

ASSEMBLY BILL

No. 2496

Introduced by Assembly Member Nava

February 19, 2010

An act to amend Sections 22979, 22980, and 22980.1 of the Business and Professions Code, to add Section 104557.1 to the Health and Safety Code, to amend Section 308.1 of the Penal Code, and to amend Sections 30163, 30165.1, and 30436 of, and to add Section 30165.2 to, the Revenue and Taxation Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 2496, as introduced, Nava. Cigarette and tobacco products.

(1) The California Cigarette and Tobacco Products Licensing Act of 2003 provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California and prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are in compliance with those licensure requirements.

The act requires a manufacturer or importer to comply with specified requirements in order to be eligible for obtaining and maintaining a license under that act, including consent to jurisdiction of the California courts for the purpose of enforcement of that act and appointment of a registered agent for service of process in this state.

This bill would require a manufacturer or importer to additionally consent to jurisdiction of the California courts for the purpose of enforcement of the Master Settlement Agreement and a specified provision of the Cigarette and Tobacco Products Tax Law. This bill

would require the manufacturer or importer to additionally identify the registered agent to the Attorney General.

The act authorizes a peace officer or board employee granted limited peace officer status to conduct inspections at any site where evidence of activities involving evasion of cigarette or tobacco products tax may be discovered.

This bill would additionally authorize those officers to inspect any site with respect to violations of a specified provision of the Cigarette and Tobacco Products Tax Law.

This act prohibits an importer, distributor, or wholesaler, or distributor functioning as a wholesaler, or retailer, to purchase, obtain, or otherwise acquire any package of cigarettes to which a stamp or meter impression may not be affixed in accordance with the Cigarette and Tobacco Products Tax Law. A violation of this provision is a misdemeanor.

This bill would additionally prohibit those persons from acquiring a package of cigarettes unless the brand family or product manufacturer of the cigarettes is included on a directory posted by the Attorney General described in (3). By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) 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 authorize a tobacco product manufacturer that elects to place funds into a qualified escrow fund to make an irrevocable assignment of its interest in the funds to the benefit of the State of California, as specified. This bill would require any funds assigned to the state that are withdrawn to be deposited into the General Fund as a credit against any judgment or settlement which may be obtained against the tobacco product manufacturer who has assigned the funds.

(3) The Cigarette and Tobacco Products Tax Law requires a tax imposed by that law with respect to distributions of cigarettes to be paid by distributors through the use of stamps or meter impressions, and

requires that these stamps or impressions be affixed to each package of cigarettes sold.

This bill would additionally require a stamp or meter impression to be made on rolls of tobacco, as specified, and would make conforming changes to other related provisions.

The Cigarette and Tobacco Products Tax Law requires every tobacco product manufacturer whose cigarettes are sold in this state to make a certification to the Attorney General regarding certain information. That law makes a false certification a misdemeanor.

This bill would require certification of additional information, as specified. By changing the definition of a crime, this bill would impose a state-mandated local program.

The Cigarette and Tobacco Products Tax Law requires the Attorney General to post on the Attorney General's Internet Web site a directory of tobacco product manufacturers that are participating manufacturers under the MSA, and that have made all required escrow payments and provided certification of related information to the Attorney General. That law also requires the Attorney General's Internet Web site to include specified brand families, as defined, that have been identified by the tobacco product manufacturers. Existing law also requires that a manufacturer and brand families be excluded from the directory, if any of certain circumstances occur.

This bill would establish circumstances under which a manufacturer and brand families are to be excluded from the directory of manufacturers and brand families, and would require distributors, after receiving notice from the Attorney General, to provide notice to its customers of any manufacturer or brand family removed or excluded from the directory.

This bill would also require a newly qualified nonparticipating manufacturer, as defined, or a nonparticipating manufacturer who poses an elevated risk of noncompliance with that law or the MSA, to post a surety bond, as specified before inclusion onto the directory.

This bill would specify that a person is prohibited from shipping or distributing into or within this state for personal consumption in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory, and would provide that this specification is declaratory of existing law.

This bill would require any nonparticipating manufacturer located outside of the United States, as an additional condition precedent to having its brand families listed or retained in the directory, to cause its

importers to appoint an agent, as specified, and would impose additional specified responsibilities upon such a manufacturer.

This bill would give the Attorney General additional specified authority regarding the administration of that law.

This bill would, as a condition of selling cigarettes in the state, require a tobacco product manufacturer, as specified, to submit, or authorize to disclose, a copy of its applicable return. This bill would provide that failure to comply with that provision would subject the manufacturer and its brand families to removal from the directory. This bill would impose a civil penalty on any manufacturer that intentionally provides an applicable return with materially false information.

(4) The Cigarette and Tobacco Products Tax Law requires that certain cigarette and tobacco products be forfeited to the state under specified circumstances, upon seizure by the State Board of Equalization.

This bill would add to the forfeiture list cigarette and tobacco products of a tobacco product manufacturer or its brand families that do not appear on the directory maintained by the Attorney General.

(5) Existing law prohibits the offer, sale, distribution, or importation of a tobacco product known as “bidis” or “beedies,” as defined, unless it is sold or intended for sale in business establishments that exclude minors.

This bill would amend the definition of “bidis” or “beedies” to include any product that is marketed and sold as “bidis” or “beedies”, and would clarify that persons who violate this prohibition are subject to both criminal and civil liability.

By changing the definition of related crimes, this bill would impose a state-mandated local program.

(6) This bill would provide that the provisions of this bill are severable.

(7) 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 22979 of the Business and Professions
2 Code is amended to read:

3 22979. (a) Commencing on January 1, 2004, every
4 manufacturer and every importer, as defined in subdivision (b) of
5 Section 22971, shall obtain and maintain a license to engage in
6 the sale of cigarettes. In order to be eligible for obtaining and
7 maintaining a license under this division, a manufacturer or
8 importer shall do all of the following in the manner specified by
9 the board:

10 (1) Submit to the board a list of all brand families that they
11 manufacture or import.

12 (2) Update the list of all brand families that they manufacture
13 or import whenever a new or additional brand is manufactured or
14 imported, or a listed brand is no longer manufactured or imported.

15 (3) Consent to jurisdiction of the California courts for the
16 purpose of enforcement of this division, *Sections 104555 to*
17 *104557, inclusive, of the Health and Safety Code, Section 30165.1*
18 *of the Revenue and Taxation Code and regulations adopted*
19 *pursuant thereto*, and appoint a registered agent for service of
20 process in this state and identify the registered agent to the board
21 *and the Attorney General.*

22 (b) In order to be eligible for obtaining and maintaining a license
23 under this division, a manufacturer or importer that is a “tobacco
24 product manufacturer” in subdivision (i) of Section 104556 of the
25 Health and Safety Code, shall do all of the following in the manner
26 specified by the board:

27 (1) Certify to the board that it is a “participating manufacturer”
28 as defined in subsection II(jj) of the “Master Settlement
29 Agreement” (MSA), or is in full compliance with paragraph (2)
30 of subdivision (a) of Section 104557 of the Health and Safety
31 Code. Any person who makes a certification pursuant to this
32 subdivision that asserts the truth of any material matter that he or
33 she knows to be false is guilty of a misdemeanor punishable by
34 imprisonment of up to one year in the county jail, or a fine of not
35 more than one thousand dollars (\$1,000), or both the imprisonment
36 and the fine.

1 (2) Submit to the board a list of all brand families that fit under
2 the category applicable to the manufacturer or importer, in
3 accordance with the following:

4 (A) Brand families that are to be counted, in the unit volume
5 and market shares determined pursuant to subsections II(z) and
6 II(mm) of the MSA and Exhibit E thereto, in calculating the
7 manufacturer's annual payments under the MSA.

8 (B) Brand families that are to be counted in calculating the
9 manufacturer's escrow deposits under paragraph (2) of subdivision
10 (a) of Section 104557 of the Health and Safety Code.

11 (C) The manufacturer or importer shall update the list whenever
12 a new or additional brand is manufactured or imported or a listed
13 brand is no longer manufactured or imported.

