

Assembly Bill No. 686

CHAPTER 823

An act to amend Section 22958 of, and to add Section 22960 to, the Business and Professions Code, relating to tobacco.

[Approved by Governor October 12, 1995. Filed
with Secretary of State October 13, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 686, Tucker Tobacco: vending machines.

Existing law, the Stop Tobacco Access to Kids Enforcement Act or the STAKE Act, among other things, requires the State Department of Health Services to develop a program to reduce the availability of tobacco products to persons under 18 years of age. The STAKE Act requires that all persons engaging in the retail sale of tobacco products check the identification of tobacco purchasers to determine the purchaser's age if the purchaser appears to be under age 18. The STAKE Act authorizes the department to assess civil penalties in accordance with a schedule against any person, firm, or corporation that sells tobacco products or other controlled substances to persons who are under age 18.

This bill would prohibit the sale or distribution of tobacco products from vending machines or other similar devices except when located at least 15 feet away from the entrance, as defined, of premises issued an on-sale public premises license, as defined, to sell alcoholic beverages, commencing January 1, 1996.

This bill would authorize the department to assess civil penalties against any person, firm, or corporation that sells or distributes tobacco products from a vending machine or against any person, firm, or corporation that leases, furnishes, or services these machines. The bill would state that its restrictions on the sale of tobacco products from vending machines do not preempt local standards that further restrict access to and reduce the availability of cigarette or tobacco products from vending machines or that impose a complete ban on the sale of cigarettes or tobacco products from vending machines or devices.

The people of the State of California do enact as follows:

SECTION 1. Section 22958 of the Business and Professions Code is amended to read:

22958. (a) The state department may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years, any

tobacco, cigarette, or cigarette papers, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, according to the following schedule: (1) a civil penalty of from two hundred dollars (\$200) to three hundred dollars (\$300) for the first violation, (2) a civil penalty of from six hundred dollars (\$600) to nine hundred dollars (\$900) for the second violation within a five-year period, (3) a civil penalty of from one thousand two hundred dollars (\$1,200) to one thousand eight hundred dollars (\$1,800) for a third violation within a five-year period, (4) a civil penalty of from three thousand dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth violation within a five-year period, or (5) a civil penalty of from five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth or subsequent violation within a five-year period.

(b) The state department shall assess penalties in accordance with the schedule set forth in subdivision (a) against any person, firm, or corporation that sells, offers for sale, or distributes tobacco products from a cigarette or tobacco products vending machine, or any person, firm, or corporation that leases, furnishes, or services these machines in violation of Section 22960.

(c) If a civil penalty has been assessed pursuant to this section against any person, firm, or corporation for a single, specific violation of this division, the person, firm, or corporation shall not be prosecuted under Section 308 of the Penal Code for a violation based on the same facts or specific incident for which the civil penalty was assessed. If any person, firm, or corporation has been prosecuted for a single, specific violation of Section 308 of the Penal Code, the person, firm, or corporation shall not be assessed a civil penalty under this section based on the same facts or specific incident upon which the prosecution under Section 308 of the Penal Code was based.

(d) (1) In the case of a corporation or business with more than one retail location, to determine the number of accumulated violations for purposes of the penalty schedule set forth in subdivision (a), violations of this division by one retail location shall not be accumulated against other retail locations of that same corporation or business.

(2) In the case of a retail location that operates pursuant to a franchise as defined in Section 20001 of the Business and Professions Code, violations of this division accumulated and assessed against a prior owner of a single franchise location shall not be accumulated against a new owner of the same single franchise location for purposes of the penalty schedule set forth in subdivision (a).

(e) Proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 22960 is added to the Business and Professions Code, to read:

22960. (a) Except as provided in subdivision (b), no cigarette or tobacco product shall be sold, offered for sale, or distributed from a vending machine or appliance, or any other coin or token operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

(b) (1) Commencing January 1, 1996, cigarette or tobacco product vending machines or appliances may be located at least 15 feet away from the entrance of a premise issued an on-sale public premises license as defined in Section 23039 by the Department of Alcoholic Beverage Control to sell alcoholic beverages.

(2) As used in this subdivision "at least 15 feet away from the entrance" means within the premises of the licensed establishment and not outside those premises.

(c) This section and subdivision (b) of Section 22958 set forth minimum state restrictions on the sale of cigarettes or tobacco products from vending machines or devices and do not preempt or otherwise prohibit the adoption of a local standard that further restricts access to and reduces the availability of cigarette or tobacco products from vending machines or devices or that imposes a complete ban on the sale of cigarettes or tobacco products from vending machines or devices. A local standard that further restricts or imposes a complete ban on the sale of cigarettes or tobacco products from vending machines or devices shall control in the event of an inconsistency between this section and a local standard.

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