



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	<b>03/13/06</b>	Bill No:	<b>AB 3069</b>
Tax:	<b>Cigarette and Tobacco Products Licensing Act</b>	Author:	<b>Committee on Governmental Organization</b>
Related Bills:			

### BILL SUMMARY

This bill would revise the Cigarette and Tobacco Products Licensing Act of 2003 (Licensing Act) to prohibit a retailer, wholesaler, or importer from purchasing cigarettes or tobacco products from any person who is not licensed or whose license has been suspended or revoked.

### ANALYSIS

#### Current Law

#### LICENSING ACT

The Licensing Act requires the Board to administer a statewide cigarette and tobacco products license program to regulate the sale of cigarettes and tobacco products in the state. The Licensing Act requires every retailer, distributor and wholesaler to obtain and maintain a license to engage in the sale of cigarettes or tobacco products. Every manufacturer and every importer is required to obtain and maintain a license to engage in the sale of cigarettes.

Under the provisions of the Licensing Act, no retailer, distributor, wholesaler, or importer is permitted to purchase cigarettes or tobacco products from any person who is required to be licensed but who is not licensed or whose license has been suspended or revoked.

Any violation of the Licensing Act by any person, except as provided, is a misdemeanor. Each offense is punishable as follows:

- A fine not to exceed five thousand dollars (\$5,000),
- Imprisonment not exceeding one year in a county jail, or
- Both the fine and imprisonment.

#### CIGARETTE AND TOBACCO PRODUCTS TAX LAW

Under existing law, Revenue and Taxation Code Section 30478 makes it a misdemeanor for any retailer, as defined in Sales and Use Tax Law Section 6015, to knowingly purchase cigarettes or tobacco products for resale from any person except a distributor or wholesaler licensed pursuant to the Cigarette and Tobacco Products Tax Law.

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**SALES AND USE TAX LAW**

In part, Revenue and Taxation Code Section 6015 defines a "retailer" to include:

- Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.
- Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

**Proposed Law**

This bill would amend Business and Professions Code Section 22980.1 to prohibit a retailer, wholesaler, or importer from purchasing cigarettes or tobacco products from any person who is not licensed or whose license has been suspended or revoked. A distributor would be prohibited from purchasing cigarettes or tobacco products from any person who is required to be licensed but who is not licensed or whose license has been suspended or revoked, which is consistent with existing law.

The provisions of this bill would become effective January 1, 2007.

**Background**

In 2003, AB 71 (J. Horton, Chapter 890) was signed into law to establish a statewide program to license manufacturers and importers of cigarettes, and distributors, wholesalers, and retailer of cigarettes and tobacco products, known as the Cigarette and Tobacco Products Licensing Act of 2003. This measure was intended to provide an additional enforcement tool to address the unlawful distribution and sales of untaxed cigarettes and tobacco products. AB 71 also provided the Board's Investigation Division with the statutory authority to more effectively and efficiently conduct their investigative duties, including new limited peace officer status and strengthened penalties and avenues for the collection of cigarette and tobacco products excise taxes.

In addition, the Board recently implemented the provisions of SB 1701 (Peace, Chapter 881, Statutes of 2002) which required the Board to replace the stamps and meter impressions, currently required to be affixed to a package of cigarettes, with stamps and meter impressions generated by a technology capable of being read by a scanning or similar device, and encrypted with specified information. The intent of SB 1701 was to address the counterfeit tax stamp issue where stamps are reproduced and appear identical to legitimate indicia.

**In General**

Prior to the enactment of AB 71, the Board estimated cigarette excise tax evasion to be \$238 million annually for retailers, associated with 274 million packs of cigarettes. This estimate did not include tobacco products excise tax evasion or related sales tax losses.

In 2004, the Licensing Act resulted in \$68.3 million in additional sales and use tax and excise tax, and \$49.5 million and \$19.9 million in additional sales and use tax and excise tax for 2005 and 2006, respectively. The revenues are through February 2006, for cigarettes and through December 2005, for tobacco products.

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In total, the Licensing Act and implementation of the new cigarette tax stamp has resulted in an increase of \$137.8 million in additional sales and use tax and excise tax revenues.

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to make technical amendments to the Licensing Act.
2. **This bill is necessary to clarify existing law.** Existing law provides that a retailer, distributor, wholesaler or importer is prohibited from purchasing cigarettes or tobacco products from any person who is *required* to be licensed. Since sellers outside California that do not have nexus with this state are not “required” to be licensed, retailers, distributors, wholesalers, and importers could legally purchase cigarettes or tobacco products from such sellers under the Licensing Act. However, this provision is not consistent with the Cigarette and Tobacco Products Tax Law, which prohibits a retailer (which includes a wholesaler) from purchasing cigarettes or tobacco products from any person except a licensed distributor or licensed wholesaler.

In addition, existing law may be confusing to a retailer, wholesaler or importer in that they believe they are in compliance with its purchasing provisions when in fact they may be in violation of other provisions of the Licensing Act. For example, a retailer, wholesaler, or importer (that is not licensed as a distributor to pay the tax) that purchases cigarettes or tobacco products from an unlicensed out-of-state seller is very likely purchasing untaxed product. The possession, storage, ownership or sale of unstamped cigarettes or untaxed tobacco products by other than a licensed distributor is a violation of the Licensing Act, which constitutes a misdemeanor punishable by specified actions and subjects such product to seizure and forfeiture by the Board or a law enforcement agency (Sections 22974.3 and, 22978.2).

3. **Would the purchase of cigarettes from an unlicensed manufacturer be permitted?** Section 22980.1(c) of the Licensing Act prohibits a retailer, distributor, wholesaler, or importer from purchasing packages of cigarettes from a manufacturer who is not licensed pursuant to the Licensing Act or whose license has been suspended or revoked. This measure would not affect this provision. As such, a retailer, distributor, wholesaler, or importer would continue to be prohibited from purchasing cigarettes from a manufacturer unless that manufacturer is licensed if this bill were successfully signed into law.

## COST ESTIMATE

Enactment of this measure would not have any impact on the Board’s administrative costs.

## REVENUE ESTIMATE

This provision would not affect the state’s revenues.

Analysis prepared by: Cindy Wilson 916-445-6036 04/14/06

Contact: Margaret S. Shedd 916-322-2376

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