14 (c) The board may not grant or permit the maintenance of a
15 license to any manufacturer or an importer of cigarettes that does
16 not affirmatively certify, both at the time the license is granted and
17 annually thereafter, that all packages of cigarettes manufactured
18 or imported by that person and distributed in this state fully comply
19 with subdivision (b) of Section 30163 of the Revenue and Taxation
20 Code, and that the cigarettes contained in those packages are the
21 subject of filed reports that fully comply with all requirements of
22 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.
23 1331 et seq.) for the reporting of ingredients added to cigarettes.
24 For purposes of the federal Cigarette Labeling and Advertising
25 Act requirement, cigars weighing three pounds or less per 1,000
26 are excluded from the definition of cigarette.

27 (d) A license issued to a manufacturer or an importer under this
28 division is only valid with respect to the manufacturer or importer
29 designated on the license and may not be transferred or assigned
30 to another manufacturer or importer.

31 (e) Any manufacturer or importer that is issued a license under
32 this division that does not commence business in the manner
33 specified or designated in the license, ceases to do business in the
34 manner specified or designated in the license, or is notified that
35 the license is suspended or revoked, shall immediately surrender
36 that license to the board.

37 (f) (1) Any manufacturer or any importer who is denied a
38 license may petition for a redetermination of the board's denial of
39 the license within 30 days after service upon that manufacturer or
40 that importer of the notice of the denial of the license. If a petition

1 for redetermination is not filed within the 30-day period, the
2 determination of denial becomes final at the expiration of the
3 30-day period.

4 (2) Every petition for redetermination shall be in writing and
5 shall state the specific grounds upon which the petition is founded.
6 The petition may be amended to state additional grounds at anytime
7 prior to the date on which the board issues its order or decision
8 upon the petition for redetermination.

9 (3) If the petition for redetermination is filed within the 30-day
10 period, the board shall reconsider the determination of the denial
11 and, if the manufacturer or the importer has so requested in the
12 petition, shall grant an oral hearing and shall give the manufacturer
13 or the importer at least 10 days' notice of the time and place of the
14 hearing. The board may continue the hearing from time to time as
15 may be necessary.

16 (4) The order or decision of the board upon a petition for
17 redetermination becomes final 30 days after mailing of notice
18 thereof.

19 (5) Any notice required by this subdivision shall be served
20 personally or by mail. If by mail, the notice shall be placed in a
21 sealed envelope, with postage paid, addressed to the manufacturer
22 or the importer at the address as it appears in the records of the
23 board. The giving of notice shall be deemed complete at the time
24 of deposit of the notice in the United States Post Office, or a
25 mailbox, subpost office, substation or mail chute or other facility
26 regularly maintained or provided by the United States Postal
27 Service, without extension of time for any reason. In lieu of
28 mailing, a notice may be served personally by delivering to the
29 person to be served and service shall be deemed complete at the
30 time of the delivery. Personal service to a corporation may be made
31 by delivery of a notice to any person designated in the Code of
32 Civil Procedure to be served for the corporation with summons
33 and complaint in a civil action.

34 SEC. 2. Section 22980 of the Business and Professions Code
35 is amended to read:

36 22980. (a) (1) Any peace officer, or board employee granted
37 limited peace officer status pursuant to paragraph (6) of subdivision
38 (a) of Section 830.11 of the Penal Code, upon presenting
39 appropriate credentials, is authorized to enter any place as described

1 in paragraph (3) and to conduct inspections in accordance with the
2 following paragraphs, inclusive.

3 (2) Inspections shall be performed in a reasonable manner and
4 at times that are reasonable under the circumstances, taking into
5 consideration the normal business hours of the place to be entered.

6 (3) Inspections may be at any place at which cigarettes or
7 tobacco products are sold, produced, or stored or at any site where
8 evidence of activities involving evasion of cigarette or tobacco
9 products tax *and violations of Section 30165.1 of the Revenue and*
10 *Taxation Code* may be discovered.

11 (4) Inspections shall be requested or conducted no more than
12 once in a 24-hour period.

13 (b) Any person that refuses to allow an inspection shall be
14 subject to the penalties imposed pursuant to Section 22981.

15 SEC. 3. Section 22980.1 of the Business and Professions Code
16 is amended to read:

17 22980.1. (a) No manufacturer or importer shall sell cigarettes
18 or tobacco products to a distributor, wholesaler, retailer, or any
19 other person who is not licensed pursuant to this division or whose
20 license has been suspended or revoked.

21 (b) (1) Except as provided in paragraph (2), no distributor or
22 wholesaler shall sell cigarettes or tobacco products to a retailer,
23 wholesaler, distributor, or any other person who is not licensed
24 pursuant to this division or whose license has been suspended or
25 revoked.

26 (2) This subdivision does not apply to any sale of cigarettes or
27 tobacco products by a distributor, wholesaler, or any other person
28 to a retailer, wholesaler, distributor, or any other person that the
29 state, pursuant to the United States Constitution, the laws of the
30 United States, or the California Constitution, is prohibited from
31 regulating.

32 (c) No retailer, distributor, or wholesaler shall purchase packages
33 of cigarettes or tobacco products from a manufacturer or importer
34 who is not licensed pursuant to this division or whose license has
35 been suspended or revoked.

36 (d) (1) No retailer, or wholesaler shall purchase cigarettes or
37 tobacco products from any person who is not licensed pursuant to
38 this division or whose license has been suspended or revoked.

39 (2) Notwithstanding subdivision (c), no distributor shall purchase
40 cigarettes or tobacco products from any person who is required to

1 be licensed pursuant to this division but who is not licensed or
2 whose license has been suspended or revoked.

3 (e) Each separate sale to, or by, a retailer, wholesaler, distributor,
4 importer, manufacturer, or any other person who is not licensed
5 pursuant to this division shall constitute a separate violation.

6 (f) No manufacturer, distributor, wholesaler, or importer may
7 sell cigarette or tobacco products to any retailer or wholesaler
8 whose license has been suspended or revoked unless all outstanding
9 debts of that retailer or wholesaler that are owed to a wholesaler
10 or distributor for cigarette or tobacco products are paid and the
11 license of that retailer or wholesaler has been reinstated by the
12 board. Any payment received from a retailer or wholesaler shall
13 be credited first to the outstanding debt for cigarettes or tobacco
14 products and must be immediately reported to the board. The board
15 shall determine the debt status of a suspended retailer or wholesaler
16 licensee 25 days prior to the reinstatement of the license.

17 (g) No importer, distributor, or wholesaler, or distributor
18 functioning as a wholesaler, or retailer, shall purchase, obtain, or
19 otherwise acquire any package of cigarettes to which a stamp or
20 meter impression may not be affixed in accordance with
21 subdivision (b) of Section 30163 *or subdivision (e) of Section*
22 *30165.1* of the Revenue and Taxation Code, or any cigarettes
23 obtained from a manufacturer or importer that cannot demonstrate
24 full compliance with all requirements of the federal Cigarette
25 Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for
26 the reporting of ingredients added to cigarettes.

27 (h) (1) Failure to comply with the provisions of this section
28 shall be a misdemeanor subject to penalties pursuant to Section
29 22981.

30 (2) Notwithstanding paragraph (1), a manufacturer or importer
31 who uses the most up-to-date licensing information provided by
32 the board on the board's Web site to determine a person's licensing
33 status is presumed to be in compliance with this section.

34 (i) The amendments that are made to this section by the act
35 adding this subdivision shall become operative May 1, 2007.

36 SEC. 4. Section 104557.1 is added to the Health and Safety
37 Code, to read:

38 104557.1. (a) Notwithstanding subdivision (b) of Section
39 104557, a tobacco product manufacturer that elects to place funds
40 into escrow pursuant to paragraph (2) of subdivision (a) of Section

1 104557 may make an irrevocable assignment of its interest in the
2 funds to the benefit of the State of California. Such assignment
3 shall be permanent and apply to all funds in the subject escrow
4 account or that may subsequently come into the account, including
5 those deposited into the escrow account prior to the assignment
6 being executed, those deposited into the escrow account after the
7 assignment is executed, and interest or other appreciation on the
8 funds. The tobacco product manufacturer, the Attorney General,
9 and the financial institution where the escrow amount is maintained
10 may make such amendments to the qualified escrow account
11 agreement as may be necessary to effectuate an assignment of
12 rights executed pursuant to this subdivision or a withdrawal of
13 funds from the escrow amount pursuant to subdivision (b). An
14 assignment of rights executed pursuant to this section shall be in
15 writing, signed by a duly authorized representative of the tobacco
16 products manufacturer making the assignment, and shall become
17 effective upon delivery of the assignment to the Attorney General
18 and the financial institution where the escrow account is
19 maintained.

