



Local model licensing ordinance v. Assembly Bill (AB) 71

| Model local licensing ordinance components* | Does AB 71 address the components? |
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| Annual fee to continuously fund enforcement and administration. | AB 71 provides no funding for the enforcement of youth access laws. Additionally, the fee required of retailers in AB 71 is one-time only (\$100). |
| Designated minimum level of enforcement (e.g., a specified number of inspections per year). | Because there is no funding to address illegal sales to minors, AB 71 provides for no minimum number of inspections. |
| A clearly designated enforcement agency. | Only the State Board of Equalization (BOE) has the authority to suspend or revoke a license, based upon violations of the STAKE Act and/or PC 308. The California Department of Health Services enforces the STAKE Act and local law enforcement enforces PC 308. There is no requirement that either agency report violations to the BOE. |
| Administrative hearings should be used (similar to the STAKE Act) which require a lower burden of proof than criminal cases. | Retailers who have had their licenses suspended or revoked have the right to appeal the decision to the BOE, and the Board has full discretion to lessen the penalty given factors such as ability to pay and other considerations. |
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| <p>Allow for a sufficient period of time for multiple violations to accumulate and affect license suspension and revocation (e.g., violations can be counted over the course of 5 years). Note that any period is a compromise in favor of the retailers because it is legal for violations to accumulate forever.</p> | <p>For a license to be suspended, AB 71 requires 4 convictions of violations within a one-year period, and for revocation, 8 convictions of violations within a two-year period. Since the inception of the STAKE Act in 1995, the most violations ever cited against one retailer is 3. Additionally, the BOE can only issue warning letters, fines or suspend or revoke licenses during years when the official statewide illegal sales rate is 13 percent or higher. For example, AB 71 currently does not address illegal sales to minors, as the illegal sales rate is 12.2 percent.</p> |
| <p>Violations of any tobacco-related law should count against the license (e.g., illegal sales to minors, sale of bidis, sale of single cigarettes, sale of cigarettes via a self-service display).</p> | <p>AB 71 counts convictions of violations of the STAKE Act and PC 308 (must be against the owner or licensee, not just the clerk) to count against the license, but might not address other laws such as PC 308.1 (the sale of bidis), PC 308.3 (kiddie packs), nor does it include violations of local tobacco control laws.</p> |
| <p>Provide 30-day suspensions for first violations; involve gradually higher suspension period for succeeding violation; revoke license after fourth violation.</p> | <p>When the illegal sales rate is 13 percent or greater, AB 71 only requires a warning letter for the first violation (and also requires the California Department of Health Services to provide training to the retailer and its employees). Subsequent violations carry actual fines (e.g., 2nd violation – \$500; 3rd violation – \$1,000; 4th violation – 90-day suspension; 8th violation within 2 years – license revocation).</p> |
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| <p>Provide graduated fines for selling tobacco products without a license or with a suspended or revoked license.</p> | <p>AB 71 makes selling tobacco without a license a misdemeanor, punishable by up to a \$5,000 fine and/or possible imprisonment.</p> |
| <p>Provide multiple enforcement options (e.g., civil fine, criminal sanction, unfair business practice, private party enforcement).</p> | <p>AB 71 only provides authority for the BOE to issue fines and to suspend or revoke licenses when the threshold of a 13 percent statewide rate of illegal tobacco sales is met or exceeded.</p> |
| <p>Remove all tobacco advertising within stores during a suspension period. This is possible because advertisements for illegal transactions are not protected by the First Amendment and selling tobacco during a suspension period is illegal. **</p> | <p>AB 71 has no provision to eliminate tobacco advertising during a license suspension or revocation.</p> |
| <p>Ban mobile vending and other forms of vending, such as sales in bars or restaurants.</p> | <p>AB 71 defines a retailer as someone who sells tobacco from a retail location. A retail location is defined (B & P Code Section 22970.3) as a building (including a personal residence) or a vending machine. Therefore, mobile vending is not prohibited. In fact, one could argue that if a retailer sells tobacco in a manner other than from a building or vending machine (e.g., from an ice cream truck or car), the retailer is not subject to license display requirements.</p> |

* Taken from TALC’s Model California Ordinance Requiring a Tobacco Retailer License

** Provision to be included in TALC Model Ordinance