

Date of Hearing: June 28, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 1400(Wieckowski) – As Amended June 21, 2016

SENATE VOTE: 21-16

***NOTE:** This bill is double-referred, and if passed by this Committee, it will be referred to the Assembly Committee on Governmental Organization.*

SUBJECT: Tobacco

SUMMARY: Revises, beginning on January 1, 2019, the definition of a “retail location” under the Cigarette and Tobacco Products Licensing Act to limit the sale of cigarettes and tobacco products to “tobacco stores” as currently defined in law.

EXISTING LAW:

- 1) Establishes the Cigarette and Tobacco Products Licensing Act of 2003, and requires the Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products. (Business and Professions Code (BPC) Section 22970, *et seq.*)
- 2) Defines "tobacco products" as all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50 percent tobacco, but does not include cigarettes, among other items. (BPC Section 22971(s))
- 3) Defines “retail location” as both any building from which cigarettes or tobacco products are sold at retail and a vending machine. (BPC Section 22971(q))
- 4) Requires a retailer to obtain a separate license for each retail location that sells cigarettes and tobacco products and pay a one-time fee of \$100. (BPC Sections 22972, 22973(7)(d))
- 5) Defines a “tobacco store”, under the Stop Tobacco Access to Kids Enforcement Act, as a retail business that meets the following requirements: (BPC Section 22962(a)(4))
 - a) Primarily sells tobacco products.
 - b) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.
 - c) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person’s parent or legal guardian, as defined in Family Code Section 6903.
 - d) Does not sell alcoholic beverages or food for consumption on the premises.

- 6) 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 the age of 21. (BPC Section 22956)

THIS BILL:

- 1) Revises and recasts the definition of a "retail location" under the California Cigarette and Tobacco Products Licensing Act of 2003, to match the definition of a "tobacco store" as specified under the Stop Tobacco Access to Kids Enforcement Act, beginning January 1, 2019.
- 2) Makes other conforming changes.

FISCAL EFFECT: According to the Senate Appropriations Committee analysis, no fiscal impact is anticipated by the Department of Public Health with respect to its enforcement of the Stop Tobacco Access to Kids Enforcement Act. This bill will likely result in:

- One time increase in tobacco retailer licensing fees of about \$700,000 in the first year, offset in future years by an ongoing reduction of \$470,000 per year in licensing fee revenues. The definitional change in the bill will result in a substantial reduction in the number of retail businesses that can legally sell cigarettes and tobacco products in the state. According to the Board of Equalization (Board), this change is expected to prohibit about 30,000 retailers (including grocery stores and gas stations) from selling tobacco products. This would leave about 2,200 existing retailers that are likely to meet the new definition of a "retail location". In addition, the Board estimates that an additional 7,000 new retail locations would open to meet existing demand for tobacco products. The Board anticipates an initial influx of licensing application fee revenue from those new retail locations, offset in future years from reductions in license applications from retail locations no longer authorized to sell tobacco products.
- Reduced total excise tax and sales tax revenues on tobacco products of \$84 million per year. The Board projects reduced tobacco excise tax revenues of about \$56 million per year (about 10% of which would come from the General Fund and the remainder from special funds that support a variety of public health programs). The Board estimates reduced sales tax revenues of about \$29 million per year (about 50% coming from the General Fund and the remainder coming from local government sales tax revenues). The Board estimates that most consumers will shift their purchases of tobacco products from retailers such as gas stations or grocery stores to tobacco stores. However, the Board also projects an overall reduction in tobacco consumption from this change, due to the reduced convenience having to purchase tobacco products only at tobacco stores.
- Unknown, but significant health care cost savings to public payers. According to the Centers for Disease Control and Prevention, estimates of annual direct health care costs related to smoking are between \$130 billion and \$180 billion per year, nationally. This bill is likely to reduce health care costs, by reducing tobacco use rates. If the long-term reduction in the expenditure of health care costs relating to smoking is proportional to the reduction in the use rate, total direct health care costs in the state would be reduced by as much as \$1 billion per year in the long-run. A significant portion of those savings would likely accrue to public payers such as the Medi-Cal program and CalPERS

COMMENTS:

Purpose. This bill revises the definition of a retail tobacco location, which will limit the types of retail locations that will be authorized to sell tobacco products. This bill is sponsored by the author. According to the author, "[This bill] will do more to prevent exposure and access to tobacco products to children by reducing its pervasive presence in retail locations in California. Despite having steep penalties for selling tobacco to minors, 90% of smokers still say they began smoking before the legal age. This is in part because tobacco companies have not stopped in their efforts to market to children."