20 (b) Notwithstanding subdivision (b) of Section 104557, any
21 escrow funds assigned to the state pursuant to subdivision (a) shall
22 be withdrawn by the state upon the request by the Treasurer and
23 approval of the Attorney General. Any funds withdrawn pursuant
24 to this subdivision shall be deposited into the General Fund and
25 shall be calculated on a dollar-for-dollar basis as a credit against
26 any judgment or settlement described in subdivision (b) of Section
27 104557 which may be obtained against the tobacco product
28 manufacturer who has assigned the funds in the subject escrow
29 account. Nothing in this section shall be construed to relieve a
30 tobacco product manufacturer from any past, current, or future
31 obligations the manufacturer may have pursuant to this chapter.

32 SEC. 5. Section 308.1 of the Penal Code is amended to read:

33 308.1. (a) Notwithstanding any other ~~provision~~ of law, no
34 person shall sell, offer for sale, distribute, or import any tobacco
35 product commonly referred to as “bidis” or “beedies,” unless that
36 tobacco product is sold, offered for sale, or intended to be sold in
37 a business establishment that prohibits the presence of persons
38 under 18 years of age on its premises.

39 (b) For purposes of this section, “bidis” or “beedies” means a
40 ~~product~~ *any of the following:*

1 (1) A product containing tobacco that is wrapped in temburni
2 leaf (*diospyros melanoxydon*) or tendu leaf (*diospyros excelsa*).

3 (2) A product that is marketed and sold as “*bidis*” or “*beedies*.”

4 (c) Any person who violates this section is guilty of a
5 misdemeanor ~~or~~ and is also subject to a civil action brought by
6 the Attorney General, a city attorney, county counsel, or district
7 attorney for an injunction and a civil penalty of up to two thousand
8 dollars (\$2,000) per violation. This subdivision does not affect any
9 other remedies available for a violation of this section.

10 SEC. 6. Section 30163 of the Revenue and Taxation Code is
11 amended to read:

12 30163. (a) Except as otherwise provided in this section, an
13 appropriate stamp shall be affixed to, or an appropriate meter
14 impression shall be made on each package of cigarettes, *or of any*
15 *rolls of tobacco with a cellulose acetate or other integrated filter,*
16 *or which has filler tobacco consisting primarily of flue-cured,*
17 *burley, oriental, or unfermented tobaccos or yields smoking*
18 *characteristics of those tobaccos or is wrapped in paper or any*
19 *substance not containing tobacco*, prior to the distribution of the
20 cigarettes *or the rolls of tobacco*.

21 (b) No stamp or meter impression may be affixed to, or made
22 upon, any package of cigarettes if any one of the following occurs:

23 (1) The package does not comply with all requirements of the
24 Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.
25 1331 and following) for the placement of labels, warnings, or any
26 other information upon a package of cigarettes that is to be sold
27 within the United States.

28 (2) The package is labeled “For Export Only,” “U.S. Tax
29 Exempt,” “For Use Outside U.S.,” or similar wording indicating
30 that the manufacturer did not intend that the product be sold in the
31 United States.

32 (3) The package, or a package containing individually stamped
33 packages, has been altered by adding or deleting the wording,
34 labels, or warnings described in paragraph (1) or (2).

35 (4) The package was imported into the United States after
36 January 1, 2000, in violation of Section 5754 of Title 26 of the
37 United States Code.

38 (5) (A) The package bears a cigarette brand name which is a
39 registered U.S. trademark of a participating manufacturer and the

1 package was imported by anyone other than the participating
2 manufacturer of that cigarette brand.

3 (B) For purposes of this paragraph, “participating manufacturer”
4 has the same meaning as defined in paragraph (1) of subdivision
5 (a) of Section 104557 of the Health and Safety Code and in Section
6 II(jj) of the Master Settlement Agreement described in Article 3
7 (commencing with Section 104555) of Chapter 1 of Part 3 of
8 Division 103 of the Health and Safety Code.

9 (c) Pursuant to its authority under Section 30148, the board shall
10 revoke the license issued to a distributor that is determined to be
11 in violation of this section.

12 (d) A violation of subdivision (b) shall constitute unfair
13 competition under Section 17200 of the Business and Professions
14 Code.

15 SEC. 7. Section 30165.1 of the Revenue and Taxation Code
16 is amended to read:

17 30165.1. (a) The following definitions shall apply for purposes
18 of this section:

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

20 (2) “Brand family” means all styles of cigarettes sold under the
21 same trademark and differentiated from one another by means of
22 additional modifiers, including, but not limited to, “menthol,”
23 “lights,” “kings,” and “100s” and includes any brand name, alone
24 or in conjunction with any other word, trademark, logo, symbol,
25 motto, selling message, recognizable pattern of colors, or any other
26 indicia of product identification identical or similar to, or
27 identifiable with, a previously known brand of cigarettes.

28 (3) “Cigarette” has the same meaning as in subdivision (d) of
29 Section 104556 of the Health and Safety Code and includes, *but*
30 *is not limited to*, tobacco products defined as a cigarette under that
31 subdivision *and any roll of tobacco with a cellulose acetate or*
32 *other integrated filter, or which has filler tobacco consisting*
33 *primarily of flue-cured, barley, oriental, or unfermented tobaccos*
34 *or yielding smoking characteristics of those tobaccos or is wrapped*
35 *in paper or any substance not containing tobacco, or any such*
36 *cigarette that is distributed within the meaning of Section 30008.*

37 (4) “Distributor” has the same meaning as in Section 30011.

38 (5) “MSA” means the Master Settlement Agreement, as defined
39 in subdivision (e) of Section 104556 of the Health and Safety Code.

1 (6) “Nonparticipating manufacturer” means any tobacco product
2 manufacturer that is not a participating manufacturer.

3 (7) “Participating manufacturer” has the same meaning as in
4 subsection II(jj) of the MSA.

5 (8) “Qualified escrow fund” has the same meaning as in
6 subdivision (f) of Section 104556 of the Health and Safety Code.

7 (9) “Tobacco product manufacturer” has the same meaning as
8 in subdivision (i) of Section 104556 of the Health and Safety Code.

9 (10) “Units sold” has the same meaning as in subdivision (j) of
10 Section 104556 of the Health and Safety Code.

11 (b) Every tobacco product manufacturer whose cigarettes are
12 sold in this state, whether directly or through a distributor, retailer,
13 or similar intermediary or intermediaries, shall execute and deliver
14 on a form and in the manner prescribed by the Attorney General,
15 *information as the Attorney General deems reasonably necessary*
16 *to make the determinations required by subdivision (c), a*
17 *certification to the Attorney General no later than the 30th day of*
18 *April each year that, as of the date of the certification, the tobacco*
19 *product manufacturer is either a participating manufacturer that*
20 *has made all payments calculated by the independent auditor to*
21 *be due under the Master Settlement Agreement, except to the extent*
22 *the participating manufacturer is disputing any of payments, or is*
23 *in full compliance with Article 3 (commencing with Section*
24 *104555) of Chapter 1 of Part 3 of Division 103 of the Health and*
25 *Safety Code, including all installment payments required by that*
26 *article and this section, and any regulations promulgated pursuant*
27 *thereto. Any person who makes a certification pursuant to this*
28 *subdivision that asserts the truth of any material matter that he or*
29 *she knows to be false is guilty of a misdemeanor punishable by*
30 *imprisonment of up to one year in the county jail, or a fine of not*
31 *more than one thousand dollars (\$1,000), or both the imprisonment*
32 *and the fine.*

33 (1) A participating manufacturer shall include in its certification
34 a complete list of its brand families. The participating manufacturer
35 shall update the list 30 days prior to any addition to or modification
36 of its brand families by executing and delivering a supplemental
37 certification to the Attorney General.

