

AMENDED IN SENATE JUNE 17, 2002

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2906

Introduced by Assembly Member Horton

February 25, 2002

An act to amend Section 30436 of, and 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: escrow compliance.

The

(1) *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 *and provided related information to the Attorney General. This bill would require the Attorney General's Web site to also include specified brand families, as defined, that have been identified by the tobacco product manufacturers.* 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, *applicable to a tobacco product manufacturer or distributor,* 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.

(2) *Existing law requires that certain cigarette and tobacco products be forfeited to the state under specified circumstances, upon seizure by the board.*

This bill would add to the forfeiture list cigarette and tobacco products to which cigarette tax stamps or meter impressions are affixed in violation of the prohibition specified in (1) above.

(3) 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.

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

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

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



1 ~~(a)~~

2 30163.1. (a) The following definitions shall apply for
3 purposes of this section:

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

8 ~~(2) "Board" means the State Board of Equalization.~~

9 ~~(3)~~

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

13 ~~(4)~~

14 (3) "MSA" means the Master Settlement Agreement
15 described, as defined in subdivision (e) of Section 104556 of the
16 Health and Safety Code.

17 ~~(5)~~

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

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

29 (c) (1) Not later than 60 days after the effective date of this
30 section, and annually thereafter on May 15, the Attorney General
31 shall develop and post on the Attorney General's Internet Web site
32 a list that includes both of the following:

33 ~~(1) All tobacco product manufacturers that are participating~~
34 ~~manufacturers under the MSA.~~

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



1 ~~those manufacturers under subdivision (b). The Attorney General~~
2 ~~shall update the list as necessary.~~

3 (A) *All tobacco product manufacturers that have complied with*
4 *subdivision (d).*

5 (B) *All brand families, and only brand families, identified by*
6 *tobacco product manufacturers under subparagraph (B) of*
7 *paragraph (1) of subdivision (d).*

8 (2) *The Attorney General shall not include on the list required*
9 *by this subdivision any tobacco product manufacturers or brand*
10 *families excluded or removed pursuant to subdivision (e). The*
11 *Attorney General shall update the list as necessary, and shall*
12 *promptly provide distributors with written notice of each tobacco*
13 *product manufacturer and brand family that the Attorney General*
14 *has added to, or excluded or removed from, the list. Distributors*
15 *shall provide the Attorney General with a current address for the*
16 *receipt of written notice by electronic mail.*

17 (d) (1) *In order for a tobacco product manufacturer and its*
18 *brand families to be included on the list required by subdivision*
19 *(c), the manufacturer shall do all of the following, in the manner*
20 *specified by the Attorney General:*

21 ~~(1) Shall certify~~

22 (A) *Certify to the Attorney General that it is a participating*
23 *manufacturer, or is in full compliance with paragraph (2) of*
24 *subdivision (a) of Section 104557 of the Health and Safety Code.*

25 ~~(2) Shall submit~~

26 (B) *Submit to the Attorney General a list of all brand families*
27 *that fit either of the following categories:*

28 ~~(A) Are~~

29 (i) *Brand families that are to be counted in the unit volume and*
30 *market shares determined pursuant to subsections II(z) and II*
31 *(mm) of the MSA and Exhibit E thereto, in calculating the*
32 *manufacturer's annual payments under the MSA.*

33 ~~(B) Are~~

34 (ii) *Brand families that are to be counted in calculating the*
35 *manufacturer's escrow payments under paragraph (2) of*
36 *subdivision (a) of Section 104557 of the Health and Safety Code,*
37 *whichever is applicable to the manufacturer.*

38 ~~(3) Shall comply~~

39 (C) *Certify to the Attorney General that it is in compliance with*
40 *subdivision (i), if applicable to the manufacturer. A tobacco*



1 ~~product manufacturer may update the list it submits to the Attorney~~
2 ~~General to reflect changes.~~

3 ~~(c) (1) Before excluding or removing a tobacco product~~
4 ~~manufacturer or any of its brand families manufacturer.~~

5 (2) *A tobacco product manufacturer may update the list that it*
6 *submits to the Attorney General pursuant to subparagraph (B) of*
7 *paragraph (1).*

8 (3) *The Attorney General shall provide each tobacco product*
9 *manufacturer that has provided all certifications and other*
10 *information required by paragraph (1) with a written*
11 *acknowledgment of receipt within seven business days after*
12 *receiving the certifications and other materials. The Attorney*
13 *General shall provide any distributor, at its request, with a copy of*
14 *the most recent written acknowledgment of receipt provided to the*
15 *tobacco product manufacturer.*

