

ASSEMBLY BILL

No. 935

Introduced by Assembly Member Connolly

February 14, 2023

An act to add Article 6 (commencing with Section 104559.7) to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, relating to tobacco sales.

LEGISLATIVE COUNSEL'S DIGEST

AB 935, as introduced, Connolly. Tobacco sales: phased tobacco ban.

Existing law licenses retailer sellers of cigarettes and tobacco products. Existing law prohibits a person from selling tobacco products to a person under 21 years of age. Existing law also prohibits a tobacco retailer from selling flavored tobacco products, as specified. Existing law prohibits smoking in various places, including government buildings, public transportation, schools, playgrounds, and workplaces.

This bill would implement a phased tobacco ban by prohibiting a tobacco retailer, as defined, from selling tobacco products, as defined, to any person born on or after January 1, 2007. The bill would clarify that it does not authorize the sale of tobacco products to any person born before January 1, 2007, that is otherwise prohibited. The bill would provide penalties for violations, including escalating civil fines and the suspension or revocation of the sellers license to sell tobacco products. The bill would require that enforcement of these provisions be the responsibility of the State Department of Public Health.

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

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

SECTION 1. Article 6 (commencing with Section 104559.7) is added to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, to read:

Article 6. Phased Tobacco Ban

104559.7. (a) Notwithstanding any other law, a tobacco retailer shall not sell any tobacco product to any person born on or after January 1, 2007.

(b) All persons engaging in the retail sale of tobacco products shall check the identification of tobacco purchasers, to establish the date of birth of the purchaser, if the purchaser reasonably appears to have been born on or after January 1, 2007. A good faith effort to comply with this subdivision shall provide an affirmative defense to a violation of subdivision (a).

(c) Responsibility for enforcement of this article shall be with the department.

(d) (1) The department may assess civil penalties against any person, firm, or corporation that violates subdivision (a), according to the following schedule:

(A) A civil penalty of from four hundred dollars (\$400) to six hundred dollars (\$600) for the first violation.

(B) A civil penalty of from nine hundred dollars (\$900) to one thousand dollars (\$1,000) for the second violation within a five-year period.

(C) 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.

(D) 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.

(E) A civil penalty of from five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within a five-year period.

(2) In addition to the civil penalties described in paragraph (1), upon the assessment of a civil penalty for the third, fourth, or fifth violation, the department, within 60 days of the date of service of the final administrative adjudication on the parties or payment of

1 the civil penalty for an uncontested violation, shall notify the State
2 Board of Equalization of the violation. The State Board of
3 Equalization shall then assess a civil penalty of two hundred fifty
4 dollars (\$250) and suspend or revoke a license issued pursuant to
5 Chapter 2 (commencing with Section 22972) of Division 8.6 of
6 the Business and Professions Code in accordance with the
7 following schedule:

8 (A) A 45-day suspension of the license for a third violation at
9 the same location within a five-year period.

10 (B) A 90-day suspension of the license for a fourth violation at
11 the same location within a five-year period.

12 (C) Revocation of the license for a fifth violation at the same
13 location within a five-year period.

14 (3) The provisions of Chapter 4 (commencing with Section
15 55121) of Part 30 of Division 2 of the Revenue and Taxation Code
16 apply with respect to the collection of the penalty imposed by the
17 State Board of Equalization pursuant to paragraph (2).

18 (4) (A) In the case of a corporation or business with more than
19 one retail location, to determine the number of accumulated
20 violations for purposes of the penalty schedules set forth in
21 paragraphs (1) and (2), violations of this section by one retail
22 location shall not be accumulated against other retail locations of
23 that same corporation or business.

24 (B) In the case of a retail location that operates pursuant to a
25 franchise as defined in Section 20001 of the Business and
26 Professions Code, violations of this division accumulated and
27 assessed against a prior owner of a single franchise location shall
28 not be accumulated against a new owner of the same single
29 franchise location for purposes of the penalty schedules set forth
30 in paragraphs (1) and (2).

31 (5) Proceedings under this subdivision shall be conducted
32 pursuant to Section 131071.

33 (e) This section does not authorize the sale of any tobacco
34 products to any person born before January 1, 2007, that is
35 otherwise prohibited by law.

36 (f) As used in this section, the following terms have the
37 following meanings:

38 (1) "Department" means the State Department of Public Health.

39 (2) "Tobacco product" means a product containing, made, or
40 derived from tobacco or nicotine that is intended for human

1 consumption, whether smoked, heated, chewed, absorbed,
2 dissolved, inhaled, snorted, sniffed, or ingested by any other means,
3 including, but not limited to, cigarettes, cigars, little cigars, chewing
4 tobacco, pipe tobacco, vaping liquid, or snuff. “Tobacco product”
5 does not include a product that has been approved by the United
6 States Food and Drug Administration for sale as a tobacco cessation
7 product or for other therapeutic purposes where the product is
8 marketed and sold solely for such an approved purpose.
9 (3) “Tobacco retailer” means a person who engages in this state
10 in the sale of tobacco products directly to the public from a retail
11 location.