdiction from adopting local tobacco licenses. The Los Angeles County Board of Supervisors adopted this ordinance on December 18, 2007 to encourage responsible tobacco retailing and to discourage violations of federal, state and local tobacco-related laws, especially those that prohibit the sale or distribution of tobacco products to minors.

To legally sell tobacco products in the unincorporated areas of the County you will need a valid state tobacco license and a County tobacco license.

[http://www.lapublichealth.org/tob/pdf/Retailer%20FAQ%20v.6\\_FINAL.pdf](http://www.lapublichealth.org/tob/pdf/Retailer%20FAQ%20v.6_FINAL.pdf)

Section 22971.3 provides that, with the exception of collection of state taxes, nothing in the Licensing Act preempts or supersedes local tobacco control laws. However, the proposed state licensing limitation appears to be related to health and public safety, rather than collection of state taxes. Would the proposed retailer licensing restrictions preempt or supersede related local tobacco control laws? It may be necessary for the author to authorize the State to preempt or supersede local

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<sup>2</sup> R&TC §§30124, 30125, 30131.3 and 30131.4.

tobacco control laws in order to prevent conflicts between local and state licensing requirements.

8. **Related legislation.** SB 602 (Padilla) adds provisions to the Licensing Act to prohibit the issuance of a new license to a retailer in an “area of overconcentration,” and makes reporting requirement changes related to sales to minors.

SB 603 (Padilla) under the Licensing Act, imposes an annual retailer fee, limits the total number of retailer licenses issued in a county, and provides for the transfer of a license under specified conditions.

### **COST ESTIMATE**

Significant administrative costs would be incurred to notify retailers, revise applications and publications, revise and/or develop computer programming, develop procedures to identify locations near schools, develop regulations and procedures to identify and issue licenses to traditional retail locations, develop procedures to investigate retail licenses consistent with the restrictions, address legal issues, and answer inquires from licensees. A detailed cost estimate is pending.

### **REVENUE ESTIMATE**

According to the Board’s Excise Taxes Division, there are approximately 38,200 licensed retail locations selling cigarettes or tobacco products in California. This figure has been fairly stable since the inception of the Licensing Act. On average, there are about 6,000 new licenses issued, with a corresponding amount of licenses surrendered.

Although we are not able to quantify the revenue impact for this bill, we believe it would result in a net loss of excise tax and licensing fees due to less convenience for consumers. As this bill progresses and more details are provided, the Board can develop a revenue estimate

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