Background. *Cigarette and Tobacco Products Licensing Act.* As a result of AB 71 (Horton), Chapter 890, Statutes of 2003, the Cigarette and Tobacco Products Licensing Act (Act) was enacted. The Act imposed licensing requirements on all retailers, wholesalers, and distributors of cigarettes and tobacco products and all manufacturers and importers of cigarettes. Licensing requirements are in addition to the permits and licenses that may be required depending on other business operations. The Act intended to decrease tax evasion on the sales of cigarettes and tobacco products in California, and also included provisions for new recordkeeping requirements, inspection and seizure of any untaxed cigarettes or tobacco products, and imposed civil and criminal penalties for violations.

The BOE is the regulatory entity charged with the licensure and enforcement of the Act. As noted, retail sellers of cigarettes and tobacco products in California must have a Cigarette and Tobacco Products Retailer's License. There is a one-time fee of \$100 for each location from which cigarettes or tobacco products are sold at retail; a license is valid for one year and must be renewed annually. There is no additional charge to renew a license. However, if a license expires, a fee of \$100 is required for reinstatement. Retailers are strictly prohibited from selling cigarette and other tobacco products without a valid Cigarette and Tobacco Products Retail License.

In an analysis of this bill, the BOE notes that it anticipates that the definitional change will reduce the number of retail locations from approximately 33,000 (current licensees) to less than 3,000. The BOE notes that the largest numbers of licensees were grocery stores, gas stations, convenience stores, liquor stores, and tobacco stores. Of those total licensees, only 2,276 were solely tobacco only stores. However, the BOE analysis does anticipate an increase of new tobacco retail facilities (estimates approximately 10,000) as a result of this bill, well below the current 33,000 current retail establishments that can sell tobacco specified products.

This bill includes a two-year delayed implementation. According to the author, the delayed implementation will help provide businesses with time to change their business model (become a retail tobacco store) to meet the revised requirements prescribed by this bill in order to sell tobacco products.

The Stop Tobacco Access to Kids Enforcement Act (STAKE). The Stake Act was established in the 1990s as an effort to address the issue of tobacco sales to minors in California to conform to a federal mandate, among other reasons. The STAKE is enforced through the California Department of Public Health (CDPH). According to the CDPH, "the mission of the program is to reduce the illegal sales of tobacco products to individuals under 21 years of age through effective enforcement of the STAKE." The BPC Section 29952(c) requires the CDPH to conduct random inspections at retail sites in order to investigate the sales of tobacco to underage

minors. In addition, the STAKE requires that specified tobacco retailers include an age-of-sale warning at each point of sale that selling tobacco to persons under the age of 21 years is illegal and subject to penalties. Until June of 2016, the sale of tobacco products was prohibited for persons under the age of 18, current law now prohibits the sale of tobacco products to individuals under 21 unless they are active duty military personnel in the U.S. Armed Forces. The STAKE was implemented as a mechanism to ensure that minors were not effectively able to obtain tobacco products from retail stores, and if they were, those stores be subjected for penalties. The revised definition of a retail tobacco store as proposed in this bill is similar to the definition of a tobacco store identified in the STAKE, which was established to address illegal sales to minors and not for issuance of retail sale licenses.

The CDPH conducts an annual "Statewide Youth Tobacco Purchase Survey" to monitor retailer compliance with the Act. The CDPH's *California Tobacco Facts and Figures 2015* report states, "Although California prohibits selling tobacco to youth ages 18 and under, statewide data show that more than 5% of retailers still sell tobacco to minors." The report breaks down the percentage of retailers selling tobacco to youth by store type. It was found that while some retail stores were found to have higher incidents of selling tobacco to minors, including convenience stores with gasoline, restaurants, donut shops, meat, and produce markets, the incident rates were at least eight percent less compared to that of tobacco stores. The most compliant retailers included supermarkets and drug stores/pharmacies.

