
SENATE COMMITTEE ON REVENUE AND TAXATION

Senator Jerry McNerney, Chair
2025 - 2026 Regular

Bill No: SB 1314
Author: Menjivar
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Consultant: Grinnell

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Tax Levy: No
Fiscal: Yes

SMOKE SHOPS: LOCATIONS, HOURS OF OPERATION, AND SALE OF NITROUS OXIDE

Enacts the Youth Over Smoke Act, which limits the location and operation of smoke shops, as defined.

Background

STAKE Act. The California Department of Public Health (CDPH) administers the Stop Tobacco Access to Kids Enforcement Act (STAKE Act) to reduce the availability of tobacco to those under the age of 21. Under the STAKE Act, an enforcing agency, including CDPH, the Attorney General, and local law enforcement agencies, can assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes a tobacco product to another person who is under 21. Fines range from between \$1,000 to \$10,000 for a first, second, third, fourth, or fifth violation within a five-year period. Enforcement agencies deposit civil penalties in the State Treasury to the credit of the Sale of Tobacco to Minors Control Account.

Tobacco Products Licensing. In 2003, the Cigarette and Tobacco Products Licensing Act (AB 71, Horton, 2003) required the Board of Equalization (BOE) to license manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products who are engaged in business in California. In 2017, the Legislature enacted AB 102 (Committee on Budget), which transferred duties, powers, and responsibilities related to the administration of taxes and fees from BOE to the California Department of Tax and Fee Administration (CDTFA). CDTFA also administers the Cigarette and Tobacco Products Tax.

Under the Licensing Act, retailers, distributors, manufacturers, wholesalers, and importers must have and maintain a license. For retailers, there are two kinds of licenses: one for those who sell tobacco products subject to the Cigarette and Tobacco Products Tax, and one for those whose products are *not* subject to that tax, such as retailers of electronic delivery devices not containing or sold with nicotine and certain accessories, such as zero-nicotine vaporized liquids. Licenses are valid for one year and must be renewed annually. Last year, the Legislature increased license fees on both sets of tobacco retailers from \$265 to \$450, for new or renewed licenses applied for on or after July 1, 2026 (AB 573, Rogers). AB 573 then permitted CDTFA to further increase the license fee by regulation to an amount necessary to maintain the Compliance Fund at a level that is no more than necessary to cover its reasonable costs, and not to exceed \$600.

CDTFA may suspend a retailer's license under the Licensing Act or the Cigarette and Tobacco Products Tax Law for a first or subsequent license violation. CDTFA must provide a tobacco

product licensee with at least ten days' written notice of a pending suspension or revocation and an opportunity to appeal.

In addition to penalties for violating the Licensing Act or the Cigarette and Tobacco Products Tax Law, CDTFA must either suspend or revoke a tobacco license upon a third, fourth, or fifth violation of the STAKE Act within 60 days of notification by the enforcing agency's final adjudication. Suspension periods are:

- 45 days for a third violation at the same location within a five-year period.
- 90 days for a fourth violation at the same location within a five-year period.
- Revocation of the license for a fifth violation at the same location within a five-year period.

CDTFA also imposes a \$250 civil penalty when notified of a violation that triggers license suspension or revocation and deposits these penalty proceeds into the Cigarette and Tobacco Products Compliance Fund, which funds compliance efforts. Additionally, CDTFA cannot consider an appeal of a suspension or revocation if the appeal is founded upon the grounds of whether the retailer, or any agent or employee, violated the STAKE Act.

Funds from license fees, along with penalties and fines, are deposited into the Cigarette and Tobacco Products License Fund, which pays for CDTFA's compliance efforts. These compliance efforts include regular inspections of businesses selling cigarettes and tobacco products, including retailers, wholesalers, and distributors, to ensure compliance with cigarette and tobacco product tax and licensing laws. Approximately 29,000 cigarette and tobacco product retail locations are licensed to sell cigarettes and tobacco products in California. CDTFA annually conducts about 3,318 inspections of licensed cigarette and tobacco product retailers to ensure compliance with the Licensing Act and applicable tax laws. When CDTFA discovers that a retailer, or any of its agents or employees, sells or offers to sell unstamped cigarette packages, it can seize the packages. (Similar authority exists for CDTFA to seize cannabis products under specified circumstances). When seized, the law treats the products as forfeited to the state.

Police Power. The police power is the authority of governments to regulate private behavior in the public interest, consistent with constitutional rights and procedures. The California Constitution allows cities and counties to "make and enforce within [their] limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws." Zoning and use permits are examples of how local officials use their police powers to regulate land uses.

Nitrous Oxide. Nitrous oxide combined with oxygen is commonly used for sedation of patients and pain relief during dental procedures. Nitrous oxide is commercially sold in a steel cylinder or cartridge primarily as a whipping agent in whipped cream dispensers and in some cooking sprays, as well as in coffee shops and restaurants to make lighter, fluffier whipped cream. Nitrous oxide can also be used as an oxidizer in model rockets and motor vehicle racing due to its low temperature and high oxygen content. Since it may produce a feeling of giddiness or euphoria, it is often called "laughing gas." As a result, nitrous oxide is used as a recreational drug and is outlawed in some states and countries when used for intoxication.

In California, the Penal Code makes possession of nitrous oxide with the intent to ingest, for the purposes of intoxication, a misdemeanor, and also provides that intentionally being under the

influence of nitrous oxide is a misdemeanor, except pursuant to legitimate medical or dental use. In 2009, the Legislature provided that the sale or furnishing of nitrous oxide to a minor is a misdemeanor (AB 1015, Torlakson). AB 1015 also provided for the suspension of the business license of a person who has been convicted of this crime for a second time for up to one year, unless the business license owner demonstrates good faith efforts to prevent sales of nitrous oxide to minors by the business license owner's employees. The bill did not apply to California licensed medical or dental practitioners administering nitrous oxide for medical or dental care, or as a propellant in a food product.

