

CALIFORNIA CODES  
BUSINESS AND PROFESSIONS CODE  
SECTION 22970-22974.8

22970. This division shall be known as and may be cited as the Cigarette and Tobacco Products Licensing Act of 2003.

22970.1. The Legislature finds and declares all of the following:

(a) The State of California has enacted excise taxes on the distribution of cigarettes and tobacco products to provide funding for local and state programs, including health services, antismoking campaigns, cancer research, and education programs.

(b) Tax revenues have declined by hundreds of millions of dollars per year due, in part, to unlawful distributions and untaxed sales of cigarettes and tobacco products conducted by organized crime syndicates, street gangs, and international terrorist groups.

(c) The enforcement of California's cigarette and tobacco products tax laws is necessary to collect millions of dollars in lost tax revenues each year.

(d) The licensing of manufacturers, importers, wholesalers, distributors, and retailers will help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products.

22970.2. The board shall administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products.

22970.3. The board may create a Tobacco Tax Compliance Task Force for the purpose of advising the board on cigarette and tobacco products tax compliance issues that may include, but not be limited to, representatives from the following:

(a) The board.

(b) The office of the Attorney General.

(c) The Franchise Tax Board.

(d) The Department of Alcoholic Beverage Control.

(e) The State Department of Health Services.

(f) Federal agencies necessary to coordinate programs to combat tobacco tax evasion, smuggling, and counterfeiting.

(g) One person from each of the categories of persons required by this division to have a license.

(h) Other states engaged in tobacco tax compliance efforts.

(i) Local law enforcement agencies.

22971. For purposes of this division, the following terms shall have the following meanings:

(a) "Board" means the State Board of Equalization.

(b) "Brand family" has the same meaning as that term is defined in paragraph (2) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code.

(c) "Cigarette" means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

(d) (1) "Control" or "controlling" means possession, direct or indirect, of the power:

(A) To vote 25 percent or more of any class of the voting securities issued by a person.

(B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, other than a commercial contract for goods or nonmanagement services, or as otherwise provided; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of that person.

(2) For purposes of subparagraph (B) of paragraph (1), a person who, directly or indirectly, owns, controls, holds, with the power to vote, or holds proxies representing 10 percent or more of the then outstanding voting securities issued by another person, is presumed to control that other person.

(3) For purposes of this division, the board may determine whether a person in fact controls another person.

(e) "Display for sale" means the placement of cigarettes or tobacco products in a vending machine or in retail stock for the purpose of selling or gifting the cigarettes or tobacco products. For purposes of this definition, the clear and easily visible display of cigarettes or tobacco products shall create a rebuttable presumption that either were displayed for sale.

(f) "Distributor" means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

(g) "Gifting" means any transfer of title or possession without consideration, exchange, or barter, in any manner or by any means, of cigarettes or tobacco products that have been purchased for resale under a license issued pursuant to this division if the transfer occurs while the license is suspended or after the effective date of its revocation.

(h) "Importer" means an importer as defined in Section 30019 of the Revenue and Taxation Code.

(i) "Law enforcement agency" means a sheriff, a police department, or a city, county, or city and county agency or department designated by the governing body of that agency to enforce this chapter or to enforce local smoking and tobacco ordinances and regulations.

(j) "License" means a license issued by the board pursuant to this division.

(k) "Licensee" means any person holding a license issued by the board pursuant to this division.

(l) "Manufacturer" means a manufacturer of cigarettes or tobacco products sold in this state.

(m) "Notice" or "notification" means, unless as otherwise provided, the written notice or notification provided to a licensee by the board by either actual delivery to the licensee or by first-class mail addressed to the licensee at the address on the license.

(n) "Package of cigarettes" means a package as defined in Section 30015 of the Revenue and Taxation Code.

(o) "Person" means a person as defined in Section 30010 of the

Revenue and Taxation Code.

(p) "Retailer" means a person who engages in this state in the sale of cigarettes or tobacco products directly to the public from a retail location. Retailer includes a person who operates vending machines from which cigarettes or tobacco products are sold in this state.

(q) "Retail location" means both of the following:

(1) Any building from which cigarettes or tobacco products are sold at retail.

(2) A vending machine.

(r) "Sale" or "sold" means a sale as defined in Section 30006 of the Revenue and Taxation Code.

(s) "Tobacco products" means tobacco products as defined in subdivision (b) of Section 30121 and subdivision (b) of Section 30131.1 of the Revenue and Taxation Code.

(t) "Unstamped package of cigarettes" means a package of cigarettes that does not bear a tax stamp as required under Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, including a package of cigarettes that bears a tax stamp of another state or taxing jurisdiction, a package of cigarettes that bears a counterfeit tax stamp, or a stamped or unstamped package of cigarettes that is marked "Not for sale in the United States."