38 (2) A nonparticipating manufacturer shall include in its
39 certification a complete list of all of its brand families, in
40 accordance with the following requirements:

1 (A) Separately listing brand families of cigarettes and the
2 number of units sold for each brand family that were sold in the
3 state during the preceding calendar year.

4 (B) Separately listing all of its brand families that have been
5 sold in the state at any time during the current calendar year.

6 (C) Indicating by an asterisk any brand family sold in the state
7 during the preceding calendar year that is no longer being sold in
8 the state as of the date of the certification.

9 (D) Identifying by name and address any other manufacturer,
10 including all fabricators or makers of the brand families in the
11 preceding or current calendar year in a form, manner, and detail
12 as required by the Attorney General. The nonparticipating
13 manufacturer shall update the list 30 days prior to any change in
14 a fabricator for any brand family or any addition to or modification
15 of its brand families by executing and delivering a supplemental
16 certification to the Attorney General.

17 (3) In the case of a nonparticipating manufacturer, the
18 certification shall further certify all of the following:

19 (A) That the nonparticipating manufacturer is registered to do
20 business in the state, or has appointed a resident agent for service
21 of process and provided notice thereof as required by subdivision
22 (f).

23 (B) That the nonparticipating manufacturer has done all of the
24 following:

25 (i) Established and continues to maintain a qualified escrow
26 fund as that term is defined in subdivision (f) of Section 104556
27 of the Health and Safety Code and implementing regulations.

28 (ii) Executed a qualified escrow agreement that has been
29 reviewed and approved by the Attorney General and that governs
30 the qualified escrow fund.

31 (iii) If the nonparticipating manufacturer is not the fabricator
32 or maker of the cigarettes, that the escrow agreement, certification,
33 reports, and any other forms required by Article 3 (commencing
34 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
35 the Health and Safety Code and implementing regulations are
36 signed by the company that fabricates or makes the cigarettes and
37 in the manner required by the Attorney General.

38 (C) That the nonparticipating manufacturer is in full compliance
39 with *both of the following*: ~~Article~~

1 (i) Article 3 (commencing with Section 104555) of Chapter 1
2 of Part 3 of Division 103 of the Health and Safety Code, including
3 paragraph (2) of subdivision (a) of Section 104557 of the Health
4 and Safety Code, this section, and any regulations promulgated
5 pursuant thereto.

6 (ii) Division 8.6 (commencing with Section 22970) of the
7 Business and Professions Code, and any regulations promulgated
8 pursuant thereto.

9 (D) That the manufacturer has provided all of the following:

10 (i) The name, address, and telephone number of the financial
11 institution where the nonparticipating manufacturer has established
12 the qualified escrow fund required pursuant to Article 3
13 (commencing with Section 104555) of Chapter 1 of Part 3 of
14 Division 103 of the Health and Safety Code and all regulations
15 promulgated thereto.

16 (ii) The account number of the qualified escrow fund and
17 subaccount number for the State of California.

18 (iii) The amount the nonparticipating manufacturer placed in
19 the fund for cigarettes sold in the state during the preceding
20 calendar year, the date and amount of each deposit, and any
21 confirming evidence or verification as may be deemed necessary
22 by the Attorney General.

23 (iv) The amounts and dates of any withdrawal or transfer of
24 funds the nonparticipating manufacturer made at any time from
25 the fund or from any other qualified escrow fund into which it ever
26 made escrow payments pursuant to Article 3 (commencing with
27 Section 104555) of Chapter 1 of Part 3 of Division 103 of the
28 Health and Safety Code and all regulations promulgated thereto.

29 (E) *In the case of a nonparticipating manufacturer located*
30 *outside the United States, that has provided a declaration in a*
31 *form prescribed by the Attorney General from each of its importers*
32 *into the United States of any of its brand families to be sold in*
33 *California, that the importer accepts joint and several liability*
34 *with the nonparticipating manufacturer for all escrow deposits*
35 *due in accordance with Article 3 (commencing with Section*
36 *104555), for all penalties assessed in accordance with Article 3*
37 *(commencing with Section 104555) of Chapter 1 of Part 3 of*
38 *Division 103 of the Health and Safety Code, and for payment of*
39 *all costs and attorney's fees imposed in accordance with this*
40 *section. The declaration shall appoint for the declarant a resident*

1 agent for service of process in California in accordance with
 2 subdivision (f) and that the importer is in compliance with Division
 3 8.6 (commencing with Section 22970) of the Business and
 4 Professions Code.

5 (4) (A) A tobacco product manufacturer may not include a
 6 brand family in its certification unless either of the following is
 7 true:

8 (i) In the case of a participating manufacturer, the participating
 9 manufacturer affirms that the brand family is to be deemed to be
 10 its cigarettes for purposes of calculating its payments under the
 11 MSA for the relevant year, in the volume and shares determined
 12 pursuant to the MSA.

13 (ii) In the case of a nonparticipating manufacturer, the
 14 nonparticipating manufacturer affirms that the brand family is to
 15 be deemed to be its cigarettes for purposes of Article 3
 16 (commencing with Section 104555) of Chapter 1 of Part 3 of
 17 Division 103 of the Health and Safety Code, including paragraph
 18 (2) of subdivision (a) of Section 104557 of the Health and Safety
 19 Code, and any regulations promulgated pursuant thereto and this
 20 section.

21 (B) Nothing in this section shall be construed as limiting or
 22 otherwise affecting the state’s right to maintain that a brand family
 23 constitutes cigarettes of a different tobacco product manufacturer
 24 for purposes of calculating payments under the MSA or for
 25 purposes of Article 3 (commencing with Section 104555) of
 26 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code
 27 and any regulations promulgated pursuant thereto.

28 (5) A tobacco product manufacturer shall maintain all invoices
 29 and documentation of sales and other information relied upon for
 30 the certification for a period of five years, unless otherwise required
 31 by law to maintain them for a longer period of time.

32 (c) Not later than June 30, 2004, the Attorney General shall
 33 develop and publish on its Internet Web site a directory listing of
 34 all tobacco product manufacturers that have provided current,
 35 timely, and accurate certifications conforming to the requirements
 36 of subdivision (b) and all brand families that are listed in the
 37 certifications, except as specified below.

38 (1) The Attorney General may not include or retain in the
 39 directory the name or brand families of ~~any nonparticipating~~
 40 *following:*

1 (A) Any participating manufacturer that fails to provide the
2 required certification or to make a payment calculated by the
3 independent auditor to be due from it under the Master Settlement
4 Agreement except to the extent that it is disputing the payment.

5 (B) Any nonparticipating manufacturer that fails to provide the
6 required certification or whose certification the Attorney General
7 determines is not in compliance with subdivision (b), unless the
8 Attorney General has determined that the violation has been cured
9 to the satisfaction of the Attorney General.

10 (2) Neither a tobacco product manufacturer nor brand family
11 shall be included or retained in the directory if the Attorney General
12 concludes that ~~either~~ any of the following is true:

13 (A) In the case of a nonparticipating manufacturer, any escrow
14 deposit required pursuant to Section 104557 of the Health and
15 Safety Code for any period for any brand family, whether or not
16 listed by the nonparticipating manufacturer, has not been fully
17 deposited into a qualified escrow fund governed by a qualified
18 escrow agreement that has been approved by the Attorney General.

19 (B) Any outstanding final judgment, including interest thereon,
20 for violations of Article 3 (commencing with Section 104555) of
21 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,
22 this section, and any regulations promulgated pursuant thereto,
23 has not been fully satisfied for the brand family and the
24 manufacturer.

