

AMENDED IN SENATE AUGUST 15, 2016

AMENDED IN SENATE JUNE 16, 2016

AMENDED IN ASSEMBLY MAY 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2770

Introduced by Assembly Member Nazarian

February 19, 2016

An act to amend Sections ~~22973~~ 22972, 22973, 22973.3, and 22977.1 of, and to add Sections 22990.5 and 22990.7 to, the Business and Professions Code, relating to cigarette and tobacco product licensing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2770, as amended, Nazarian. Cigarette and tobacco product licensing: fees and funding.

The Cigarette and Tobacco Products Licensing Act of 2003 requires the State Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products, and imposes various licensing fees. That act requires a retailer to have a license to engage in the sale of cigarette and tobacco products, and requires a separate license for each retail location. Existing law imposes a fee for each license and provides that the license is valid for a 12-month period. On and after January 1, 2017, existing law requires a license to be renewed annually and imposes a renewal fee.

This bill would require a retailer that adds an additional retail location to 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. This bill would prohibit any license fee or renewal fee from being prorated.

~~The Cigarette and Tobacco Products Licensing Act of 2003 requires the State Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products, and imposes various licensing fees. That act requires the moneys collected pursuant to the act to be deposited in the Cigarette and Tobacco Products Compliance Fund, which are available for expenditure, upon appropriation by the Legislature, solely for the purpose of implementing, enforcing, and administering the licensing program under the act. The act requires the board to report to the Legislature no later than January 1, 2019, regarding the adequacy of funding for the licensing program .~~

~~This bill would instead require the board to report to the Legislature Legislature, Governor, and Department of Finance on or before January 1, 2019, and on and before January 1 annually thereafter. The bill would also require the report to include information on the board’s compliance with the State Auditor’s recommendation in the State Auditor’s March 2016 report to eliminate the excess fund balance in the Cigarette and Tobacco Tax Compliance Fund, which would be required until the excess fund balance is eliminated.~~

The Cigarette and Tobacco Products Tax Law imposes a tax on distributors of cigarettes and tobacco products, and authorizes the reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the tax.

This bill would prohibit, on or after ~~January 1, 2017, July 1, 2019,~~ the appropriation of revenues derived from the taxes imposed upon the distribution of cigarettes and tobacco products to the board for the purpose of implementing, enforcing, or administering the California Cigarette and Tobacco Products Licensing Act of 2003.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22972 of the Business and Professions
- 2 Code is amended to read:
- 3 22972. (a) Commencing June 30, 2004, a retailer shall have
- 4 in place and maintain a license to engage in the sale of cigarettes
- 5 or tobacco products. A retailer that owns or controls more than

1 one retail location shall obtain a separate license for each retail
2 location, but may submit a single application for those licenses.

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

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

10 (d) A license shall be valid for a 12-month period, and shall be
11 renewed annually. *A retailer that adds an additional retail location*
12 *shall renew the license for that location based on a 12-month*
13 *period beginning in the month the retailer obtained its license for*
14 *its first retail location.*

15 ~~SECTION 1.~~

16 *SEC. 2.* Section 22973 of the Business and Professions Code
17 is amended to read:

18 22973. (a) An application for a license shall be filed on or
19 before April 15, 2004, on a form prescribed by the board and shall
20 include the following:

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

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

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

39 (4) If any other licenses or permits have been issued by the
40 board or the Department of Alcoholic Beverage Control to the

1 applicant, the license or permit number of those licenses or permits
 2 then in effect.

3 (5) A statement by the applicant that the contents of the
 4 application are complete, true, and correct. Any person who signs
 5 a statement pursuant to this subdivision that asserts the truth of
 6 any material matter that he or she knows to be false is guilty of a
 7 misdemeanor punishable by imprisonment of up to one year in the
 8 county jail, or a fine of not more than one thousand dollars
 9 (\$1,000), or both the imprisonment and the fine.

10 (6) The signature of the applicant.

11 (7) Any other information the board may require.

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

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

20 (d) A fee of two hundred sixty-five dollars (\$265) shall be
 21 submitted with each application. An applicant that owns or controls
 22 more than one retail location shall obtain a separate license for
 23 each retail location, but may submit a single application for those
 24 licenses with an application license fee of two hundred sixty-five
 25 dollars (\$265) per location. *The fee shall be for the period provided*
 26 *in subdivision (d) of Section 22972 and shall not be prorated.*

27 (e) ~~For calendar years beginning~~ *Beginning* on and after January
 28 1, 2017, every retailer shall file an application for renewal of the
 29 license prescribed in Section 22972, accompanied with a fee of
 30 two hundred sixty-five dollars (\$265) per retail location, in the
 31 form and manner prescribed by the board.

32 *SEC. 3. Section 22973.3 of the Business and Professions Code*
 33 *is amended to read:*

34 22973.3. (a) Notwithstanding any other law, an application
 35 for a license for the sale of a tobacco product, as defined in
 36 subdivision (d) of Section 22950.5, that is not subject to a tax
 37 imposed by the Cigarette and Tobacco Products Tax Law pursuant
 38 to Part 13 (commencing with Section 30001) of Division 2 of the
 39 Revenue and Taxation Code shall be filed on a form prescribed
 40 by the board and shall include the following:

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

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

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

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

23 (5) A statement by the applicant that the contents of the
24 application are complete, true, and correct. Any person who signs
25 a statement pursuant to this subdivision that asserts the truth of
26 any material matter that he or she knows to be false is guilty of a
27 misdemeanor punishable by imprisonment of up to one year in the
28 county jail, or a fine of not more than one thousand dollars
29 (\$1,000), or both the imprisonment and the fine.