(u) "Wholesaler" means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

22971.1. Commencing January 1, 2006, the Bureau of State Audits shall conduct a performance audit of the licensing and enforcement provisions of this division, and shall report its findings to the board and the Legislature by July 1, 2006. The report shall include, but not be limited to:

(a) The actual costs of the program.

(b) The level of additional revenue generated by the program compared to the period before its implementation.

(c) Tax compliance rates.

(d) The costs of enforcement at the varying levels.

(e) The appropriateness of penalties assessed in this division.

(f) The overall effectiveness of enforcement programs.

22971.2. The board shall administer and enforce the provisions of this division and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this division.

22971.3. Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.

22971.4. No person is subject to the requirements of this division if that person is exempt from regulation under the United States Constitution, the laws of the United States, or the California Constitution.

22971.5. Any notice required by this division shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the licensee at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation, or mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaints in a civil action.

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

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

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

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

22972.1. (a) Notwithstanding Section 22972 or Section 22973, the board may issue to a retailer a temporary license with a scheduled expiration date, as determined by the board, that occurs on or before September 30, 2004.

(b) A temporary license issued pursuant to this section shall be automatically terminated upon the board's issuance of a license pursuant to Section 22973.1.

(c) A temporary license issued pursuant to this section is subject to the same suspension, revocation, and forfeiture provisions that apply to licenses issued by the board pursuant to Section 22973.1.

22973. (a) An application for a license shall be filed on or before April 15, 2004, on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant.

(2) The business name, address, and telephone number of each retail location. For applicants who control more than one retail location, an address for receipt of correspondence or notices from the board, such as a headquarters or corporate office of the retailer, shall also be included on the application and listed on the license. Citations issued to licensees shall be forwarded to all addressees on the license.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) If any other licenses or permits have been issued by the board or the Department of Alcoholic Beverage Control to the applicant, the license or permit number of those licenses or permits then in effect.

(5) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(6) The signature of the applicant.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application. The board may issue a license without further investigation to an applicant for a retail location if the applicant holds a valid license from the Department of Alcoholic Beverage Control for that same location.

(c) The board shall provide electronic means for applicants to download and submit applications.

(d) (1) A one-time license fee of one hundred dollars (\$100) shall be submitted with each application. An applicant that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses with a one-time license fee of one hundred dollars (\$100) per location.

(2) The one-time fee required by this subdivision does not apply to an application for renewal of a license for a retail location for which the one-time license fee has already been paid. If a license is reinstated after its expiration, the retailer, as a condition precedent to its reinstatement, shall pay a reinstatement fee of one hundred dollars (\$100).

22973.1. (a) The board shall issue a license to a retailer upon receipt of a completed application and payment of the fees prescribed in Section 22973, unless any of the following apply:

(1) The retailer, or if the retailer is not an individual, any

person controlling the retailer, has previously been issued a license that is suspended or revoked by the board for violation of any of the provisions of this division.

(2) The application is for a license or renewal of a license for a retail location that is the same retail location as that of a retailer whose license was revoked or is subject to revocation proceedings for violation of any of the provisions of this division, unless:

(A) It has been more than five years since a previous license for the retail location was revoked.

(B) The person applying for the license provides the board with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For purposes of this section, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this division that occurred at the retail location, is presumed not to be made at "arm's length."

(3) The retailer, or if the retailer is not an individual, any person controlling the retailer, has been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(4) The retailer does not possess all required permits or licenses required under the Revenue and Taxation Code.

(b) (1) Any retailer who is denied a license may petition for a redetermination of the board's denial of the license within 30 days after service upon that retailer of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the retailer has so requested in the petition, shall grant the retailer an oral hearing and shall give the retailer at least 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

22973.2. The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to retailers within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the board's database shall only access and use the board's database for purposes of enforcing tobacco control laws and shall adhere to all state laws, policies, and regulations pertaining to the

protection of personal information and individual privacy.

22974. A retailer shall retain purchase invoices that meet the requirements set forth in Section 22978.4 for all cigarettes or tobacco products the retailer purchased for a period of four years. The records shall be kept at the retail location for at least one year after the purchase. Invoices shall be made available upon request during normal business hours for review inspection and copying by the board or by a law enforcement agency. Any retailer found in violation of these requirements or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

22974.3. (a) Notwithstanding any other provision of this division, upon discovery by the board or a law enforcement agency that a retailer or any other person possesses, stores, owns, or has made a retail sale of an unstamped package of cigarettes, the board or the law enforcement agency shall be authorized to seize unstamped packages of cigarettes at the retail, or any other person's location. Any cigarettes seized by a law enforcement agency shall be delivered to the board, or its designee, within seven days, unless the cigarettes will be destroyed by that law enforcement agency, or unless the cigarettes are otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any cigarettes seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. In addition to the inventory of unstamped packages of cigarettes of a retailer or of any other person that is subject to forfeiture and seizure, the possession, storage, ownership, or retail sales of unstamped packages of cigarettes by a retailer or other person, as applicable, shall constitute a misdemeanor punishable by the following actions:

