

Assembly Bill No. 2770

CHAPTER 699

An act to amend Sections 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.

[Approved by Governor September 27, 2016. Filed with
Secretary of State September 27, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2770, 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 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, Governor, and Department of Finance on or before January 1, 2019, and on and before January 1 annually thereafter.

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 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.

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

SECTION 1. Section 22972 of the Business and Professions Code is amended to read:

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.

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

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.

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

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 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) 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 shall apply 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.

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

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.

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

22990.5. Notwithstanding Sections 30124 and 30131.3 of the Revenue and Taxation Code or any other law, on or after July 1, 2019, no revenues derived from the taxes imposed upon the distribution of cigarettes and tobacco products by Article 1 (commencing with Section 30101), Article 2 (commencing with Sections 30121), and Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code shall be appropriated to the board for the purpose of implementing, enforcing, or administering the California Cigarette and Tobacco Products Licensing Act of 2003.

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

22990.7. (a) The board shall report to the Legislature, Governor, and Department of Finance on or before January 1, 2019, and on and before January 1 annually thereafter, regarding the adequacy of funding for the Cigarette and Tobacco Products Licensing Act of 2003. 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.

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