

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2906**

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**Introduced by Assembly Member Horton**

February 25, 2002

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An act to add Section 30163.1 to the Revenue and Taxation Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

AB 2906, as amended, Horton. Tobacco settlement agreement: ~~advertising~~ escrow compliance.

*The Cigarette and Tobacco Products Tax Law generally requires licensed cigarette distributors to purchase and affix an appropriate stamp to, or make an appropriate meter impression upon, each package of cigarettes prior to distribution, as provided. Under existing law, the State Board of Equalization administers provisions relating to the cigarette and tobacco products tax.*

*Under existing law, states' attorneys general and various tobacco product manufacturers have entered into a Master Settlement Agreement (MSA), in settlement of various lawsuits, that provides for the allocation of money to the states and certain territories. The state has entered into a memorandum of understanding providing for the allocation of the state's share of moneys to be received under the MSA between the state and counties and certain cities in the state. Existing law requires any tobacco product manufacturer selling cigarettes to consumers in California to place specified amounts into a qualified escrow fund by April 15 of each year.*

*This bill would require the Attorney General to develop and post on the Attorney General’s Internet Web site a list of tobacco product manufacturers that are participating manufacturers under the MSA, and that have made all required escrow payments. The bill would prohibit any tax stamp or meter impression to be affixed unless the tobacco product manufacturer and brand family in question is included on the Attorney General’s list. The bill would give the Attorney General and the board specified authority and duties in this regard.*

*This bill would impose specified penalties for failure to comply with the various provisions of the bill, including civil penalties. The bill would also make it a misdemeanor for a tobacco product manufacturer to make certain false representations relating to the tobacco product manufacturer’s responsibilities under the bill, thus creating a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law creates the Stop Tobacco Access to Kids Enforcement (STAKE) Act. The STAKE Act is designed to reduce the availability of tobacco products to minors through specified sales restrictions and enforcement activities. Existing law vests with the State Department of Health Services primary responsibility for enforcement of the act. The STAKE Act prohibits the advertisement of tobacco products on any outdoor billboard located within 1,000 feet of a school or playground.~~

~~This bill would require the department, by January 1, 2004, to conduct a study to determine those forms of advertising that would be prohibited or restricted as a result of the holding in a specified decision of the United States Supreme Court.~~

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

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

- 1 ~~SECTION 1. On or before January 1, 2004, the State~~
- 2 ~~Department of Health Services shall conduct a study to determine~~
- 3 ~~those forms of advertising that would be prohibited or restricted~~



1 ~~as a result of the holding in the United States Supreme Court~~  
2 ~~decision of *Lorillard v. Reilly* (2001) 533 U.S. 525.~~

3 SECTION 1. Section 30163.1 is added to the Revenue and  
4 Taxation Code, to read:

5 (a) The following definitions shall apply for purposes of this  
6 section:

7 (1) "Brand family" means all styles of cigarettes sold under the  
8 same trademark and differentiated from one another by means of  
9 additional modifiers including, but not limited to, "menthol,"  
10 "lights," "kings," and "100s."

11 (2) "Board" means the State Board of Equalization.

12 (3) "Cigarette" has the same meaning as in subdivision (d) of  
13 Section 104556 of the Health and Safety Code and includes  
14 tobacco products defined as a cigarette under that subdivision.

15 (4) "MSA" means the Master Settlement Agreement described  
16 in subdivision (e) of Section 104556 of the Health and Safety Code.

17 (5) "Participating manufacturer" has the same meaning as  
18 defined in subsection II(jj) of the MSA.

19 (b) No person shall affix, or cause to be affixed, any tax stamp  
20 or meter impression to a package of cigarettes pursuant to Section  
21 30163, or pay the tax levied pursuant to Sections 30123 and  
22 30131.2 on a tobacco product defined as a cigarette under this  
23 section, unless the brand family of the cigarettes or tobacco  
24 product, and the tobacco product manufacturer that makes or sells  
25 the cigarettes or tobacco product, are included on the list posted  
26 by the Attorney General pursuant to subdivision (c).

