

AMENDED IN SENATE AUGUST 5, 2002

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

(Coauthor: Senator Romero)

February 25, 2002

An act to amend ~~Section 30436~~ *Sections 30436 and 30449* 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.

(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, *and would require that these cigarette and tobacco products be destroyed.*

(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:

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

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

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

12 (3) “MSA” means the Master Settlement Agreement, as
13 defined in subdivision (e) of Section 104556 of the Health and
14 Safety Code.

15 (4) “Participating manufacturer” has the same meaning as
16 defined in subsection II(jj) of the MSA.

17 (5) “*Tobacco product manufacturer*” has the same meaning as
18 in subdivision (i) of Section 104556 of the Health and Safety Code.

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
21 subdivision (a) of Section 30163, or pay the tax levied pursuant to
22 Sections 30123 and 30131.2 on a tobacco product defined as a
23 cigarette under this section, unless the brand family of the
24 cigarettes or tobacco product, and the tobacco product
25 manufacturer that makes or sells the cigarettes or tobacco product,
26 are included on the list posted by the Attorney General pursuant
27 to subdivision (c).

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

32 (A) All tobacco product manufacturers that have complied
33 with subdivision (d).

34 (B) All brand families, and only brand families, identified by
35 tobacco product manufacturers under subparagraph (B) of
36 paragraph (1) of subdivision (d).

37 (2) The Attorney General shall not include on the list required
38 by this subdivision any tobacco product manufacturers or brand



1 families excluded or removed pursuant to subdivision (e). The
2 Attorney General shall update the list as necessary, and shall
3 promptly provide distributors with written notice of each tobacco
4 product manufacturer and brand family that the Attorney General
5 has added to, or excluded or removed from, the list. Distributors
6 shall provide the Attorney General with a current address for the
7 receipt of written notice by electronic mail.

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

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

15 (B) Submit to the Attorney General a list of all brand families
16 that fit ~~either of the following categories~~ *under the category*
17 *applicable to the manufacturer, in accordance with the following:*

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

22 (ii) Brand families that are to be counted in calculating the
23 manufacturer's escrow payments under paragraph (2) of
24 subdivision (a) of Section 104557 of the Health and Safety Code;
25 ~~whichever is applicable to the manufacturer.~~

26 (C) Certify to the Attorney General that it is in compliance with
27 subdivision (i), if applicable to the manufacturer.

28 (2) A tobacco product manufacturer may update the list that it
29 submits to the Attorney General pursuant to subparagraph (B) of
30 paragraph (1).

31 (3) The Attorney General shall provide each tobacco product
32 manufacturer that has provided all certifications and other
33 information required by paragraph (1) with a written
34 acknowledgment of receipt within seven business days after
35 receiving the certifications and other materials. The Attorney
36 General shall provide any distributor, at its request, with a copy of
37 the most recent written acknowledgment of receipt provided to the
38 tobacco product manufacturer.

39 (e) (1) The Attorney General may exclude or remove from the
40 list required by subdivision (c) a tobacco product manufacturer or



1 any of its brand families, based on a determination that the
2 manufacturer is not a participating manufacturer and has not made
3 all escrow payments required by paragraph (2) of subdivision (a)
4 of Section 104557 of the Health and Safety Code, in accordance
5 with that subdivision, or has not complied with subdivision (i).
6 Before the exclusion or removal may take effect, the Attorney
7 General shall notify the manufacturer of this determination.

8 (2) Upon receiving notice from the Attorney General pursuant
9 to paragraph (1), the manufacturer may challenge the Attorney
10 General's determination as erroneous, and may seek relief from
11 the determination, by filing a petition for writ of mandate pursuant
12 to Section 1085 of the Code of Civil Procedure for that purpose in
13 the Superior Court for the County of Sacramento, or as otherwise
14 provided by law. The filing of the petition shall operate to stay the
15 Attorney General's determination, if the manufacturer has paid
16 into escrow the full amount of any deficiency in the escrow
17 payments that the Attorney General has determined the tobacco
18 product manufacturer was required to have made under paragraph
19 (2) of subdivision (a) of Section 104557 of the Health and Safety
20 Code, including any installment payments required under
21 subdivision (i), pending final resolution of the action.