16 (e) (1) *The Attorney General may exclude or remove from the*
17 *list required by subdivision (c) a tobacco product manufacturer or*
18 *any of its brand families, based on a determination that the*
19 *manufacturer is not a participating manufacturer and has not*
20 *made all escrow payments required by paragraph (2) of*
21 *subdivision (a) of Section 104557 of the Health and Safety Code,*
22 *in accordance with that subdivision, or has not complied with*
23 *subdivision (i), if applicable to the manufacturer (i). Before the*
24 *exclusion or removal may take effect, the Attorney General shall*
25 *notify the manufacturer of this determination.*

26 (2) *Upon receiving notice from the Attorney General pursuant*
27 *to paragraph (1), the manufacturer may challenge the Attorney*
28 *General's determination as erroneous, and may seek relief from*
29 *the determination, by filing ~~an action~~ a petition for writ of mandate*
30 *pursuant to Section 1085 of the Code of Civil Procedure for that*
31 *purpose in the Superior Court for the County of Sacramento, or as*
32 *otherwise provided by law. The filing of the ~~action~~ petition shall*
33 *operate to stay the Attorney General's determination, if the*
34 *manufacturer has paid into escrow the full amount of any*
35 *deficiency in the escrow payments that the Attorney General has*
36 *determined the tobacco product manufacturer was required to*
37 *have made under paragraph (2) of subdivision (a) of Section*
38 *104557 of the Health and Safety Code, including any installment*
39 *payments required under subdivision (i), pending final resolution*
40 *of the action.*



1 (f) (1) In addition to any other civil or criminal penalty
2 provided by law, upon a finding that a distributor has violated
3 subdivision (b), the board may *take the following actions*:

4 (A) *In the case of the first offense, the board may revoke or*
5 *suspend the license or licenses of the distributor pursuant to the*
6 *procedures applicable to the suspension or revocation of a license*
7 *set forth in Section ~~30148, and 30148.~~*

8 (B) *In the case of a second or any subsequent offense, in*
9 *addition to the action authorized under subparagraph (A), the*
10 *board may impose a civil penalty in an amount not to exceed the*
11 *greater of either of the following:*

12 ~~(1)~~
13 (i) *Five times the retail value of the cigarettes or tobacco*
14 *products defined as cigarettes under subdivision (d) of Section*
15 *~~104556 of the Health and Safety Code involved.~~*

16 ~~(2) — this section.~~

17 (ii) *Five thousand dollars (\$5,000).*

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

28 (2) *A distributor in any action for a violation of subdivision (b)*
29 *shall have a defense provided that either of the following is true:*

30 (A) *At the time of the alleged violation, the cigarettes or*
31 *tobacco products claimed to be the subject of the alleged violation*
32 *belonged to a brand family that was included on the list required*
33 *by subdivision (c).*

34 (B) *At the time of the alleged violation, the distributor*
35 *possessed a copy of the Attorney General's most recent written*
36 *acknowledgment of receipt of the certifications and other*
37 *information required as a condition of including the brand family*
38 *on the list required by subdivision (c).*

39 (3) *The defense described in subparagraph (B) of paragraph*
40 *(2) shall not be available to a distributor if, at the time of the*



1 *alleged violation, the Attorney General had provided the*
2 *distributor with written notice that the brand family had been*
3 *excluded or removed from the list required by subdivision (c), or*
4 *the distributor failed to provide the Attorney General with a*
5 *current address for the receipt of written notice through electronic*
6 *mail, as required by paragraph (2) of subdivision (c).*

7 *(g) If a distributor affixes a stamp or meter impression to a*
8 *package of cigarettes under Section 30163, or pays the tax levied*
9 *under Section 30123 and Section 30131.2 on a tobacco product*
10 *defined as a cigarette under this section, during the period between*
11 *the date on which the brand family of the cigarettes or tobacco*
12 *product was excluded or removed from the list required by*
13 *subdivision (c) and the date on which the distributor received*
14 *notice of the exclusion or removal under paragraph (2) of*
15 *subdivision (c), then both of the following shall apply:*

16 *(1) The distributor shall be entitled to a credit for the tax paid*
17 *by the distributor with respect to the cigarette or tobacco product*
18 *to which the stamp or meter impression was affixed, or the tax paid*
19 *during that period. The distributor shall comply with regulations*
20 *prescribed by the board regarding refunds and credits that are*
21 *adopted pursuant to Section 30176.*

22 *(2) The brand family shall not be included on or restored to the*
23 *list until the tobacco product manufacturer has reimbursed the*
24 *distributor for the cost to the distributor of the cigarettes or*
25 *tobacco product to which the stamp or meter impression was*
26 *affixed, or the tax paid during that period.*

