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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 2. License for Retailers of Cigarettes and Tobacco Products [22971.7 - 22974.8]** ( *Chapter 2 added by Stats. 2003, Ch. 890, Sec. 1.* )

**22971.7.** (a) For the purposes of this chapter, except as provided in subdivision (b), and notwithstanding subdivision (s) of Section 22971, a "tobacco product" includes a product or device as defined in subdivision (d) of Section 22950.5.

(b) This section does not apply to subdivision (b) of Section 22974.3.

(c) This section shall be operative on January 1, 2017.

(*Added by Stats. 2016, 2nd Ex. Sess., Ch. 7, Sec. 4. (SB 5 2x) Effective June 9, 2016. Section operative January 1, 2017, by its own provisions.*)

**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. A retailer that adds an additional retail location shall renew the license for that location based on a 12-month period beginning in the month the retailer obtained its license for its first retail location.

(*Amended by Stats. 2016, Ch. 699, Sec. 1. (AB 2770) Effective January 1, 2017.*)

**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.

(*Added by Stats. 2004, Ch. 82, Sec. 2. Effective June 30, 2004.*)

**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) A fee of two hundred sixty-five dollars (\$265) 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 an application license fee of two hundred sixty-five dollars (\$265) per location. The fee shall be for the period provided in subdivision (d) of Section 22972 and shall not be prorated.

(e) Beginning on and after January 1, 2017, every retailer shall file an application for renewal of the license prescribed in Section 22972, accompanied with a fee of two hundred sixty-five dollars (\$265) per retail location, in the form and manner prescribed by the board.

*(Amended by Stats. 2016, Ch. 699, Sec. 2. (AB 2770) Effective January 1, 2017.)*

**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.

*(Amended by Stats. 2010, Ch. 607, Sec. 3. (AB 2733) Effective January 1, 2011.)*

**22973.2.** The department shall, upon request, provide to the State Department of Public Health, the office of the Attorney General, a law enforcement agency, a local lead agency, and any agency authorized to enforce or administer state or local tobacco control laws, access to the department's database of licenses issued to retailers within the jurisdiction of that agency, local lead agency, or law enforcement agency. The agencies authorized by this section to access the department's database shall access and use the department's database only 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.

*(Amended by Stats. 2021, Ch. 432, Sec. 2. (SB 824) Effective January 1, 2022.)*

**22973.3.** (a) Notwithstanding any other law, an application for a license for the sale of a tobacco product, as defined in subdivision (d) of Section 22950.5, that is not subject to a tax imposed by the Cigarette and Tobacco Products Tax Law pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code shall be filed 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 a 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) A fee of two hundred sixty-five dollars (\$265) 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 an application license fee of two hundred sixty-five dollars (\$265) per location. The fee shall be for the period provided in subdivision (d) of Section 22972 and shall not be prorated.

(e) Every retailer shall file an application for renewal of its license, accompanied with a fee of two hundred sixty-five dollars (\$265) per retail location in the form and manner prescribed by the board.

(f) (1) The board shall report back to the Legislature no later than January 1, 2019, regarding the adequacy of funding for the Cigarette and Tobacco Products Licensing Act of 2003 with regard to tobacco products for which a license is required by this section.

The report shall include data and recommendations about whether the annual licensing fee funding levels are set at an appropriate level to maintain an effective enforcement program.

(2) The report required by paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(g) (1) This section applies to a retailer who sells a tobacco product, as defined in subdivision (d) of Section 22950.5, that is not subject to a tax imposed by the Cigarette and Tobacco Products Tax Law pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, and who does not already possess a valid license to sell cigarettes or tobacco products issued pursuant to Section 22972.

(2) A retailer that possesses a valid license to sell cigarettes and tobacco products issued pursuant to Section 22972 may also sell under that license a tobacco product, as defined in subdivision (d) of Section 22950.5, that is not subject to a tax imposed by the Cigarette and Tobacco Products Tax Law pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code.

(h) This section shall become operative January 1, 2017.

*(Amended by Stats. 2017, Ch. 561, Sec. 11. (AB 1516) Effective January 1, 2018.)*

**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.

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

**22974.1.** (a) Notwithstanding any other law, if the department discovers that a retailer, or any of the tobacco retailer's agents or employees, sell, offer for sale or possess with the intent to sell or offer for sale, a flavored tobacco product or tobacco product flavor enhancer, in violation of Section 104559.5 of the Health and Safety Code, the department may seize those flavored tobacco products or tobacco product flavor enhancers at the retail location or any other person's location. Any flavored tobacco products or tobacco product flavor enhancers seized by the department shall be deemed forfeited and the department shall comply with the procedures set forth in Chapter 7.5 (commencing with Section 30435) of Part 13 of Division 2 of the Revenue and Taxation Code.