In 2014, the Legislature expanded these provisions to make it a misdemeanor for any person to dispense or distribute nitrous oxide to a person, if it is known or should have been known that it will be ingested or inhaled by the person for the purposes of causing intoxication, and that person proximately causes great bodily injury or death to themselves, or any other person (AB 1735, Hall). AB 1735 also required persons distributing or selling nitrous oxide to record each transaction involving the dispensing or distribution of nitrous oxide in a written or electronic document, among other record-keeping requirements.

Seeking to increase regulation of smoke shops to mitigate potential harms, the author wants to limit the location and operation of smoke shops by adding a new provision to the STAKE Act.

Proposed Law

Senate Bill 1314 enacts the Youth Over Smoke Act, limiting the location and operation of smoke shops, as defined. Specifically, SB 1314 adds a section to the STAKE Act effective July 1, 2027, to:

- Prohibit a smoke shop from being located within a 600-foot radius of a school or day care center that is in existence at the time CDTFA issues the smoke shop's tobacco retailer license, unless the local jurisdiction specifies a radius greater than 600 feet. The measure directs that the radius be measured in a manner similar to the existing prohibition on medical cannabis facilities (AB 2650, Buchanan, 2010).
- Restrict the hours of operation of a smoke shop to between 6 am to 10 pm.
- Bars a smoke shop from possessing, storing, owning or selling nitrous oxide, including products derived from nitrous oxide, or paraphernalia related to the consumption of nitrous oxide.
- Permits CDPH or CDTFA to establish regulations and requirements for the operation of smoke shops, which may include a separate license category and fee rates. However, a local standard that imposes more restrictive requirements on the operation of smoke shops shall control in the event of any inconsistency.

SB 1314 directs a STAKE Act enforcement agency to assess penalties that apply to current violations of the bill's restrictions on smoke shops upon notice to the person, firm, or corporation in violation of the bill. The measure then requires CDTFA to issue civil penalties under the STAKE Act that apply upon a third, fourth, or fifth violation, and suspend or revoke the tobacco retailer's license. The measure defines several terms, many by reference to the Cigarette and Tobacco Products Licensing Act or other provisions of existing law. Among them, the bill defines:

- “Smoke shop” as any retailer whose retail location has 20 percent or more of its net floor area devoted to the sale of tobacco products, substances intended for smoking or inhaling, or smoking or inhaling accessories, but not licensed cigar lounges or cannabis retailers.
- “School” means, as evidenced by the State Department of Education’s school directory, either a public or private school instructing children in kindergarten or any of grades 1 to 12, inclusive, as authorized by the State Department of Education. Private schools must have filed a verification of private school affidavit with the State Department of Education. A school does not include a private school in which education is primarily conducted in a private home.

The bill replaces references to BOE with CDTFA and includes a severability clause.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, “As a state, we are confronting a growing youth drug crisis—from the surge in vaping among teens to the recent rise of nitrous oxide use, commonly known as ‘whippets.’ In 2024 alone, 156 minors died from nitrous oxide use. The time to act is now. We must ensure that as a state, we are protecting our children by creating healthy and safe neighborhoods around our schools. It is unacceptable that there are schools across the state with smoke shops that are closer than the community centers, libraries, and public parks. We must do better. SB 1314 takes a common-sense approach to protecting the health and safety of minors by establishing reasonable guardrails on how and where these smoke shops operate to ensure that our kids’ environments are not plagued with harmful vices.”
2. Sure, but will it work? Generally, local agencies regulate land use within their jurisdictions, applying local ordinances to mitigate the effects of otherwise legitimate business operations to suit local needs. However, the state often either sets minimum standards or overrides local discretion, as it has with the prohibition on medical cannabis facilities. SB 1314 seeks to set a statewide floor for specified operations of smoke shops; however, it’s unclear to what degree state agency enforcement can be effective. CDPH administers the STAKE Act, which seeks to deter sales of tobacco products to those under the age of 21. CDTFA administers the Cigarette and Tobacco Products Licensing Act and the Cigarette and Tobacco Products Tax, which seeks to generally regulate the sale of cigarettes and tobacco products, deter the sale of unstamped cigarettes, and ensure the adequate collection of cigarette and tobacco products taxes. Although CDTFA reviews license applications and conducts physical examinations of retailers, neither agency regulates business locations and operations in the manner contemplated by SB 1314, which permits either agency to issue regulations for the operation of smoke shops and to potentially include a separate license category and fee rates. Additionally, the Penal Code currently makes the sale of nitrous oxide with the intent to ingest for intoxication a misdemeanor.
3. Technicals. The bill’s proposed new Business and Professions Code 22965(b) states that a smoke shop “shall not be located within a 600-foot radius of a school or daycare center that is in existence at the time the smoke shop’s license is issued.” However, it’s unclear what entity is issuing which license under this provision. Additionally, the measure is ambiguous as to whether this prohibition applies to existing licensees or only new ones; if it’s the former, CDTFA

could not issue a license renewal to an existing location within 600 feet of a school or day care center, which would require the smoke shop to move or cease retail sales of tobacco products.

4. Coming and going. The Senate Rules Committee ordered a double-referral of SB 1314: first, to the Committee on Revenue & Taxation to consider its impacts on tobacco licensing, and second to the Committee on Health.

Support and Opposition (4/6/26)

Support: California Cannabis Operators Association
California District Attorneys Association
California Youth Karate Club
City of Stanton
County of Orange
League of California Cities

Opposition: None received.

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