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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 3. License for Wholesalers and Distributors of Cigarettes and Tobacco Products [22975 - 22978.8] (*Chapter 3 added by Stats. 2003, Ch. 890, Sec. 1.)*

22975. (a) In addition to licenses required pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, commencing June 30, 2004, every distributor and every wholesaler shall annually obtain and maintain a license to engage in the sale of cigarettes or tobacco products.

(b) Licenses shall be valid for a calendar year period upon payment of the fee prescribed in Section 22977.1, unless surrendered, suspended, or revoked prior to the end of the calendar year, and may be renewed each year upon payment of such fee.

(c) A license is not assignable or transferable. A person who obtains a license as a distributor or as a wholesaler 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.

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

22976. A distributor or a wholesaler that, at the time of application, holds a valid license issued by the board pursuant to Section 30140 or 30155 of the Revenue and Taxation Code may be issued a license without further investigation.

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

22977. (a) An application for a license shall be 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 location where cigarettes or tobacco products will be sold. For applicants who control more than one location, an address for receipt of correspondence or notices from the board, such as a headquarters or corporate office, shall also be included in 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 numbers for such 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) 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.

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

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

22977.1. (a) Every distributor and every wholesaler shall file an application, as prescribed in Section 22977, on or before April 15, 2004. Each application shall be accompanied by a fee of one thousand dollars (\$1,000) for each location. The fee shall be for a calendar year and may not be prorated. Subject to meeting the requirements of this section and Section 22977.2, the board shall issue a license.

(b) Every distributor and every wholesaler who commences business after the last day of May 2004, or who commences selling or distributing cigarettes or tobacco products at a new or different place of business in this state after the last day of May 2004, shall file with the board an application as prescribed in Section 22977 at least 30 days prior to commencing such business or commencing such sales or distributions; and all distributors and all wholesalers that fail to timely file an application for a license under subdivision (a) shall file with the board an application as prescribed in Section 22977. Each application shall be accompanied by a fee of one thousand two hundred dollars (\$1,200) for each location. The fee shall be for a calendar year and may not be prorated. Subject to Section 22977.2, the board, within 30 days after receipt of an application and payment of the proper fee, shall issue a license.

(c) For calendar years beginning on and after January 1, 2005, and before January 1, 2017, every distributor and every wholesaler shall file an application for renewal of the license prescribed in Section 22977, accompanied with a fee of one thousand dollars (\$1,000) for each location where cigarettes and tobacco products are sold, in the form and manner as prescribed by the board. For calendar years beginning on and after January 1, 2017, the fee accompanying an application for renewal of the license prescribed in Section 22977 shall be one thousand two hundred dollars (\$1,200) for each location where cigarettes and tobacco products are sold.

(Amended by Stats. 2017, Ch. 561, Sec. 12. (AB 1516) Effective January 1, 2018.)

22977.2. (a) The board shall issue a license to a distributor or a wholesaler upon receipt of a completed application and payment of the fee prescribed in Section 22977.1, unless any of the following apply:

(1) The distributor or the wholesaler, or if the distributor or the wholesaler is not an individual, any person controlling the distributor or the wholesaler, 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 distributor or a wholesaler, whose license is revoked or revocation is pending, unless:

(A) It has been more than five years since a distributor's or a wholesaler's previous license was revoked.

(B) The person applying for the license provides the board with documentation demonstrating that the applicant has acquired or is acquiring the 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 of the business between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of state tobacco control laws that were committed by the distributor or wholesaler is presumed not to be made at "arm's length."

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

(b) (1) Any distributor or any wholesaler 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 distributor or that wholesaler 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 distributor or the wholesaler has so requested in the petition, shall grant the distributor or wholesaler an oral hearing and shall give the distributor or the wholesaler 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.

22978. 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 distributors and wholesalers for locations 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. 3. (SB 824) Effective January 1, 2022.)

22978.1. All distributors and all wholesalers shall retain purchase records that meet the requirements set forth in Section 22978.5 for all cigarettes or tobacco products purchased. The records shall be maintained for a period of one year from the date of purchase on the distributor's or the wholesaler's premises identified in the license, and thereafter, the records shall be made available for inspection by the board or a law enforcement agency for a period of four years. Any distributor or any wholesaler 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.)