30 (6) The signature of the applicant.

31 (7) Any other information the board may require.

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

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

1 (d) A fee of two hundred sixty-five dollars (\$265) shall be
2 submitted with each application. An applicant that owns or controls
3 more than one retail location shall obtain a separate license for
4 each retail location, but may submit a single application for those
5 licenses with an application license fee of two hundred sixty-five
6 dollars (\$265) per location. *The fee shall be for the period provided*
7 *in subdivision (d) of Section 22972 and shall not be prorated.*

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

12 (f) (1) The board shall report back to the Legislature no later
13 than January 1, 2019, regarding the adequacy of funding for the
14 Cigarette and Tobacco Products Licensing Act of 2003 with regard
15 to tobacco products for which a license is required by this section.
16 The report shall include data and recommendations about whether
17 the annual licensing fee funding levels are set at an appropriate
18 level to maintain an effective enforcement program.

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

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

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

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

36 ~~SEC. 2.~~

37 *SEC. 4.* Section 22977.1 of the Business and Professions Code
38 is amended to read:

39 22977.1. (a) Every distributor and every wholesaler shall file
40 an application, as prescribed in Section 22977, on or before April

1 15, 2004. Each application shall be accompanied by a fee of one
2 thousand dollars (\$1,000) for each location. The fee shall be for a
3 calendar year and may not be prorated. Subject to meeting the
4 requirements of this section and Section 22977.2, the board shall
5 issue a license.

6 (b) Every distributor and every wholesaler who commences
7 business after the last day of May 2004, or who commences selling
8 or distributing cigarettes or tobacco products at a new or different
9 place of business in this state after the last day of May 2004, shall
10 file with the board an application as prescribed in Section 22977
11 at least 30 days prior to commencing such business or commencing
12 such sales or distributions; and all distributors and all wholesalers
13 that fail to timely file an application for a license under subdivision
14 (a) shall file with the board an application as prescribed in Section
15 22977. Each application shall be accompanied by a fee of one
16 thousand two hundred dollars (\$1,200) for each location. The fee
17 shall be for a calendar year and may not be prorated. Subject to
18 Section 22977.2, the board, within 30 days after receipt of an
19 application and payment of the proper fee shall issue a license.

20 (c) For calendar years beginning on and after January 1, 2005,
21 and before January 1, 2017, every distributor and every wholesaler
22 shall file an application for renewal of the license prescribed in
23 Section 22977, accompanied with a fee of one thousand dollars
24 (\$1,000) for each location where cigarettes and tobacco products
25 are sold, in the form and manner as prescribed by the board. For
26 calendar years beginning on and after January 1, 2017, the fee
27 accompanying an application for renewal of the license prescribed
28 in Section 22977 shall be one thousand two hundred dollars
29 (\$1,200) for each location where cigarettes and tobacco products
30 are sold.

31 ~~SEC. 3.~~

32 *SEC. 5.* Section 22990.5 is added to the Business and
33 Professions Code, to read:

34 22990.5. Notwithstanding Sections 30124 and 30131.3 *of the*
35 *Revenue and Taxation Code* or any other law, on or after ~~January~~
36 ~~1, 2017,~~ *July 1, 2019*, no revenues derived from the taxes imposed
37 upon the distribution of cigarettes and tobacco products by Article
38 1 (commencing with Section 30101), Article 2 (commencing with
39 Sections 30121), and Article 3 (commencing with Section 30131)
40 of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation

1 Code shall be appropriated to the ~~State Board of Equalization~~
2 ~~board~~ for the purpose of implementing, enforcing, or administering
3 the California Cigarette and Tobacco Products Licensing Act of
4 2003.

5 ~~SEC. 4.~~

6 *SEC. 6.* Section 22990.7 is added to the Business and
7 Professions Code, to read:

8 22990.7. (a) The board shall report to the ~~Legislature~~
9 *Legislature, Governor, and Department of Finance* on or before
10 January 1, 2019, and on and before January 1 annually thereafter,
11 regarding the adequacy of funding for the Cigarette and Tobacco
12 Products Licensing Act of 2003. The report shall include data and
13 recommendations about whether the annual licensing fee funding
14 levels are set at an appropriate level to maintain an effective
15 enforcement program. ~~The report shall also include information~~
16 ~~on the board's compliance with the State Auditor's~~
17 ~~recommendation in the State Auditor's March 2016 report to~~
18 ~~eliminate the excess fund balance in the Cigarette and Tobacco~~
19 ~~Tax Compliance Fund, which shall be required until the excess~~
20 ~~fund balance is eliminated.~~

21 (b) The report *to the Legislature* required by subdivision (a)
22 shall be submitted in compliance with Section 9795 of the
23 Government Code.