Tobacco Consumption and Tobacco Sales to Minors. The CDC states that if smoking continues at the current rate among youth in this country, 5.6 million of today's Americans younger than 18 will die early from a smoking-related illness. Some of the statistics related to tobacco use provided by the CDC indicate that while there has been no significant change in overall tobacco use among high school students since 2011, there was a decrease in cigarette use among high school students from 2011-2015. According to the Executive Summary from the Surgeon General's 2012 report, *Preventing Tobacco Use Among Youth and Adults*, "nearly all tobacco use begins in childhood and adolescence. In all, 88% of adult cigarette smokers who smoke daily, report that they started smoking by the age of 18, (NSDUH 2010, Chapter 3). This is a time in life of great vulnerability to social influences, and the pervasive presence of tobacco product marketing—including everything from sleek ads in magazines to youth-generated posts on social networking sites, to images of smoking in the movies—conveys messages that make tobacco use attractive to youth and young adults."

Tobacco Products Banned from Pharmacies. In 2008, San Francisco became the first city in the United States to ban the sale of tobacco products from retail pharmacies, and Boston became the second. Additionally, CVS announced in 2014 that it planned to ban tobacco products from all of its stores.

Current Related Legislation. SB 1470 (Wieckowski) of 2016, revises the definition of "tobacco store" to indicate that a retail business primarily sells tobacco products and tobacco paraphernalia. *STATUS: This bill is currently pending in the Assembly Committee on Business and Professions.*

SBX2 – 5 (Leno) Chapter 7, Statutes of 2016, recasts and broadens the definition of "tobacco product" to include electronic cigarettes, as specified; extends current restrictions and prohibitions against the use of tobacco products to electronic cigarettes; extends current licensing

requirements for manufacturers, importers, distributors, wholesalers, and retailers of tobacco products to electronic cigarettes; and requires electronic cigarette cartridges to be child-resistant.

SB X2 – 7 (Hernandez) Chapter 8, Statutes of 2016 increases the minimum legal age to purchase or consume tobacco from 18 to 21 and makes additional conforming changes to restrictions and enforcement mechanisms in current law.

Prior Related Legislation. SB X2 – 10 (Beall) of 2015, would have revised the Cigarette and Tobacco Products Licensing Act of 2003 to change the retailer license fee from a \$100 one-time fee to a \$265 annual fee, and increased the distributor and wholesaler license fee from \$1,000 to \$1,200. *NOTE: This bill was held at the Assembly desk.*

SB 24 (Hill) of 2015, would have classified electronic cigarettes separately from tobacco products, added electronic cigarettes to the Stop Tobacco Access to Kids Enforcement Act and smoking location prohibitions, and mandated childproof packaging for e-liquid used in electronic cigarettes. *NOTE: This bill was amended to pertain to the California Public Employees' Pension Reform Act of 2013.*

ABX2 – 6 (Cooper) of 2015, defined the term smoking for purposes of the Stop Tobacco Access to Kids Enforcement Act, expanded the definition of a tobacco product to include electronic cigarettes (e-cigarettes), and extended current restrictions and prohibitions against the use of tobacco products to electronic cigarettes. The bill further extended current licensing requirements for manufacturers, importers, distributors, wholesalers, and retailers of tobacco products to electronic cigarettes. *NOTE: This bill was held on the Assembly Floor.*

AB 1500 (Dickinson) of 2014, would have prohibited a delivery seller, as defined, from selling or delivering an electronic cigarette to a person under 18 years of age. *NOTE: This bill failed passage in the Assembly Committee on Appropriations.*

SB 568 (Steinberg), Chapter 336, Statutes of 2013, prohibits an operator of an Internet Web site, online service, online application, or mobile application, as specified, from marketing or advertising electronic cigarettes to a minor.

