

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 640

Introduced by Assembly Member Hall

February 20, 2013

An act to amend Section ~~22972~~ 22963 of the Business and Professions Code, relating to cigarettes and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 640, as amended, Hall. Cigarettes and tobacco products: ~~retailers:~~ ~~licenses:~~ *identification requirements.*

Existing law prohibits the sale, distribution, or nonsale distribution of tobacco products directly or indirectly to any person under 18 years of age. A violation of these provisions may result in a criminal action or an assessment of civil penalties. Existing law requires a person selling or distributing, or engaging in the nonsale distribution of, tobacco products directly to a consumer in the state through the United States Postal Service or package delivery service to verify that the purchaser or recipient of the product is 18 years of age or older. Under existing law, if the seller, distributor, or nonsale distributor is unable to verify that the purchaser or recipient is 18 years of age or older, he or she is required to require the purchaser or recipient to submit an age-verification kit, which includes a copy of a valid form of government identification, as specified.

This bill would provide that, for the purposes of these provisions, if a customer or recipient provides an identification card issued by the United States Armed Forces as proof of majority and the identification card lacks a physical description, but includes date of birth and a photo, further proof of majority is not required.

The California Cigarette and Tobacco Products Licensing Act of 2003 requires a retailer to have and maintain a license from the State Board of Equalization to engage in the sale of cigarette and tobacco products in California.

This bill would make a technical, nonsubstantive change in those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 22963 of the Business and Professions
2 Code is amended to read:

3 22963. (a) The sale, distribution, or nonsale distribution of
4 tobacco products directly or indirectly to any person under the age
5 of 18 years of age through the United States Postal Service or
6 through any other public or private postal or package delivery
7 service at locations, including, but not limited to, public mailboxes
8 and mailbox stores, is prohibited.

9 (b) Any person selling or distributing, or engaging in the nonsale
10 distribution of, tobacco products directly to a consumer in the state
11 through the United States Postal Service or by any other public or
12 private postal or package delivery service, including orders placed
13 by mail, telephone, facsimile transmission, or the Internet, shall
14 comply with the following provisions:

15 (1) (A) Before enrolling a person as a customer, or distributing
16 or selling, or engaging in the nonsale distribution of, the tobacco
17 product through any of these means, the distributor or seller shall
18 verify that the purchaser or recipient of the product is 18 years of
19 age or older. The distributor or seller shall attempt to match the
20 name, address, and date of birth provided by the customer to
21 information contained in records in a database of individuals whose
22 age has been verified to be 18 years of age or older by reference
23 to an appropriate database of government records kept by the
24 distributor, a direct marketing firm, or any other entity. In the case
25 of a sale, the distributor or seller shall also verify that the billing
26 address on the check or credit card offered for payment by the
27 purchaser matches the address listed in the database.

28 (B) If the seller, distributor, or nonsale distributor, distributor
29 is unable to verify that the purchaser or recipient is 18 years of age

1 or older pursuant to subparagraph (A), he or she shall require the
2 customer or recipient to submit an age-verification kit consisting
3 of an attestation signed by the customer or recipient that he or she
4 is 18 years of age or older and a copy of a valid form of government
5 identification. For the purposes of this section, a valid form of
6 government identification includes a driver's license, state
7 identification card, ~~passport, a valid passport issued by the United~~
8 *States or by a foreign government*, an official naturalization or
9 immigration document, ~~such as including~~ an alien registration
10 receipt card (commonly known as a "green card") or an immigrant
11 visa, or military identification. *In the event that a customer or*
12 *recipient provides an identification card issued by the United States*
13 *Armed Forces as proof of majority and the identification card*
14 *lacks a physical description, but includes date of birth and a photo,*
15 *further proof of majority shall not be required. In the case of a*
16 *sale, the distributor or seller shall also verify that the billing address*
17 *on the check or credit card provided by the consumer matches the*
18 *address listed in the form of government identification.*

19 (2) In the case of a sale, the distributor or seller shall impose a
20 two-carton minimum on each order of cigarettes, and shall require
21 payment for the purchase of any tobacco product to be made by
22 personal check of the purchaser or the purchaser's credit card. No
23 money order or cash payment shall be received or permitted. The
24 distributor or seller shall submit to each credit card acquiring
25 company with which it has credit card sales identification
26 information in an appropriate form and format so that the words
27 "tobacco product" may be printed in the purchaser's credit card
28 statement when a purchase of a tobacco product is made by credit
29 card payment.

30 (3) In the case of a sale, the distributor or seller shall make a
31 telephone call after 5 p.m. to the purchaser confirming the order
32 prior to shipping the tobacco products. The telephone call may be
33 a person-to-person call or a recorded message. The distributor or
34 seller is not required to speak directly with a person and may leave
35 a message on an answering machine or by voice mail.