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

37 *(2) The Attorney General may require tobacco product*
38 *manufacturers to submit all information as the Attorney General*
39 *deems necessary to enable the Attorney General to determine*
40 *whether a manufacturer has made all escrow payments required by*



1 paragraph (2) of subdivision (a) of Section 104557 of the Health
 2 and Safety Code, and has complied with subdivision (i) *and with*
 3 *paragraph (2) of subdivision (g)*, if applicable to the manufacturer.
 4 (i) (1) The Attorney General may require each tobacco
 5 product manufacturer subject to the requirements of paragraph (2)
 6 of subdivision (a) of Section 104557 of the Health and Safety Code
 7 ~~to do all of the following:~~
 8 ~~(1) To~~ to make the escrow payments required by that paragraph
 9 in quarterly installments during the year in which the sales covered
 10 by those payments are made.
 11 ~~(2) To appoint~~
 12 (2) *Each tobacco product manufacturer subject to the*
 13 *requirements of paragraph (2) of subdivision (a) of Section*
 14 *104557 of the Health and Safety Code shall do all of the following:*
 15 (A) *Appoint* a registered agent for service of process in the state
 16 and identify the registered agent to the Attorney General.
 17 ~~(3) To certify~~
 18 (B) *Certify*, under penalty of perjury, that all escrow payments
 19 required by *paragraph (2) of subdivision (a) of Section 104557 of*
 20 *the Health and Safety Code* have been made by all other tobacco
 21 product manufacturers that previously made or sold brand families
 22 identified under subdivision (d), or brand styles included within
 23 those brand families. However, if the brand family or brand style
 24 was made or sold by the manufacturer *making the certification*
 25 before the effective date of this section, the manufacturer shall be
 26 required only to identify those predecessor manufacturer or
 27 manufacturers.
 28 (C) *Provide to each distributor to whom it sells or ships*
 29 *cigarettes, or a tobacco product defined as a cigarette under this*
 30 *section, a copy of each acknowledgment of receipt provided to the*
 31 *manufacturer by the Attorney General under paragraph (3) of*
 32 *subdivision (d).*
 33 (j) Any tobacco product manufacturer that falsely represents
 34 any of the following to any person shall be guilty of a misdemeanor
 35 for each false representation:
 36 (1) Any information required under subdivision (d).
 37 (2) That the tobacco product manufacturer is a participating
 38 manufacturer.
 39 (3) That the tobacco product manufacturer or any other person
 40 has made any or all escrow payments required by paragraph (2) of



1 subdivision (a) of Section 104557 of the Health and Safety Code,
2 if applicable to the manufacturer.

3 (4) That it has complied with subdivision (i), *or with*
4 *paragraph (2) of subdivision (g)*, if applicable to the manufacturer.

5 (k) The board and the Attorney General may exchange
6 information as is reasonably necessary for the enforcement and
7 administration of this section.

8 (1) The Attorney General may adopt rules and regulations for
9 the administration and enforcement of this section. The rules and
10 regulations may establish procedures for including in the list
11 described in subdivision (c) tobacco product manufacturers that
12 are not participating manufacturers and were not required to make
13 escrow payments under paragraph (2) of subdivision (a) of Section
14 104557 of the Health and Safety Code, for sales made during any
15 preceding calendar year, and brand families of those
16 manufacturers.

17 SEC. 2. *Section 30436 of the Revenue and Taxation Code is*
18 *amended to read:*

19 30436. The following property, upon seizure by the board, is
20 hereby forfeited to the State of California:

21 (a) Cigarettes or tobacco products transported upon the
22 highways, roads or streets of this state in violation of ~~the provisions~~
23 ~~of~~ Section 30431 or Section 30432.

24 (b) Cigarettes not contained in packages to which are affixed
25 California cigarette tax stamp or meter impressions or tobacco
26 products upon which the tobacco products surtax has not been
27 paid, which are offered for sale, possessed, kept, stored, or owned
28 by any person with the intent of the person to sell the cigarettes or
29 tobacco products without payment of the taxes imposed by this
30 part.

31 (c) Any cigarette or tobacco product vending machine,
32 together with the cigarettes, tobacco products, money or other
33 contents thereof, which has been loaded in whole or in part with
34 packages of cigarettes ~~which~~ *that* do not have California cigarette
35 tax stamps or meter impressions affixed or tobacco products upon
36 which the tobacco products surtax has not been paid.

37 (d) Cigarettes contained in packages to which are affixed
38 California cigarette tax stamps or meter impressions in violation
39 of Section 30163.



1 (e) Cigarettes or tobacco products to which are affixed
2 California cigarette tax stamps or meter impressions, or for which
3 tax is paid pursuant to Sections 30123 and 30131.2, in violation
4 of Section 30163.1.

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