(b) For purposes of this section, "flavored tobacco product" and "tobacco product flavor enhancer" shall have the same meaning as the terms are defined in Section 104559.5 of the Health and Safety Code.

*(Added by Stats. 2024, Ch. 462, Sec. 4. (SB 1230) Effective January 1, 2025.)*

**22974.2.** (a) (1) Notwithstanding any other provision of this division, upon discovery by the department or a law enforcement agency that a retailer possesses, stores, owns, or has made a retail sale of flavored tobacco products or tobacco product flavor enhancers in violation of Section 104559.5 of the Health and Safety Code, the department or the law enforcement agency may seize the flavored tobacco products or tobacco product flavor enhancers at the retail location or any other person's location.

(2) Any flavored tobacco products or tobacco product flavor enhancers seized by a law enforcement agency shall be delivered to the department, or its designee, within 30 days, unless the seized flavored tobacco products or tobacco product flavor enhancers shall be destroyed by that law enforcement agency, or unless the seized flavored tobacco products or tobacco product flavor enhancers 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 flavored tobacco products or tobacco product flavor enhancers seized by the department or delivered to the department by a law enforcement agency shall be deemed forfeited to the state and the department shall comply with procedures set forth in Chapter 7.5 (commencing with Section 30435) of Part 13 of Division 2 of the Revenue and Taxation Code.

(b) (1) In addition to seizure and forfeiture of the flavored tobacco products or tobacco product flavor enhancers under subdivision (a), the department shall issue a civil penalty against the retailer equal to fifty dollars (\$50) per individual package of flavored tobacco product or tobacco product flavor enhancer seized or delivered to the department by a law enforcement agency regardless of the authority used by the law enforcement agency to seize the flavored tobacco product or tobacco product flavor enhancer. The department shall issue the civil penalty in accordance with the procedures applicable to the civil penalty authorized under Section 22974.7.

(2) In the case of a second seizure and forfeiture of flavored tobacco products or tobacco product flavor enhancers under subdivision (a), the department shall suspend the license of the retailer, in accordance with the procedures set forth in Section 22980.3.

(3) In the case of a third seizure and forfeiture of flavored tobacco products or tobacco product flavor enhancers under subdivision (a), the department shall revoke the license of the retailer, in accordance with the procedures set forth in Section 22980.3.

(4) Civil penalties collected pursuant to this section shall be deposited into the Cigarette and Tobacco Products Compliance Fund created pursuant to Section 22990.

(5) For the purposes of paragraph (1), "package" means the individual packet, box, or other container of flavored tobacco products or tobacco product flavor enhancers that are normally sold or intended to be sold at retail. "Package" does not include containers that contain smaller packaging units of flavored tobacco products or tobacco product flavor enhancers, including, but not limited to, cartons, cases, bales, or boxes.

*(Added by Stats. 2024, Ch. 849, Sec. 2. (AB 3218) Effective January 1, 2025.)*

**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.

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

**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.

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

**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).

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

**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).

*(Amended by Stats. 2004, Ch. 82, Sec. 3. Effective June 30, 2004.)*

**22974.8.** (a) Except as provided in subdivision (b), the board shall suspend or revoke the license of a retailer upon notification by the State Department of Public Health pursuant to subdivision (b) of Section 22958, or pursuant to paragraph (2) of subdivision (f) of Section 104559.5 of the Health and Safety Code.

(b) Notwithstanding any other provision regarding the suspension or revocation of a license pursuant to this part, the board shall provide a licensee no fewer than 10 days' written notice of a pending suspension or revocation pursuant to this section and an opportunity to appeal the suspension or revocation and the civil penalty assessed pursuant to the provisions described in subdivision (a) only to correct a mistake or clerical error. The board shall not accept or consider an appeal of suspension or revocation under this section if the appeal is founded upon the grounds of whether the retailer, or any employee or agent of the retailer, violated the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 104559.5 of the Health and Safety Code for which violation civil penalties are imposed by the State Department of Public Health pursuant to subdivision (a) of Section 22958, or pursuant to subdivision (f) of Section 104559.5 of the Health and Safety Code. This section shall not be construed to prevent the board from modifying its action on its own to correct a mistake or clerical error.

*(Amended by Stats. 2023, Ch. 351, Sec. 1. (AB 935) Effective January 1, 2024.)*