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

25 (A) In the case of the first offense, the board may revoke or
26 suspend the license or licenses of the distributor pursuant to the
27 procedures applicable to the ~~suspension or~~ revocation of a license
28 set forth in Section 30148.

29 (B) In the case of a second or any subsequent offense, in
30 addition to the action authorized under subparagraph (A), the
31 board may impose a civil penalty in an amount not to exceed the
32 greater of either of the following:

33 (i) Five times the retail value of the cigarettes or tobacco
34 products defined as cigarettes under this section.

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

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

38 (A) At the time of the ~~alleged~~ violation, the cigarettes or
39 tobacco products claimed to be the subject of the alleged violation



1 belonged to a brand family that was included on the list required
2 by subdivision (c).

3 (B) At the time of the ~~alleged~~ violation, the distributor
4 possessed a copy of the Attorney General's most recent written
5 acknowledgment of receipt of the certifications and other
6 information required as a condition of including the brand family
7 on the list required by subdivision (c).

8 (3) The defense described in subparagraph (B) of paragraph (2)
9 shall not be available to a distributor if, at the time of the ~~alleged~~
10 violation, the Attorney General had provided the distributor with
11 written notice that the brand family had been excluded or removed
12 from the list required by subdivision (c), or the distributor failed
13 to provide the Attorney General with a current address for the
14 receipt of written notice through electronic mail, as required by
15 paragraph (2) of subdivision (c).

16 (g) If a distributor affixes a stamp or meter impression to a
17 package of cigarettes under *subdivision (a) of Section 30163*, or
18 pays the tax levied under Section 30123 and Section 30131.2 on
19 a tobacco product defined as a cigarette under this section, during
20 the period between the date on which the brand family of the
21 cigarettes or tobacco product was excluded or removed from the
22 list required by subdivision (c) and the date on which the
23 distributor received notice of the exclusion or removal under
24 paragraph (2) of subdivision (c), then both of the following shall
25 apply:

26 (1) The distributor shall be entitled to a credit for the tax paid
27 by the distributor with respect to the cigarette or tobacco product
28 to which the stamp or meter impression was affixed, or the tax paid
29 during that period. The distributor shall comply with regulations
30 prescribed by the board regarding refunds and credits that are
31 adopted pursuant to Section 30176. *If the distributor has sold the*
32 *cigarette or tobacco product to a wholesaler or retailer, and has*
33 *received payment from the wholesaler or retailer, the distributor*
34 *shall provide the credit to the wholesaler or retailer.*

35 (2) The brand family shall not be included on or restored to the
36 list until the tobacco product manufacturer has reimbursed the
37 distributor for the cost to the distributor of the cigarettes or tobacco
38 product to which the stamp or meter impression was affixed, or the
39 tax paid, during that period.



1 (h) (1) Pursuant to Section 30454, the board may require those
2 distributors that affix stamps or meter impressions to packages of
3 cigarettes under *subdivision (a)* of Section 30161, or that pay the
4 tax levied under Sections 30123 and 30131.2 on a tobacco product
5 defined as a cigarette under this section, to submit all information
6 necessary to enable the Attorney General to determine whether a
7 tobacco product manufacturer has made all escrow payments
8 required by paragraph (2) of subdivision (a) of Section 104557 of
9 the Health and Safety Code, if applicable to the manufacturer, and
10 has complied with subdivision (i), if applicable to the
11 manufacturer.

12 (2) The Attorney General may require tobacco product
13 manufacturers to submit all information ~~as~~*that* the Attorney
14 General deems necessary to enable the Attorney General to
15 determine whether a manufacturer has made all escrow payments
16 required by paragraph (2) of subdivision (a) of Section 104557 of
17 the Health and Safety Code, and has complied with subdivision (i)
18 and with paragraph (2) of subdivision (g), if applicable to the
19 manufacturer.

20 (i) (1) The Attorney General may require each tobacco
21 product manufacturer subject to the requirements of paragraph (2)
22 of subdivision (a) of Section 104557 of the Health and Safety Code
23 to make the escrow payments required by that paragraph in
24 quarterly installments during the year in which the sales covered
25 by those payments are made.

26 (2) Each tobacco product manufacturer subject to the
27 requirements of paragraph (2) of subdivision (a) of Section
28 104557 of the Health and Safety Code shall do all of the following:

29 (A) Appoint a registered agent for service of process in the state
30 and identify the registered agent to the Attorney General.