36 (4) The nonsale distributor shall deliver the tobacco product to
37 the recipient's verified mailing address, or in the case of a sale,
38 the seller or distributor shall deliver the tobacco product to the
39 purchaser's verified billing address on the check or credit card

1 used for payment. No delivery described under this section shall
2 be permitted to any post office box.

3 (c) Notwithstanding subdivisions (a) and (b), if a seller,
4 distributor, or nonsale distributor, complies with all of the
5 requirements of this section and a minor obtains a tobacco product
6 by any of the means described in subdivision (b), the seller,
7 distributor, or nonsale distributor is not in violation of this section.

8 (d) For the purposes of the enforcement of this section pursuant
9 to Section 22958, the acts of the United States Postal Service or
10 other common carrier when engaged in the business of transporting
11 and delivering packages for others, and the acts of a person,
12 whether compensated or not, who transports or delivers a package
13 for another person without any reason to know of the package's
14 contents, are not unlawful and are not subject to civil penalties.

15 (e) (1) (A) For the purposes of this section, a "distributor" is
16 any person or entity, within or outside the state, who agrees to
17 distribute tobacco products to a customer or recipient within the
18 state. The United States Postal Service or any other public or
19 private postal or package delivery service are not distributors within
20 the meaning of this section.

21 (B) A "nonsale distributor" is any person inside or outside of
22 this state who, directly or indirectly, knowingly provides tobacco
23 products to any person in this state as part of a nonsale transaction.
24 "Nonsale distributor" includes the person or entity who provides
25 the tobacco product for delivery and the person or entity who
26 delivers the product to the recipient as part of a nonsale transaction.

27 (C) "Nonsale distribution" means to give smokeless tobacco or
28 cigarettes to the general public at no cost, or at nominal cost, or
29 to give coupons, coupon offers, gift certificates, gift cards, or other
30 similar offers, or rebate offers for smokeless tobacco or cigarettes
31 to the general public at no cost or at nominal cost. Distribution of
32 tobacco products, coupons, coupon offers, gift certificates, gift
33 cards, or other similar offers, or rebate offers in connection with
34 the sale of another item, including tobacco products, cigarette
35 lighters, magazines, or newspapers shall not constitute nonsale
36 distribution.

37 (2) For the purpose of this section, a "seller" is any person or
38 entity, within or outside the state, who agrees to sell tobacco
39 products to a customer within the state. The United States Postal

1 Service or any other public or private postal or package delivery
2 service are not sellers within the meaning of this section.

3 (3) For the purpose of this section, a “carton” is a package or
4 container that contains 200 cigarettes.

5 (f) A district attorney, a city attorney, or the Attorney General
6 may assess civil penalties against any person, firm, corporation,
7 or other entity that violates this section, according to the following
8 schedule:

9 (1) A civil penalty of not less than one thousand dollars (\$1,000)
10 and not more than two thousand dollars (\$2,000) for the first
11 violation.

12 (2) A civil penalty of not less than two thousand five hundred
13 dollars (\$2,500) and not more than three thousand five hundred
14 dollars (\$3,500) for the second violation.

15 (3) A civil penalty of not less than four thousand dollars (\$4,000)
16 and not more than five thousand dollars (\$5,000) for the third
17 violation within a five-year period.

18 (4) A civil penalty of not less than five thousand five hundred
19 dollars (\$5,500) and not more than six thousand five hundred
20 dollars (\$6,500) for the fourth violation within a five-year period.

21 (5) A civil penalty of ten thousand dollars (\$10,000) for a fifth
22 or subsequent violation within a five-year period.

23 ~~SECTION 1. Section 22972 of the Business and Professions~~
24 ~~Code is amended to read:~~

25 ~~22972. (a) Commencing June 30, 2004, a retailer shall have~~
26 ~~in place and maintain a license to engage in the sale of cigarettes~~
27 ~~or tobacco products. A retailer that owns or controls more than~~
28 ~~one retail location shall obtain a separate license for each retail~~
29 ~~location, but may submit a single application for those licenses.~~

30 ~~(b) The retailer shall conspicuously display the license at each~~
31 ~~retail location in a manner that is visible to the public.~~

32 ~~(c) A license is not assignable or transferable. A person who~~
33 ~~obtains a license as a retailer who ceases to do business as specified~~
34 ~~in the license, or who never commenced business, or whose license~~
35 ~~is suspended or revoked, shall immediately surrender the license~~
36 ~~to the board.~~

37 ~~(d) A license shall be valid for a 12-month period, and shall be~~
38 ~~renewed annually.~~

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