25 (C) *In the case of a nonparticipating manufacturer or a tobacco*
26 *product manufacturer that became a participating manufacturer*
27 *after the Master Settlement Agreement execution date, as defined*
28 *by Section II (aa) of the Master Settlement Agreement, by reason*
29 *of the business plan, business history, trade connections, or*
30 *compliance and payment history under the Master Settlement*
31 *Agreement in California or any other state, or the business history,*
32 *trade connections, or compliance and payment history under the*
33 *Master Settlement Agreement in California or any other state of*
34 *any of the principals thereof, the nonparticipating manufacturer*
35 *or the tobacco product manufacturer fails to provide reasonable*
36 *assurance that it will comply with the requirements of this section*
37 *or Article 3 (commencing with Section 104555) of Chapter 1 of*
38 *Part 3 of Division 103 of the Health and Safety Code. As used in*
39 *this section, “reasonable assurance” may include information and*
40 *documentation establishing to the satisfaction of the Attorney*

1 *General that a failure to pay in California or elsewhere was the*
2 *result of a good faith dispute over the payment obligation.*

3 *(D) The manufacturer has knowingly failed to disclose any*
4 *material information required or knowingly made any material*
5 *false statements in the certification of any supporting information*
6 *or documentation provided.*

7 (3) The Attorney General shall update the directory as necessary
8 in order to correct mistakes and to add or remove a tobacco product
9 manufacturer or brand family to keep the directory in conformity
10 with the requirements of this section. The Attorney General shall
11 promptly provide distributors with written notice of each tobacco
12 product manufacturer and brand family that the Attorney General
13 has added to, or excluded or removed from the list.

14 *(A) The Attorney General shall transmit, by electronic mail or*
15 *other practicable means, notice to each distributor of any addition*
16 *to, or removal from, the directory of any tobacco product*
17 *manufacturer or brand family.*

18 *(B) Within seven days of receiving a removal notice from the*
19 *Attorney General, each distributor shall provide:*

20 *(i) A copy of the removal notice to each of the distributor's*
21 *customers who purchased the cigarettes of the tobacco product*
22 *manufacturer or brand family that has been removed from the*
23 *directory.*

24 *(ii) To the board, a list of the customers to whom the removal*
25 *notices were sent.*

26 *(C) (i) The customer shall have 60 days from the effective date*
27 *of the removal notice to sell the affected cigarettes that the*
28 *customer purchased prior to the removal from the directory. On*
29 *and after the 61st day from the effective date of the removal notice,*
30 *the cigarettes are contraband and become subject to seizure and*
31 *destruction under subdivision (e) of Section 30436 and subdivision*
32 *(b) of Section 30449.*

33 *(ii) On and after the 61st day from the effective date of the*
34 *removal notice, the customer shall not sell any cigarettes of a*
35 *tobacco manufacturer or brand family that has been removed from*
36 *the directory.*

37 (4) Every distributor shall provide to the Attorney General and
38 update, as necessary, an electronic mail address for the purpose
39 of receiving any notifications as may be required by this section.
40 *Licensed retailers and wholesalers may also provide electronic*

1 *mail addresses to the Attorney General for the purposes of*
2 *receiving such notifications.*

3 *(5) Newly qualified and elevated-risk nonparticipating*
4 *manufacturers shall post surety bonds as follows:*

5 *(A) Notwithstanding any other law, if a newly qualified*
6 *nonparticipating manufacturer is to be listed in the directory or*
7 *if the Attorney General reasonably determines that any*
8 *nonparticipating manufacturer who has filed a certification*
9 *pursuant to subdivision (b) poses an elevated risk for*
10 *noncompliance with this section or with Article 3 (commencing*
11 *with Section 104555) of Chapter 1 of Part 3 of Division 103 of the*
12 *Health and Safety Code, neither the nonparticipating manufacturer*
13 *nor any of its brand families shall be included in the directory*
14 *unless and until the nonparticipating manufacturer, or its United*
15 *States importer that undertakes joint and several liability for the*
16 *manufacturer's performance in accordance with subparagraph*
17 *(E) of paragraph (3) of subdivision (b), has posted a bond in*
18 *accordance with this section.*

19 *(B) The bonds shall be posted by a corporate surety located*
20 *within the United States in an amount equal to the greater of fifty*
21 *thousand dollars (\$50,000) or the amount of escrow the*
22 *manufacturer in either its current or predecessor form was*
23 *required to deposit as a result of its previous calendar year's sales*
24 *in California. The bond shall be written in favor of the State of*
25 *California and shall be conditioned on the performance by the*
26 *nonparticipating manufacturer, or its United States importer that*
27 *undertakes joint and several liability for the manufacturer's*
28 *performance in accordance with subparagraph (E) of paragraph*
29 *(3) of subdivision (b), of all its duties and obligations under this*
30 *section and Article 3 (commencing with Section 104555) of Chapter*
31 *1 of Part 3 of Division 103 of the Health and Safety Code during*
32 *the year in which the certification is filed and the next succeeding*
33 *calendar year.*

34 *(C) A nonparticipating manufacturer may be deemed to pose*
35 *an elevated risk for noncompliance with this section or Article 3*
36 *(commencing with Section 104555) of Chapter 1 of Part 3 of*
37 *Division 103 of the Health and Safety Code if:*

38 *(i) The nonparticipating manufacturer or any affiliate thereof*
39 *has failed to deposit fully the amount due on an escrow obligation*
40 *with respect to any state at any time during the calendar year or*

1 *within the past three calendar years unless either of the following*
2 *occur:*

3 *(I) The manufacturer did not underdeposit knowingly or*
4 *recklessly and the manufacturer promptly cured the underdeposit*
5 *within 180 days of notice of it.*

6 *(II) The underdeposit or lack of deposit is the subject of a good*
7 *faith dispute as documented to the satisfaction of the Attorney*
8 *General and the underdeposit is cured within 180 days of entry of*
9 *a final order establishing the amount of the required escrow*
10 *deposit.*

11 *(ii) Any state has removed the manufacturer or its brands or*
12 *brand families or an affiliate or any of the affiliate's brands or*
13 *brand families from the state's tobacco directory for*
14 *noncompliance with a state escrow deposit or tobacco tax law at*
15 *any time during the calendar year or within the past three calendar*
16 *years.*

17 *(iii) Any state has litigation pending against, or an unsatisfied*
18 *judgment against, the manufacturer or any affiliate thereof for*
19 *escrow or for penalties, costs, or attorney's fees related to*
20 *noncompliance with state escrow laws.*

21 *(iv) The nonparticipating manufacturer sells its cigarettes or*
22 *tobacco products directly to consumers via remote or other*
23 *non-face-to-face means.*

24 *(v) A state or federal court determining that the nonparticipating*
25 *manufacturer has violated any tobacco tax or tobacco control law*
26 *or engaged in unfair business practice or unfair competition.*

27 *(vi) The nonparticipating manufacturer fails to submit or*
28 *complete any required forms, documents, certification, or notices,*
29 *in a timely manner or, to the satisfaction of the Attorney General*
30 *or the State Board of Equalization.*

31 *(D) As used in this section, "newly qualified nonparticipating*
32 *manufacturer" means a nonparticipating manufacturer that has*
33 *not previously been listed in the California Tobacco Directory or*
34 *proposes to sell a brand family that has not been previously listed*
35 *in the directory. Such manufacturers may be required to post a*
36 *bond in accordance with this section for the first three years of*
37 *their listing, or longer if they have been determined to pose an*
38 *elevated risk for noncompliance.*

39 ~~(5)~~

1 (6) The Attorney General shall provide each tobacco product
2 manufacturer that has provided all certifications and other
3 information required by this section with a written acknowledgment
4 of receipt within seven business days after receiving the
5 certifications and other materials. Each tobacco product
6 manufacturer shall provide to each distributor to whom it sells or
7 ships cigarettes, or any tobacco product defined as a cigarette under
8 this section, a copy of each acknowledgment of receipt provided
9 to the manufacturer by the Attorney General. Upon request, the
10 Attorney General shall provide any distributor with a copy of the
11 most recent written acknowledgment of receipt provided to the
12 tobacco product manufacturer.