22978.2. (a) Notwithstanding any other provision of this division, upon discovery by the board or a law enforcement agency that a distributor possesses, stores, owns, or has made a sale of an unstamped package of cigarettes bearing a counterfeit California state tax stamp or that a wholesaler possesses, stores, owns, or has made a sale of an unstamped package of cigarettes, the board or the law enforcement agency shall be authorized to seize the unstamped packages of cigarettes at the distributor's or the wholesaler's location. Any cigarettes 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 investigation. 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 distributor's or wholesaler's inventory of unstamped packages of cigarettes being subject to seizure and forfeiture, the possession, storage, ownership or sale by a distributor or wholesaler of the unstamped package of cigarettes in the manner described above, shall constitute a misdemeanor punishable by the following actions:

(1) A first violation involving seizure of a total quantity of less than 20 unstamped packages of 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 seizure of a total quantity of less than 20 unstamped packages of 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 unstamped packages of 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 total quantity of 20 unstamped packages of 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 distributor or a wholesaler possesses, stores, owns, or has made a sale of tobacco products on which tax is due but has not been paid to the board, or its designee, the board or law enforcement agency is authorized to seize such tobacco products at the distributor or wholesaler location. Any tobacco products seized by a law enforcement agency shall be delivered to the board 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 distributor or a wholesaler until the contrary is established by the distributor's proof of payment to the board or by a purchase invoice that shows that the wholesaler 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 distributor or wholesaler in possession thereof. Possession by a distributor or a wholesaler of tobacco products on which tax is due but has not been paid as required is a violation of this division and subjects the distributor or wholesaler to the actions described in Section 22981.

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

22978.3. (a) (1) Notwithstanding any other provision of this division, upon discovery by the department or a law enforcement agency that a wholesaler possesses, stores, or owns flavored tobacco products or tobacco product flavor enhancers, or has made a sale of flavored tobacco products or tobacco product flavor enhancers in violation of Section 104559.1 of the Health and Safety Code, the department or the law enforcement agency may seize the flavored tobacco products or tobacco product flavor enhancers possessed, stored, owned, or sold by the wholesaler.

(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 will 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 described in subdivision (a), the department shall impose a civil penalty upon the wholesaler 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 impose the civil penalty in accordance with the procedures applicable to the civil penalty authorized in Section 22978.7.

(2) In the case of a second seizure and forfeiture of flavored tobacco products or tobacco product flavor enhancers made pursuant to subdivision (a), the department shall suspend the license of the wholesaler 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 made pursuant to subdivision (a), the department shall revoke the license of the wholesaler 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.

(c) Upon discovery by the department that a distributor, wholesaler, or other person has made a sale in violation of Section 104559.1 of the Health and Safety Code, and, for wholesalers, if neither the department nor a law enforcement agency seized flavored tobacco products or tobacco product flavor enhancers from the wholesaler pursuant to subdivision (a), all of the following shall apply:

(1) Upon a first offense, the department shall issue a warning notice to the distributor, wholesaler, or other person.

(2) Upon a second offense, the department shall suspend the license of the distributor, wholesaler, or person in accordance with the procedures set forth in Section 22980.3.

(3) Upon a third offense, the department shall revoke the license of the distributor, wholesaler, or other person in accordance with the procedures set forth in Section 22980.3.

(d) The appeals procedures applicable to Section 22978.7 shall apply to the warning notice, suspension, and revocation actions taken by the department pursuant to this section.

(Added by Stats. 2024, Ch. 849, Sec. 3. (AB 3218) Effective January 1, 2025.)

22978.4. (a) Except as otherwise provided in paragraph (7), each distributor and each wholesaler shall include the following information on each invoice for the sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the distributor or wholesaler.

(2) The license number of the distributor or the wholesaler as provided by the board.

(3) The amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products.

(4) The name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold.

(5) An itemized listing of the cigarettes or tobacco products sold.

(6) The date the cigarette or tobacco products are sold.

(7) Notwithstanding paragraph (3), a distributor that is also a retailer or manufacturer shall include either one of the following on each invoice for the sale of cigarettes or tobacco products:

(A) A statement that reads: "All California cigarette and tobacco product taxes are included in the total amount of this invoice."

(B) The amount of excise taxes due to the board by the distributor on the distribution of cigarettes and tobacco products.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

(Amended by Stats. 2005, Ch. 512, Sec. 1. Effective January 1, 2006.)

22978.5. (a) Each distributor and each wholesaler of cigarette and tobacco products subject to licensing under this chapter shall maintain accurate and complete records relating to the sale of those products, including, but not limited to, receipts, invoices, and other records as may be required by the board, during the past four years with invoices for the past year to be maintained on the premises for which the license was issued, and shall make these records available upon request by a the board or a law enforcement agency.

(b) Failure of a distributor or a wholesaler to comply with this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

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

22978.6. 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 distributor or any wholesaler or any person controlling any distributor or any wholesaler 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.)

22978.7. In addition to any other civil or criminal penalty provided by law, upon a finding that any distributor or any wholesaler 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 distributor or the wholesaler 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. 2005, Ch. 512, Sec. 2. Effective January 1, 2006.)

22978.8. The board shall include on its Web site the name of any wholesaler or distributor whose license has been suspended or revoked.

(Added by Stats. 2004, Ch. 82, Sec. 4. Effective June 30, 2004.)