31 (B) Certify, under penalty of perjury, that all escrow payments
32 required by paragraph (2) of subdivision (a) of Section 104557 of
33 the Health and Safety Code have been made by all other tobacco
34 product manufacturers that previously made or sold brand families
35 identified under subdivision (d), or brand styles included within
36 those brand families. However, if the brand family or brand style
37 was made or sold by the manufacturer making the certification
38 before the effective date of this section, the manufacturer shall be
39 required only to identify those predecessor manufacturer or
40 manufacturers.



1 (C) Provide to each distributor to whom it sells or ships
2 cigarettes, or a tobacco product defined as a cigarette under this
3 section, a copy of each acknowledgment of receipt provided to the
4 manufacturer by the Attorney General under paragraph (3) of
5 subdivision (d).

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

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

10 (2) That the tobacco product manufacturer is a participating
11 manufacturer.

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

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

18 (k) The board and the Attorney General may exchange
19 information as is reasonably necessary for the enforcement and
20 administration of this section.

21 (l) The Attorney General may adopt rules and regulations for
22 the administration and enforcement of this section. The rules and
23 regulations may establish procedures for including in the list
24 described in subdivision (c) tobacco product manufacturers that
25 are not participating manufacturers and were not required to make
26 escrow payments under paragraph (2) of subdivision (a) of Section
27 104557 of the Health and Safety Code, for sales made during any
28 preceding calendar year, and brand families of those
29 manufacturers.

30 SEC. 2. Section 30436 of the Revenue and Taxation Code is
31 amended to read:

32 30436. The following property, upon seizure by the board, is
33 hereby forfeited to the State of California:

34 (a) Cigarettes or tobacco products transported upon the
35 highways, roads or streets of this state in violation of Section
36 30431 or Section 30432.

37 (b) Cigarettes not contained in packages to which are affixed
38 California cigarette tax stamp or meter impressions or tobacco
39 products upon which the tobacco products surtax has not been
40 paid, which are offered for sale, possessed, kept, stored, or owned



1 by any person with the intent of the person to sell the cigarettes or
2 tobacco products without payment of the taxes imposed by this
3 part.

4 (c) Any cigarette or tobacco product vending machine,
5 together with the cigarettes, tobacco products, money or other
6 contents thereof, which has been loaded in whole or in part with
7 packages of cigarettes that do not have California cigarette tax
8 stamps or meter impressions affixed or tobacco products upon
9 which the tobacco products surtax has not been paid.

10 (d) Cigarettes contained in packages to which are affixed
11 California cigarette tax stamps or meter impressions in violation
12 of Section 30163.

13 (e) Cigarettes or tobacco products to which are affixed
14 California cigarette tax stamps or meter impressions, or for which
15 tax is paid pursuant to Sections 30123 and 30131.2, in violation of
16 Section 30163.1-

17 ~~SEC. 3.—~~, *regardless of whether the violation is subject to the*
18 *defense described in paragraph (2) of subdivision (f) of Section*
19 *30163.1.*

20 *SEC. 3. Section 30449 of the Revenue and Taxation Code is*
21 *amended to read:*

22 30449. ~~Any~~ *(a) Except as provided in subdivision (b), any*
23 *property, except money, forfeited to the state under this chapter*
24 *shall be sold by the board at public auction. Notice of ~~such~~ the sale*
25 *shall be given by posting a written notice of the time and place of*
26 *sale in three public places in the county where the property is to be*
27 *sold for not less than five days nor more than ten days before the*
28 *sale. If the board is unable to sell any property forfeited to the state*
29 *under this part or, if the board determines that the property is*
30 *unsalable, it may destroy ~~such~~ that property.*

31 *(b) Any property forfeited to the state pursuant to subdivision*
32 *(e) of Section 30436 shall be destroyed.*

33 *(c) A record shall be kept of all property destroyed pursuant to*
34 *this section showing the nature of the property, the quantity, the*
35 *reason for, and the manner of destruction. The proceeds of the sale*
36 *and any money forfeited to the state shall be deposited in the State*
37 *Treasury to the credit of the General Fund.*

38 *SEC. 4. No reimbursement is required by this act pursuant to*
39 *Section 6 of Article XIII B of the California Constitution because*
40 *the only costs that may be incurred by a local agency or school*



1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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