

AMENDED IN SENATE MAY 31, 2016

**SENATE BILL**

**No. 1400**

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**Introduced by Senator Wieckowski**

February 19, 2016

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An act to ~~amend~~ *amend, repeal, and add* Section 22971 of the Business and Professions Code, relating to cigarette and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, as amended, Wieckowski. Retail tobacco licenses.

Existing law, the Cigarette and Tobacco Products Licensing Act of ~~2003~~ *2003*, requires a retailer to obtain a license from the State Board of Equalization to engage in the sale of ~~cigarette~~ *cigarettes* and tobacco products in this state and defines a retailer as a person who engages in this state in the sale of cigarettes or tobacco products directly to the public from a retail location. The act defines a "retail location" as both any building from which cigarettes or tobacco products are sold at retail and a vending machine.

This bill would, *beginning January 1, 2019*, revise the definition of a "retail location" to mean a tobacco store that is a retail business that, among other things, generates more than 60% of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.

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 22971 of the Business and Professions
- 2 Code is amended to read:

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

(a) “Board” means the State Board of Equalization.

(b) “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.

(c) “Cigarette” means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

(d) (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 board may determine whether a person in fact controls another person.

(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.

1 (h) “Importer” means an importer as defined in Section 30019  
2 of the Revenue and Taxation Code.

3 (i) “Law enforcement agency” means a sheriff, a police  
4 department, or a city, county, or city and county agency or  
5 department designated by the governing body of that agency to  
6 enforce this chapter or to enforce local smoking and tobacco  
7 ordinances and regulations.

8 (j) “License” means a license issued by the board pursuant to  
9 this division.

10 (k) “Licensee” means any person holding a license issued by  
11 the board pursuant to this division.

12 (l) “Manufacturer” means a manufacturer of cigarettes or  
13 tobacco products sold in this state.

14 (m) “Notice” or “notification” means, unless as otherwise  
15 provided, the written notice or notification provided to a licensee  
16 by the board by either actual delivery to the licensee or by  
17 first-class mail addressed to the licensee at the address on the  
18 license.

19 (n) “Package of cigarettes” means a package as defined in  
20 Section 30015 of the Revenue and Taxation Code.

21 (o) “Person” means a person as defined in Section 30010 of the  
22 Revenue and Taxation Code.

23 (p) “Retailer” means a person who engages in this state in the  
24 sale of cigarettes or tobacco products directly to the public from  
25 a retail location. Retailer includes a person who operates vending  
26 machines from which cigarettes or tobacco products are sold in  
27 this state.

28 ~~(q) “Retail location” means a tobacco store as defined in Section~~  
29 ~~22962.~~

30 *(q) “Retail location” means both of the following:*

31 *(1) Any building from which cigarettes or tobacco products are*  
32 *sold at retail.*

33 *(2) A vending machine.*

34 (r) “Sale” or “sold” means a sale as defined in Section 30006  
35 of the Revenue and Taxation Code.

36 (s) “Tobacco products” means tobacco products as defined in  
37 subdivision (b) of Section 30121 and subdivision (b) of Section  
38 30131.1 of the Revenue and Taxation Code.

39 (t) “Unstamped package of cigarettes” means a package of  
40 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.”

(u) “Wholesaler” means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

(v) *This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.*

SEC. 2. Section 22971 is added to the Business and Professions Code, to read:

22971. (a) For purposes of this division, the following terms shall have the following meanings:

(1) “Board” means the State Board of Equalization.

(2) “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.

(3) “Cigarette” means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

(4) (A) “Control” or “controlling” means possession, direct or indirect, of the power:

(i) To vote 25 percent or more of any class of the voting securities issued by a person.

(ii) 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.

(B) For purposes of clause (ii) of subparagraph (A), 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.

(C) For purposes of this division, the board may determine whether a person in fact controls another person.

(5) “Display for sale” means the placement of cigarettes or tobacco products in a vending machine or in retail stock for the

1 *purpose of selling or gifting the cigarettes or tobacco products.*  
2 *For purposes of this definition, the clear and easily visible display*  
3 *of cigarettes or tobacco products shall create a rebuttable*  
4 *presumption that either were displayed for sale.*

5 (6) “Distributor” means a distributor as defined in Section  
6 30011 of the Revenue and Taxation Code.

7 (7) “Gifting” means any transfer of title or possession without  
8 consideration, exchange, or barter, in any manner or by any means,  
9 of cigarettes or tobacco products that have been purchased for  
10 resale under a license issued pursuant to this division if the transfer  
11 occurs while the license is suspended or after the effective date of  
12 its revocation.

13 (8) “Importer” means an importer as defined in Section 30019  
14 of the Revenue and Taxation Code.

15 (9) “Law enforcement agency” means a sheriff, a police  
16 department, or a city, county, or city and county agency or  
17 department designated by the governing body of that agency to  
18 enforce this chapter or to enforce local smoking and tobacco  
19 ordinances and regulations.

20 (10) “License” means a license issued by the board pursuant  
21 to this division.

22 (11) “Licensee” means any person holding a license issued by  
23 the board pursuant to this division.

24 (12) “Manufacturer” means a manufacturer of cigarettes or  
25 tobacco products sold in this state.

26 (13) “Notice” or “notification” means, unless as otherwise  
27 provided, the written notice or notification provided to a licensee  
28 by the board by either actual delivery to the licensee or by  
29 first-class mail addressed to the licensee at the address on the  
30 license.

31 (14) “Package of cigarettes” means a package as defined in  
32 Section 30015 of the Revenue and Taxation Code.

33 (15) “Person” means a person as defined in Section 30010 of  
34 the Revenue and Taxation Code.

35 (16) “Retailer” means a person who engages in this state in  
36 the sale of cigarettes or tobacco products directly to the public  
37 from a retail location. Retailer includes a person who operates  
38 vending machines from which cigarettes or tobacco products are  
39 sold in this state.

- 1     (17) “Retail location” means a tobacco store as defined in  
2     Section 22962.
- 3     (18) “Sale” or “sold” means a sale as defined in Section 30006  
4     of the Revenue and Taxation Code.
- 5     (19) “Tobacco products” means tobacco products as defined  
6     in subdivision (b) of Section 30121 and subdivision (b) of Section  
7     30131.1 of the Revenue and Taxation Code.
- 8     (20) “Unstamped package of cigarettes” means a package of  
9     cigarettes that does not bear a tax stamp as required under Part  
10    13 (commencing with Section 30001) of Division 2 of the Revenue  
11    and Taxation Code, including a package of cigarettes that bears  
12    a tax stamp of another state or taxing jurisdiction, a package of  
13    cigarettes that bears a counterfeit tax stamp, or a stamped or  
14    unstamped package of cigarettes that is marked “Not for sale in  
15    the United States.”
- 16    (21) “Wholesaler” means a wholesaler as defined in Section  
17    30016 of the Revenue and Taxation Code.
- 18    (b) This section shall become operative on January 1, 2019.