(1) A first violation involving seizure of a total quantity of less than 20 packages of unstamped cigarettes shall be a misdemeanor punishable by a fine of one thousand dollars (\$1,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(2) A second violation within five years involving a seizure of a total quantity of less than 20 packages of unstamped cigarettes shall be a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) but not to exceed five thousand dollars (\$5,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(3) A first violation involving seizure of a total quantity of 20 packages of unstamped cigarettes or more shall be a misdemeanor punishable by a fine of two thousand dollars (\$2,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(4) A second violation within five years involving seizure of a quantity of 20 packages of unstamped cigarettes or more shall be a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) but not to exceed fifty thousand dollars (\$50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(b) Upon discovery by the board or a law enforcement agency that a retailer or any other person possesses, stores, owns, or has made a retail sale of tobacco products on which tax is due but has not been paid to the board, the board or law enforcement agency is authorized to seize such tobacco products at the retail, or any other person's location. Any tobacco products seized by a law enforcement agency shall be delivered to the board, or its designee, within seven days, unless otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any tobacco products seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. It shall be presumed that tax has not been paid to the board on all tobacco products in the possession of a retailer or of any other person until the contrary is established by a proof of payment to the board or by a purchase invoice that shows that the retailer or other person, as applicable, paid the tax included purchase price to a licensed distributor, wholesaler, manufacturer, or importer as described in Section 22978.4. The burden of proof that tax has been paid on tobacco products shall be upon the retailer or the other person, as applicable, in possession thereof. Possession of untaxed tobacco products on which tax is due but has not been paid as required is a violation of this division and subjects the retailer or other person, as applicable, to the actions described in Section 22981.

22974.4. The board shall revoke the license, pursuant to the provisions applicable to the revocation of a license as set forth in Section 30148 of the Revenue and Taxation Code, of any retailer or any person controlling the retailer that has:

(a) Been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) Had any permit or license revoked under any provision of the Revenue and Taxation Code.

22974.5. Any retailer who fails to display a license as required in Section 22972 shall, in addition to any other applicable penalty, be liable for a penalty of five hundred dollars (\$500).

22974.7. In addition to any other civil or criminal penalty provided by law, upon a finding that a retailer has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the retailer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the seized cigarettes or tobacco products.

(2) Five thousand dollars (\$5,000).

22974.8. (a) (1) The board shall take action against a retailer, convicted of a violation of either the Stake Act (Division 8.5 (commencing with Section 22950) or Section 308 of the Penal Code, according to the schedule set forth in subdivision (b).

(2) Convictions of violations by a retailer at one retail location may not be accumulated against other locations of that same retailer.

(3) Convictions of violations accumulated against a prior retail owner at a licensed location may not be accumulated against a new retail owner at the same retail location.

(4) Prior to suspending or revoking a retailer's license to sell cigarette and tobacco products, the board shall notify the retailer. The notice shall include instructions for appealing the license suspension or revocation.

(b) (1) Upon the first conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950) or Section 308 of the Penal Code, the retailer shall receive a warning letter from the board that delineates the circumstances under which a retailer's license may be suspended or revoked and the amount of time the license may be suspended or revoked. The retailer and its employees shall receive training on tobacco control laws from the Department of Health Services upon a first conviction.

(2) Upon the second conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the retailer shall be subject to a fine of five hundred dollars (\$500).

(3) Upon the third conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the retailer shall be subject to a fine of one thousand dollars (\$1,000).

(4) Upon the fourth to the seventh conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the board shall suspend the retailer's license to sell cigarette and tobacco products for 90 days.

(5) Upon the eighth conviction of a violation of the STAKE Act (Division 8.5 (commencing with Section 22950) or Section 308 of the Penal Code within 24 months, the board shall revoke the retailer's license to sell cigarette and tobacco products.

(c) The decision of the board to suspend or revoke the retailer's license may be appealed to the board within 30 days after the notice of suspension or revocation. All appeals shall be submitted in writing.

(d) The board's authority to take action against retailers, as set forth in this section, commences on the date of the release of the results from the survey undertaken by the Department of Health Services pursuant to Section 22952 of the Business and Professions Code Section 22952 to comply with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. 300x-26), and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services, showing that the youth purchase survey finds that 13 percent or more of youth were able to purchase cigarettes. The board's authority to take action under this section is inoperative on or after the date of the subsequent release of the results from the survey showing that less than 13 percent of youth were able to purchase cigarettes.