13 (d) (1) The Attorney General may exclude or remove from the
14 list required by subdivision (c) a tobacco product manufacturer or
15 any of its brand families, based on a determination that the
16 manufacturer is not a participating manufacturer *that has provided*
17 *the required certification and made all payments calculated by*
18 *the independent auditor to be due from it under the Master*
19 *Settlement Agreement, except to the extent that it is disputing the*
20 *payment, and has not made all escrow payments required by*
21 *paragraph (2) of subdivision (a) of Section 104557 of the Health*
22 *and Safety Code, in accordance with that subdivision, or has not*
23 *complied with this section, or any applicable state or federal laws.*
24 Before the exclusion or removal may take effect, the Attorney
25 General shall 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 a petition for writ of mandate pursuant
30 to Section 1085 of the Code of Civil Procedure for that purpose
31 in the Superior Court for the County of Sacramento, or as otherwise
32 provided by law. The filing of the petition shall operate to stay the
33 Attorney General's determination, if the manufacturer has paid
34 into escrow the full amount of any deficiency in the escrow
35 payments that the Attorney General has determined the tobacco
36 product manufacturer was required to have made under paragraph
37 (2) of subdivision (a) of Section 104557 of the Health and Safety
38 Code, including any installment payments required under
39 subdivision (h), pending final resolution of the action.

1 (e) (1) No person shall affix, or cause to be affixed, any tax
2 stamp or meter impression to a package of cigarettes pursuant to
3 subdivision (a) of Section 30163, or pay the tax levied pursuant
4 to Sections 30123 and 30131.2 on a tobacco product defined as a
5 cigarette under this section, unless the brand family of the cigarettes
6 or tobacco product, and the tobacco product manufacturer that
7 makes or sells the cigarettes or tobacco product, are included on
8 the list posted by the Attorney General pursuant to subdivision
9 (c).

10 (2) No person shall sell, offer, or possess for sale in this state,
11 *ship or otherwise distribute into or within this state* or import for
12 personal consumption in this state, cigarettes of a tobacco product
13 manufacturer or brand family not included in the directory.

14 (3) No person shall do either of the following:

15 (A) Sell or distribute cigarettes that the person knows or should
16 know are intended to be distributed in violation of paragraphs (1)
17 and (2).

18 (B) Acquire, hold, own, possess, transport, import, or cause to
19 be imported cigarettes that the person knows or should know are
20 intended to be distributed in violation of paragraphs (1) and (2).

21 (f) (1) Any nonresident or foreign nonparticipating manufacturer
22 that has not registered to do business in the state as a foreign
23 corporation or business entity shall, as a condition precedent to
24 having its brand families listed or retained in the directory, appoint
25 and continually engage without interruption the services of an
26 agent in this state to act as agent for the service of process on whom
27 all process, and any action or proceeding against it concerning or
28 arising out of the enforcement of this section, Article 3
29 (commencing with Section 104555) of Chapter 1 of Part 3 of
30 Division 103 of the Health and Safety Code, and any regulations
31 promulgated pursuant thereto, may be served in any manner
32 authorized by law. This service shall constitute legal and valid
33 service of process on the nonparticipating manufacturer. The
34 nonparticipating manufacturer shall provide the name, address,
35 telephone number, and proof of the appointment and availability
36 of the agent to the satisfaction of the Attorney General. *Any*
37 *nonparticipating manufacturer located outside of the United States*
38 *shall, as an additional condition precedent to having its brand*
39 *families listed or retained in the directory, cause each of its*
40 *importers into the United States of any of its brand families to be*

1 *sold in California to appoint and continually engage without*
2 *interruption the services of an agent in the state in accordance*
3 *with this section. All obligations of a nonparticipating*
4 *manufacturer imposed by this section with respect to appointment*
5 *of its agent shall likewise apply to importers with respect to*
6 *appointment of their agents.*

7 (2) The nonparticipating manufacturer shall provide notice to
8 the Attorney General 30 calendar days prior to termination of the
9 authority of an agent and shall further provide proof to the
10 satisfaction of the Attorney General of the appointment of a new
11 agent no less than five calendar days prior to the termination of
12 an existing agent appointment. In the event an agent terminates an
13 agency appointment, the nonparticipating manufacturer shall notify
14 the Attorney General of said termination within five calendar days
15 and shall include proof to the satisfaction of the Attorney General
16 of the appointment of a new agent.

17 (3) Any nonparticipating manufacturer whose products are sold
18 in this state without appointing or designating an agent as herein
19 required shall be deemed to have appointed the Secretary of State
20 as its agent, as provided in Section 2105 of the Corporations Code,
21 and may be proceeded against in courts of this state by service of
22 process upon the Secretary of State. However, the appointment of
23 the Secretary of State pursuant to this provision as the agent for
24 service of process does not satisfy the condition precedent specified
25 in paragraph (1) to having its brand families listed or retained in
26 the directory.

27 (4) *For each nonparticipating manufacturer located outside the*
28 *United States, each importer into the United States of any*
29 *nonparticipating manufacturer's brand families that are sold in*
30 *California shall bear joint and several liability with the*
31 *nonparticipating manufacturer for deposit of all escrow due under*
32 *Section 104557 of the Health and Safety Code, payment of all costs*
33 *and attorney's fees imposed in accordance with Section 104557*
34 *of the Health and Safety Code, and payment of all costs and*
35 *attorney's fees imposed in accordance with this section. Each*
36 *manufacturer and importer shall comply with Division 8.6*
37 *(commencing with Section 22970) of the Business and Professions*
38 *Code. Each manufacturer and its importers shall report in the*
39 *manner, including electronically, as required by the Attorney*
40 *General and the board, all cigarettes and tobacco products,*

1 including, but not limited to, the quantity of each brand family,
2 and shall make all escrow deposits and pay state taxes due before
3 the importer or manufacturer releases the cigarettes and tobacco
4 products for transport to or sale in California. Any manufacturer
5 or importer that fails to file the report as required by the Attorney
6 General or board shall be liable for a civil penalty in an amount
7 not to exceed the greater of either of the following:

8 (A) Five times the retail value of the cigarettes or tobacco
9 products defined as cigarettes under this section that were not
10 reported prior to release for shipment to or sale in California.

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

12 (g) (1) Not later than 25 days after the end of each calendar
13 quarter, and more frequently if so directed by the board or the
14 Attorney General, each distributor shall submit any information
15 as the board or Attorney General requires to facilitate compliance
16 with this section, including, but not limited to, a list by brand
17 family of the total number of cigarettes or in the case of roll your
18 own, the total ounces for which the distributor affixed stamps
19 during the previous calendar month or otherwise paid the tax due
20 for those cigarettes. The distributor shall maintain, and shall make
21 available to the board and the Attorney General, all invoices and
22 documentation of sales of all nonparticipating manufacturer
23 cigarettes and any other information relied upon in reporting to
24 the board and the Attorney General for a period of five years.

25 (2) Notwithstanding Section 30455, the board is authorized to
26 disclose to the Attorney General any information received under
27 this part for purposes of determining compliance with and
28 enforcing the provisions of this section and Article 3 (commencing
29 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
30 the Health and Safety Code, and any regulations promulgated
31 pursuant thereto. The board and Attorney General shall share with
32 each other the information received under this section, and may
33 share that information with other federal, state, or local agencies,
34 only for purposes of enforcement of this section, Article 3
35 (commencing with Section 104555) of Chapter 1 of Part 3 of
36 Division 103 of the Health and Safety Code, and any regulations
37 promulgated pursuant thereto, or corresponding laws of other
38 states.

39 (3) At any time, the Attorney General may require from the
40 nonparticipating manufacturer proof from the financial institution

1 in which the manufacturer has established a qualified escrow fund
2 for the purpose of compliance with Article 3 (commencing with
3 Section 104555) of Chapter 1 of Part 3 of Division 103 of the
4 Health and Safety Code, and any regulations promulgated pursuant
5 thereto, of the amount of money in the fund being held on behalf
6 of the state and the dates of deposits, and listing the amounts of
7 all withdrawals from the fund and the dates thereof.

8 (4) In addition to the information required to be submitted
9 pursuant to this section or Article 3 (commencing with Section
10 104555) of Chapter 1 of Part 3 of Division 103 of the Health and
11 Safety Code and any regulations promulgated pursuant thereto,
12 the board or the Attorney General may require a retailer,
13 wholesaler, distributor, *importer*, or tobacco product manufacturer
14 to submit any additional information, including, but not limited
15 to, samples of the packaging or labeling of each brand family, as
16 is necessary to enable the Attorney General to determine whether
17 a tobacco product manufacturer *or importer has complied*, is in
18 compliance, *and will continue in compliance* with this section, or
19 Article 3 (commencing with Section 104555) of Chapter 1 of Part
20 3 of Division 103 of the Health and Safety Code, and any
21 regulations promulgated pursuant thereto.