27 (c) Not later than 60 days after the effective date of this section,  
28 and annually thereafter on May 15, the Attorney General shall  
29 develop and post on the Attorney General's Internet Web site a list  
30 that includes both of the following:

31 (1) All tobacco product manufacturers that are participating  
32 manufacturers under the MSA.

33 (2) All tobacco product manufacturers that the Attorney  
34 General has determined to have made all escrow payments  
35 required by paragraph (2) of subdivision (a) of Section 104557 of  
36 the Health and Safety Code in accordance with that subdivision  
37 and that have complied with subdivision (h), if applicable to the  
38 manufacturer. The list shall include all brand families identified by  
39 those manufacturers under subdivision (b). The Attorney General  
40 shall update the list as necessary.



1     *(d) In order for a tobacco product manufacturer and its brand*  
2 *families to be included on the list required by subdivision (c), the*  
3 *manufacturer shall do all of the following:*

4     *(1) Shall certify that it is a participating manufacturer, or is in*  
5 *full compliance with paragraph (2) of subdivision (a) of Section*  
6 *104557 of the Health and Safety Code.*

7     *(2) Shall submit to the Attorney General a list of all brand*  
8 *families that fit either of the following categories:*

9     *(A) Are counted in the unit volume and market shares*  
10 *determined pursuant to subsections II(z) and II (mm) of the MSA*  
11 *and Exhibit E thereto, in calculating the manufacturer's annual*  
12 *payments under the MSA.*

13     *(B) Are to be counted in calculating the manufacturer's escrow*  
14 *payments under paragraph (2) of subdivision (a) of Section*  
15 *104557 of the Health and Safety Code, whichever is applicable to*  
16 *the manufacturer.*

17     *(3) Shall comply with subdivision (i), if applicable to the*  
18 *manufacturer. A tobacco product manufacturer may update the list*  
19 *it submits to the Attorney General to reflect changes.*

20     *(e) (1) Before excluding or removing a tobacco product*  
21 *manufacturer or any of its brand families from the list required by*  
22 *subdivision (c) based on a determination that the manufacturer*  
23 *has not made all escrow payments required by paragraph (2) of*  
24 *subdivision (a) of Section 104557 of the Health and Safety Code,*  
25 *or has not complied with subdivision (i), if applicable to the*  
26 *manufacturer, the Attorney General shall notify the manufacturer*  
27 *of this determination.*

28     *(2) Upon receiving notice from the Attorney General pursuant*  
29 *to paragraph (1), the manufacturer may challenge the Attorney*  
30 *General's determination as erroneous, and may seek relief from the*  
31 *determination, by filing an action for that purpose in the Superior*  
32 *Court for the County of Sacramento, or as otherwise provided by*  
33 *law. The filing of the action shall operate to stay the Attorney*  
34 *General's determination, if the manufacturer has paid into escrow*  
35 *the full amount of any deficiency in the escrow payments that the*  
36 *Attorney General has determined the tobacco product*  
37 *manufacturer was required to have made under paragraph (2) of*  
38 *subdivision (a) of Section 104557 of the Health and Safety Code,*  
39 *pending final resolution of the action.*



1 (f) In addition to any other civil or criminal penalty provided  
2 by law, upon a finding that a distributor has violated subdivision  
3 (b), the board may revoke or suspend the license or licenses of the  
4 distributor pursuant to the procedures applicable to the  
5 suspension or revocation of a license set forth in Section 30148,  
6 and may impose a civil penalty in an amount not to exceed the  
7 greater of either of the following:

8 (1) Five times the retail value of the cigarettes or tobacco  
9 products defined as cigarettes under subdivision (d) of Section  
10 104556 of the Health and Safety Code involved.

11 (2) Five thousand dollars (\$5,000).

