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**BUSINESS AND PROFESSIONS CODE - BPC**

**DIVISION 8.6. CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT OF 2003 [22970 - 22991]** ( *Heading of Division 8.6 amended by Stats. 2017, Ch. 561, Sec. 10.* )

**CHAPTER 1. General Provisions and Definitions [22970 - 22971.5]** ( *Chapter 1 added by Stats. 2003, Ch. 890, Sec. 1.* )

**22970.** This division shall be known as and may be cited as the Cigarette and Tobacco Products Licensing Act of 2003.  
(*Added by Stats. 2003, Ch. 890, Sec. 1. Effective January 1, 2004.*)

**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.

(*Added by Stats. 2003, Ch. 890, Sec. 1. Effective January 1, 2004.*)

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

(*Added by Stats. 2003, Ch. 890, Sec. 1. Effective January 1, 2004.*)

**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.

(*Added by Stats. 2003, Ch. 890, Sec. 1. Effective January 1, 2004.*)

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

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

- (c) (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 department may determine whether a person in fact controls another person.
- (d) "Department" means the California Department of Tax and Fee Administration.
- (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 department pursuant to this division.
- (k) "Licensee" means a person holding a license issued by the department pursuant to this division.
- (l) "Local lead agency" means an agency designated as a local lead agency pursuant to Section 104400 of the Health and Safety Code.
- (m) "Manufacturer" means a manufacturer of cigarettes or tobacco products sold in this state.
- (n) "Notice" or "notification" means, unless as otherwise provided, the written notice or notification provided to a licensee by the department by either actual delivery to the licensee or by first-class mail addressed to the licensee at the address on the license.
- (o) "Package of cigarettes" means a package as defined in Section 30015 of the Revenue and Taxation Code.
- (p) "Person" means a person as defined in Section 30010 of the Revenue and Taxation Code.
- (q) "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.
- (r) "Retail location" means both of the following:
- (1) Any building from which cigarettes or tobacco products are sold at retail.
  - (2) A vending machine.
- (s) "Sale" or "sold" means a sale as defined in Section 30006 of the Revenue and Taxation Code.
- (t) "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.
- (u) "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."
- (v) "Wholesaler" means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

*(Amended by Stats. 2021, Ch. 432, Sec. 1. (SB 824) Effective January 1, 2022.)*

**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.

*(Added by Stats. 2003, Ch. 890, Sec. 1. Effective January 1, 2004.)*

**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.

*(Added by Stats. 2003, Ch. 890, Sec. 1. Effective January 1, 2004.)*

**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.

*(Added by Stats. 2003, Ch. 890, Sec. 1. Effective January 1, 2004.)*

**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.

*(Added by Stats. 2004, Ch. 822, Sec. 1. Effective September 27, 2004.)*

**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.

*(Added by Stats. 2010, Ch. 607, Sec. 2. (AB 2733) Effective January 1, 2011.)*