SB 648 (Corbett) of 2013, would have restricted electronic cigarettes from being sold in vending machines. *NOTE: SB 648 failed passage in the Assembly Committee on Appropriations.*

SB 882 (Corbett), Chapter 312, Statutes of 2010, made it unlawful, to the extent not preempted by federal law, for a person to sell or otherwise furnish an electronic cigarette to a person less than 18 years of age.

ARGUMENTS IN SUPPORT:

The California College and University Police Chiefs Association writes in support, "This important bill will modernize the way tobacco products are sold in California. Tobacco products are everywhere—easily available in a quick trip to a gas station or grocery store or virtually every retail establishment around a college or university campus."

Common Sense Kids Action writes in support, "[This bill] will help reduce the chance that children will be impacted by the negative lifetime health risks associated with these products."

By restricting the sales of tobacco products to tobacco stores, this bill will both drastically reduce exposure of minors to tobacco and streamline tax collection and enforcement for the Board of Equalization."

The Santa Clara County Board of Supervisors writes in support, "[This bill] narrows the definition of retailers permitted to sell tobacco products to only tobacco stores. This would significantly restrict where tobacco products can be purchased and help reduce tobacco exposure to minors."

The County Health Executives Association of California writes in support, "Limiting the sale of tobacco products to only at tobacco stores would decrease youth exposure to tobacco products as they do not allow minors to enter the premises without a parent or legal guardian."

The American Cancer Society Cancer Action Network writes in support, "By limiting the sale of tobacco products to tobacco only stores, this bill limits the number of tobacco retailers and thus the ability of the tobacco industry to market tobacco to our kids. Studies have shown that frequent exposure to tobacco retail displays has been associated with increased smoking initiation among youth and can create a negative impact on tobacco quit attempts."

ARGUMENTS IN OPPOSITION:

The California Association Representing Independent Fuel, Lubes and Convenience Store Interests writes in opposition, "Sale of tobacco products provides essential revenues for the operation and profitability of convenience stores, allowing continued operation of those vital community service locations. Prohibiting sales of tobacco products will create serious, if not fatal, consequences for such businesses."

The California Chamber of Commerce writes in opposition, "Passage of this bill will result in a loss of jobs and tax revenues."

The National Federation of Independent Business Owners writes in opposition, "the sale of legal tobacco products generates 40% of the gross grocery sale revenue for the typical small convenience stores and gas stations... [This bill] will only serve to further decimate small business in a state where they are struggling to survive and create job."

The California Retailers Association, "While tobacco is a legal product in California, our members would like to continue to responsibly sell offer it for sale to age appropriate consumers."

Trepcos West writes in opposition, "[This bill would create an unfair swing in the tobacco and cigarette business that will hurt thousands of businesses across the state, including Trepcos West, and forcing more people out of jobs."

C-Store Realty and G&M Oil Company, Inc., writes in opposition, "There is no good reason to support the sales prohibition in [this bill], convenience stores have a well-deserved and positive compliance record; serving only those eligible to buy legal tobacco products."

The California Distributors Association writes in opposition, "[This bill] will have a heavy impact on the viability of convenience stores and small grocery stores."

A coalition of organizations writes in opposition, "this bill places undue burden on our licensed retailers that have for many years sold tobacco products in a successful and responsible manner to legal age consumers."

REGISTERED SUPPORT:

American Cancer Society Cancer Action Network
California College and University Police Chiefs Association
Common Sense Kids Action
County Health Executives Association of California
Santa Clara County Board of Supervisors

REGISTERED OPPOSITION:

American Petroleum and Convenience Store Association*
California Asian Chamber of Commerce*
California Association Representing Independent Fuel, Lubes and Convenience Store Interests
California Black Chamber of Commerce*
California Chamber of Commerce*
California Distributors Association*
California Independent Oil Marketers Association*
California Licensed Beverage Association*
California Retailers Association*
C-Store Realty
National Federation of Independent Business Owners*
Regional Black Chamber of Commerce*
Retailers and Store Owners United to Rebuild California's Economy*
Trepco West
Valley Industry Commerce Association*
Numerous individuals

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