12 (g) Any cigarettes or tobacco products defined as cigarettes  
13 under this section that are stamped or to which a meter impression  
14 is affixed, or for which tax is paid as required by Sections 30123  
15 and 30131.2, in violation of subdivision (b) shall be deemed  
16 contraband and shall be subject to seizure and forfeiture as  
17 provided in Chapter 7.5 (commencing with Section 30436), and  
18 the cigarettes or tobacco products seized and forfeited shall be  
19 destroyed. The cigarettes or tobacco products shall be deemed  
20 contraband regardless of whether the violation of subdivision (b)  
21 is knowing.

22 (h) (1) Pursuant to Section 30454, the board may require those  
23 distributors that affix stamps or meter impressions to packages of  
24 cigarettes under Section 30161, or that pay the tax levied under  
25 Sections 30123 and 30131.2 on a tobacco product defined as a  
26 cigarette under this section, to submit all information necessary to  
27 enable the Attorney General to determine whether a tobacco  
28 product manufacturer has made all escrow payments required by  
29 paragraph (2) of subdivision (a) of Section 104557 of the Health  
30 and Safety Code, if applicable to the manufacturer, and has  
31 complied with subdivision (i), if applicable to the manufacturer.

32 (2) The Attorney General may require tobacco product  
33 manufacturers to submit all information as the Attorney General  
34 deems necessary to enable the Attorney General to determine  
35 whether a manufacturer has made all escrow payments required by  
36 paragraph (2) of subdivision (a) of Section 104557 of the Health  
37 and Safety Code, and has complied with subdivision (i), if  
38 applicable to the manufacturer.

39 (i) The Attorney General may require each tobacco product  
40 manufacturer subject to the requirements of paragraph (2) of



1 subdivision (a) of Section 104557 of the Health and Safety Code  
2 to do all of the following:

3 (1) To make the escrow payments required by that paragraph  
4 in quarterly installments during the year in which the sales covered  
5 by those payments are made.

6 (2) To appoint a registered agent for service of process in the  
7 state and identify the registered agent to the Attorney General.

8 (3) To certify, under penalty of perjury, that all escrow  
9 payments required by subdivision (a) of Section 104557 of the  
10 Health and Safety Code have been made by all other tobacco  
11 product manufacturers that previously made or sold brand families  
12 identified under subdivision (d), or brand styles included within  
13 those brand families. However, if the brand family or brand style  
14 was made or sold by the manufacturer before the effective date of  
15 this section, the manufacturer shall be required only to identify  
16 those predecessor manufacturer or manufacturers.

17 (j) Any tobacco product manufacturer that falsely represents  
18 any of the following to any person shall be guilty of a misdemeanor  
19 for each false representation:

20 (1) Any information required under subdivision (d).

21 (2) That the tobacco product manufacturer is a participating  
22 manufacturer.

23 (3) That the tobacco product manufacturer or any other person  
24 has made any or all escrow payments required by paragraph (2)  
25 of subdivision (a) of Section 104557 of the Health and Safety Code,  
26 if applicable to the manufacturer.

27 (4) That it has complied with subdivision (i), if applicable to the  
28 manufacturer.

29 (k) The board and the Attorney General may exchange  
30 information as is reasonably necessary for the enforcement and  
31 administration of this section.

32 (1) The Attorney General may adopt rules and regulations for  
33 the administration and enforcement of this section. The rules and  
34 regulations may establish procedures for including in the list  
35 described in subdivision (c) tobacco product manufacturers that  
36 are not participating manufacturers and were not required to make  
37 escrow payments under paragraph (2) of subdivision (a) of Section  
38 104557 of the Health and Safety Code, for sales made during any  
39 preceding calendar year, and brand families of those  
40 manufacturers.



1     *SEC. 2. No reimbursement is required by this act pursuant to*  
2     *Section 6 of Article XIII B of the California Constitution because*  
3     *the only costs that may be incurred by a local agency or school*  
4     *district will be incurred because this act creates a new crime or*  
5     *infraction, eliminates a crime or infraction, or changes the penalty*  
6     *for a crime or infraction, within the meaning of Section 17556 of*  
7     *the Government Code, or changes the definition of a crime within*  
8     *the meaning of Section 6 of Article XIII B of the California*  
9     *Constitution.*

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