22 (h) To promote compliance with this section, the Attorney
23 General may promulgate regulations requiring a tobacco product
24 manufacturer subject to the requirements of paragraph (2) of
25 subdivision (a) of Section 104557 to make the escrow deposits
26 required in quarterly or other specified installments during the year
27 in which the sales covered by the deposits are made. The Attorney
28 General may require production of information sufficient to enable
29 the Attorney General to determine the adequacy of the amount of
30 the installment deposit.

31 (i) (1) In addition to any other civil or criminal penalty provided
32 by law, upon a finding that a ~~distributor~~ *person* has violated
33 subdivision (e), or paragraph (1) of subdivision (g), the board may
34 take the following actions:

35 (A) In the case of the first offense, the board may revoke or
36 suspend the license or licenses ~~of the distributor~~ *issued to the*
37 *person by the board*, pursuant to the procedures applicable to the
38 revocation of a license set forth in ~~Section~~ *Sections 30148 and*
39 *30158, and Section 22980.3 of the Business and Professions Code.*

1 *Each stamp affixed and each sale or offer to sell cigarettes in*
2 *violation of subdivision (e) shall constitute a separate violation.*

3 (B) In the case of a second or any subsequent offense, *which*
4 *the board determines to be a violation of subdivision (e) or any*
5 *regulations adopted pursuant to this section*, in addition to the
6 action authorized under subparagraph (A), the board may impose
7 a civil penalty in an amount not to exceed the greater of either of
8 the following:

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

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

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

14 (A) At the time of the violation, the cigarettes or tobacco
15 products claimed to be the subject of the alleged violation belonged
16 to a brand family that was included on the list required by
17 subdivision (c).

18 (B) At the time of the violation, the distributor possessed a copy
19 of the Attorney General's most recent written acknowledgment of
20 receipt of the certifications and other information required as a
21 condition of including the brand family on the list required by
22 subdivision (c).

23 (3) The defense described in subparagraph (B) of paragraph (2)
24 is not available to a distributor if, at the time of the violation, the
25 Attorney General had provided the distributor with written notice
26 that the brand family had been excluded or removed from the list
27 required by subdivision (c), or the distributor failed to provide the
28 Attorney General with a current address for the receipt of written
29 notice through electronic mail as required by paragraph (4) of
30 subdivision (c).

31 (4) A violation of paragraph (3) of subdivision (e) shall
32 constitute a misdemeanor.

33 (j) If a distributor affixes a stamp or meter impression to a
34 package of cigarettes under subdivision (a) of Section 30163, or
35 pays the tax levied under Sections 30123 and 30131.2 on a tobacco
36 product defined as a cigarette under this section, during the period
37 between the date on which the brand family of the cigarettes or
38 tobacco product was excluded or removed from the list required
39 by subdivision (c) and the date on which the distributor received

1 notice of the exclusion or removal under paragraph (4) of
2 subdivision (c), then both of the following shall apply:

3 (1) The distributor shall be entitled to a credit for the tax paid
4 by the distributor with respect to the cigarette or tobacco product
5 to which the stamp or meter impression was affixed, or the tax
6 paid during that period. The distributor shall comply with
7 regulations prescribed by the board regarding refunds and credits
8 that are adopted pursuant to Section 30177.5. If the distributor has
9 sold the cigarette or tobacco product to a wholesaler or retailer,
10 and has received payment from the wholesaler or retailer, the
11 distributor shall provide the credit to the wholesaler or retailer.

12 (2) The brand family may not be included on or restored to the
13 list until the tobacco product manufacturer has reimbursed the
14 distributor for the cost to the distributor of the cigarettes or tobacco
15 product to which the stamp or meter impression was affixed, or
16 the tax paid, during that period.

17 (k) 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 (b).

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
26 Code, if applicable to the manufacturer.

27 (4) That it has complied with subdivision (b), or with paragraph
28 (1) of subdivision (g), if applicable to the manufacturer.

29 (l) A violation of subdivision (e) shall constitute unfair
30 competition under Section 17200 of the Business and Professions
31 Code.

32 (m) No person shall be issued a distributor's license, pursuant
33 to Section 30140, unless that person has certified in writing that
34 the person will comply fully with this section. Any person who
35 makes a certification pursuant to this subdivision that asserts the
36 truth of any material matter that he or she knows to be false is
37 guilty of a misdemeanor punishable by imprisonment of up to one
38 year in the county jail, or a fine of not more than one thousand
39 dollars (\$1,000), or both the imprisonment and the fine.

1 (n) For the year 2003, if the effective date of the act that added
2 this section is later than March 16, 2003, the first report of
3 distributors required by paragraph (1) of subdivision (g) shall be
4 due 30 days after that effective date, the certifications by a tobacco
5 product manufacturer described in subdivision (b) shall be due 45
6 days after that effective date, and the directory described in
7 subdivision (c) shall be published or made available within 90
8 days after that effective date.

9 (o) The Attorney General may adopt rules and regulations to
10 implement this section. The rules and regulations may establish
11 procedures for including in the list described in subdivision (c)
12 tobacco product manufacturers that are not participating
13 manufacturers and were not required to make escrow payments
14 under paragraph (2) of subdivision (a) of Section 104557 of the
15 Health and Safety Code, for sales made during any preceding
16 calendar year, and brand families of those manufacturers. The rules
17 and regulations may also establish procedures for seizure and
18 destruction of cigarettes forfeited to the state pursuant to Section
19 30436 or Section 30449, including, but not limited to, the state
20 facilities that may be used for the destruction of contraband
21 cigarettes. Nothing in this section shall affect the authority of local
22 law enforcement and local government officials to seize and destroy
23 contraband under existing state or local law. The regulations
24 adopted to effect the purposes of this section are emergency
25 regulations in accordance with Chapter 3.5 (commencing with
26 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
27 Code. For purposes of that chapter, including Section 11349.6 of
28 the Government Code, the adoption of the regulations shall be
29 considered by the Office of Administrative Law to be necessary
30 for the immediate preservation of the public peace, health and
31 safety, and general welfare. Notwithstanding subdivision (e) of
32 Section 11346.1 of the Government Code, the regulations shall be
33 repealed 180 days after their effective date, unless the adopting
34 authority or agency complies with that chapter, as provided in
35 subdivision (e) of Section 11346.1 of the Government Code.

36 (p) In any action brought by the state to enforce this section,
37 the state shall be entitled to recover the costs of investigation,
38 expert witness fees, costs of the action, and reasonable attorney's
39 fees.

1 *(q) The Attorney General or his or her authorized representative*
2 *shall have the authority to:*

3 *(1) Conduct audits and investigations of the following:*

4 *(A) A nonparticipating manufacturer and its importers or a*
5 *tobacco product manufacturer as defined in subdivision (i) of*
6 *Section 104556 of the Health and Safety Code that became a*
7 *participating manufacturer after the Master Settlement execution*
8 *date, as defined in Section II (aa) of the Master Settlement*
9 *Agreement, and its importers.*

10 *(B) Exclusive distributors, retailers, stamping agents, and*
11 *wholesalers, as defined in Division 8.6 (commencing with Section*
12 *22970) of the Business and Profession Code, and this part.*

13 *(C) Persons or entities engaged in delivery sales as defined in*
14 *Section 22963 of the Business and Professions Code.*

15 *(2) Upon reasonable cause to believe that a violation of this*
16 *article or of Article 3 (commencing with Section 104555) of*
17 *Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,*
18 *or of Section 22963 of the Business and Professions Code, or of*
19 *Section 30101.7, has occurred or is reasonably likely to occur,*
20 *issue subpoenas, compel the attendance of witnesses, administer*
21 *oaths, certify to official acts, take depositions within and without*
22 *the state, as now provided by law, and compel the production of*
23 *pertinent books, payrolls, accounts, papers, records, documents,*
24 *and testimony relevant to investigations. If a person refuses,*
25 *without good cause, to be examined or to answer a legal and*
26 *pertinent question, or to produce a document or other evidence*
27 *when ordered to do so by the Attorney General or his or her*
28 *authorized representative, the Attorney General or his or her*
29 *authorized representative may apply to the superior court of the*
30 *county where the person is in attendance or located, upon affidavit,*
31 *for an order returnable in no less than two nor more than five*
32 *days, directing the person to show cause why he or she should not*
33 *be examined, answer a legal or pertinent question or produce a*
34 *document, record or other evidence. Upon the hearing, if the court*
35 *determines that the person, without good cause, has refused to be*
36 *examined or to answer legal or pertinent questions, or to produce*
37 *a document, record, or other evidence, the court may order*
38 *compliance with the subpoena and assess all costs and reasonable*
39 *attorney's fees against the person. If the motion for an order is*
40 *granted and the person thereafter fails to comply with the order,*

1 *the court may make orders as are provided for by law. Subpoenas*
 2 *shall be served and witness fees and mileage paid as allowed in*
 3 *civil cases in the courts of the State of California.*

4 *(r) In any action regarding a violation of this article or of Article*
 5 *3 (commencing with Section 104555) of Chapter 1 of Part 3 of*
 6 *Division 103 of the Health and Safety Code, or of Section 22963*
 7 *of the Business and Professions Code, or of Section 30101.7, or*
 8 *of Section 17200 of the Business and Professions Code, reports*
 9 *submitted to the board pursuant to Section 30182 or Section*
 10 *22978.1, 22978.4, or 22978.5 of the Business and Professions*
 11 *Code, shall be admissible in evidence and shall be presumed to*
 12 *accurately state the number of cigarettes stamped during the time*
 13 *period by the stamping agent that submitted the report absent a*
 14 *contrary showing by the nonparticipating manufacturer or*
 15 *importer. Nothing in this section shall be construed as limiting or*
 16 *otherwise affecting the right of the state to maintain that reports*
 17 *are incorrect or do not accurately reflect a nonparticipating*
 18 *manufacturer’s sales in the state during the time period in question,*
 19 *and the presumption shall not apply in the event the state does so*
 20 *maintain.*

21 *(s) In any action regarding a violation of this article or of Article*
 22 *3 (commencing with Section 104555) of Chapter 1 of Part 3 of*
 23 *Division 103 of the Health and Safety Code, or of Section 22963*
 24 *of the Business and Professions Code, or of Section 30101.7, or*
 25 *of Section 17200 of the Business and Professions Code, sufficient*
 26 *notice of the action to the alleged violator shall be given by*
 27 *complaint written in the English language. The state shall not be*
 28 *required to bear any expense of translating complaint into another*
 29 *language.*

30 ~~(t)~~

31 *(t) Unless otherwise expressly provided, the remedies or*
 32 *penalties provided by this section are cumulative to each other and*
 33 *to the remedies or penalties available under all other laws of this*
 34 *state.*

35 SEC. 8. Section 30165.2 is added to the Revenue and Taxation
 36 Code, to read:

37 30165.2. (a) For purposes of this section, “applicable returns”
 38 means the following returns or reports relating to cigarettes that
 39 are filed or required to be filed with the Alcohol and Tobacco Tax

1 and Trade Bureau of the United States Department of Treasury,
2 after the effective date of the act adding this section:

3 (1) Alcohol and Tobacco Tax and Trade Bureau Form 5000.24.

4 (2) Alcohol and Tobacco Tax and Trade Bureau Form 5210.5.

5 (3) Alcohol and Tobacco Tax and Trade Bureau Form 5220.6.

6 (4) Any successor returns or reports intended to replace Alcohol
7 and Tobacco Tax and Trade Bureau Form 5000.24, 5210.5, or
8 5220.6.

9 (b) As a condition of selling cigarettes in the state, every tobacco
10 product manufacturer, as defined in paragraph (9) of subdivision
11 (a) of Section 30165.1, whose cigarettes are to be sold in the state
12 whether directly or through a distributor, importer, retailer, or
13 similar intermediary or intermediaries shall, at the election of
14 tobacco product manufacturer, either:

15 (1) Submit to the Attorney General a true and correct copy of
16 each and every applicable return of tobacco product manufacturer.

17 (2) Submit to the United States Treasury a request or consent
18 under Internal Revenue Code Section 6103(c) authorizing the
19 Alcohol and Tobacco Tax and Trade Bureau to disclose the
20 applicable returns of manufacturer to the Attorney General. A
21 foreign tobacco product manufacturer whose cigarettes are
22 imported into the United States by an importer or importers shall
23 submit, or shall cause each of its importers to submit, to the Attorney
24 General each and every applicable return that includes any
25 information about cigarettes of that foreign tobacco product
26 manufacturer imported into the United States. The Attorney
27 General shall not disclose any applicable returns or any information
28 contained therein, except as necessary to carry out the functions
29 and duties of the Department of Justice or State Board of
30 Equalization, or as provided in subdivision (c).

31 (c) The Attorney General may compile data on cigarette
32 shipments from the applicable returns and may share data with
33 other states that are signatories to the Master Settlement
34 Agreement, as defined paragraph (5) of subdivision (a) of Section
35 30165.1, provided that states impose protections against disclosure
36 of the applicable returns, or any information from applicable
37 returns, that are equivalent to the protections provided under
38 subdivision (b).

39 (d) A tobacco product manufacturer who does not comply with
40 the requirements of subdivision (b) shall, after 30 days notice by

1 the state to the tobacco product manufacturer of the failure to
2 comply, be removed, along with its brand families, from the
3 tobacco directory unless the tobacco product manufacturer has
4 brought itself into compliance by the end of the 30-day period.

5 (e) (1) Any tobacco manufacturer or importer that intentionally
6 provides any applicable return containing materially false
7 information shall be liable for a civil penalty in an amount not to
8 exceed the greater of either of the following:

9 (A) Five times the retail value of the cigarettes or tobacco
10 products defined as cigarettes under this section and about which
11 false information was provided.

12 (B) Five thousand dollars (\$5,000).

13 (2) The provisions of each applicable return containing one or
14 more false statements shall constitute a separate offense.

15 (f) The Attorney General may promulgate regulations to
16 implement and carry out this section.

17 SEC. 9. 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:

21 (a) Cigarettes or tobacco products transported upon the
22 highways, roads, or streets of this state in violation of Section
23 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, together
32 with the cigarettes, tobacco products, money or other contents
33 thereof, that has been loaded, in whole or in part, with packages
34 of cigarettes that do not have California cigarette tax stamps or
35 meter impressions affixed or tobacco products upon which the
36 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 *of a tobacco product*
2 *manufacturer or its brand families that do not appear on the*
3 *directory maintained by the Attorney General pursuant to*
4 *subdivision (c) of Section 30165.1 or to which are affixed*
5 California cigarette tax stamps or meter impressions, or for which
6 tax is paid pursuant to Sections 30123 and 30131.2, in violation
7 of Section 30165.1, regardless of whether the violation is subject
8 to the defense described in paragraph (2) of subdivision (i) of
9 Section 30165.1.

10 SEC. 10. The amendments made to paragraph (2) of subdivision
11 (e) of Section 30165.1 of the Revenue and Taxation Code by
12 Section 7 of this act are declaratory of, and do not constitute a
13 change in, existing law.

14 SEC. 11. Nothing in this act preempts or supersedes any local
15 tobacco control law or ordinance other than those laws or
16 ordinances that are related to the collection of state taxes. Local
17 licensing laws or ordinances may provide for the suspension or
18 revocation of licenses issued by a local government or agency for
19 a violation of the laws imposed under the Cigarette and Tobacco
20 Products Tax Law (Part 13 (commencing with Section 30001) of
21 Division 2 of the Revenue and Taxation Code).

22 SEC. 12. The provisions of this act are severable. If any
23 provision of this act or its application is held invalid, that invalidity
24 does not affect other provisions of applications that can be given
25 effect without the invalid provision or application.

26 SEC. 13. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

O