

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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~~ *Sections 30165.2 and 30165.3* to, the Revenue and Taxation Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

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

(1) The California Cigarette and Tobacco Products Licensing Act of 2003 (*hereafter the act*) 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.

~~This~~*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 ~~whit~~ *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~~

~~(3) 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, and would authorize the Attorney General to assess a fee on tobacco products manufacturers to recover its costs of investigating and processing certifications or other specified costs. 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.

This bill would, unless otherwise provided by specified federal laws, require a person engaging in non-face-to-face sales of cigarettes to comply with specified requirements and to make reports to the Attorney General, and would impose civil penalties, as provided.

(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 (4) *Waive any sovereign immunity defense that may apply to*
23 *any enforcement action brought by the Attorney General or the*
24 *board to enforce this division, Sections 104555 to 104557,*
25 *inclusive, of the Health and Safety Code, Section 30165.1 of the*
26 *Revenue and Taxation Code, and regulations adopted thereto. Any*
27 *waiver shall be express and in writing, in a form and manner*
28 *acceptable to the Attorney General and the board.*

1 (5) Provide a copy of any valid, corresponding federal permit
2 issued by the United States Treasury, Alcohol and Tobacco Tax
3 and Trade Bureau.

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

9 (1) Certify to the board that it is a “participating manufacturer”
10 as defined in subsection II(jj) of the “Master Settlement
11 Agreement” (MSA), or is in full compliance with paragraph (2)
12 of subdivision (a) of Section 104557 of the Health and Safety
13 Code, *Section 30165.1 of the Revenue and Taxation Code, and*
14 *regulations adopted pursuant thereto.* Any person who makes a
15 certification pursuant to this subdivision that asserts the truth of
16 any material matter that he or she knows to be false is guilty of a
17 misdemeanor punishable by imprisonment of up to one year in the
18 county jail, or a fine of not more than one thousand dollars
19 (\$1,000), or both the imprisonment and the fine.

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

23 (A) Brand families that are to be counted, in the unit volume
24 and market shares determined pursuant to subsections II(z) and
25 II(mm) of the MSA and Exhibit E thereto, in calculating the
26 manufacturer’s annual payments under the MSA.

27 (B) Brand families that are to be counted in calculating the
28 manufacturer’s escrow deposits under paragraph (2) of subdivision
29 (a) of Section 104557 of the Health and Safety Code.

30 (C) The manufacturer or importer shall update the list whenever
31 a new or additional brand is manufactured or imported or a listed
32 brand is no longer manufactured or imported.

33 (c) The board may not grant or permit the maintenance of a
34 license to any manufacturer or an importer of cigarettes that does
35 not affirmatively certify, both at the time the license is granted and
36 annually thereafter, that all packages of cigarettes manufactured
37 or imported by that person and distributed in this state fully comply
38 with subdivision (b) of Section 30163 of the Revenue and Taxation
39 Code, and that the cigarettes contained in those packages are the
40 subject of filed reports that fully comply with all requirements of

1 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.
2 1331 et seq.) for the reporting of ingredients added to cigarettes.
3 For purposes of the federal Cigarette Labeling and Advertising
4 Act requirement, cigars weighing three pounds or less per 1,000
5 are excluded from the definition of cigarette.

6 (d) A license issued to a manufacturer or an importer under this
7 division is only valid with respect to the manufacturer or importer
8 designated on the license and may not be transferred or assigned
9 to another manufacturer or importer.

10 (e) Any manufacturer or importer that is issued a license under
11 this division that does not commence business in the manner
12 specified or designated in the license, ceases to do business in the
13 manner specified or designated in the license, or is notified that
14 the license is suspended or revoked, shall immediately surrender
15 that license to the board.

16 (f) (1) Any manufacturer or any importer who is denied a
17 license may petition for a redetermination of the board's denial of
18 the license within 30 days after service upon that manufacturer or
19 that importer of the notice of the denial of the license. If a petition
20 for redetermination is not filed within the 30-day period, the
21 determination of denial becomes final at the expiration of the
22 30-day period.

23 (2) Every petition for redetermination shall be in writing and
24 shall state the specific grounds upon which the petition is founded.
25 The petition may be amended to state additional grounds at anytime
26 prior to the date on which the board issues its order or decision
27 upon the petition for redetermination.

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

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

38 (5) Any notice required by this subdivision shall be served
39 personally or by mail. If by mail, the notice shall be placed in a
40 sealed envelope, with postage paid, addressed to the manufacturer

1 or the importer at the address as it appears in the records of the
2 board. The giving of notice shall be deemed complete at the time
3 of deposit of the notice in the United States Post Office, or a
4 mailbox, subpost office, substation or mail chute or other facility
5 regularly maintained or provided by the United States Postal
6 Service, without extension of time for any reason. In lieu of
7 mailing, a notice may be served personally by delivering to the
8 person to be served and service shall be deemed complete at the
9 time of the delivery. Personal service to a corporation may be made
10 by delivery of a notice to any person designated in the Code of
11 Civil Procedure to be served for the corporation with summons
12 and complaint in a civil action.

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

15 22980. (a) (1) Any peace officer, or board employee granted
16 limited peace officer status pursuant to paragraph (6) of subdivision
17 (a) of Section 830.11 of the Penal Code, upon presenting
18 appropriate credentials, is authorized to enter any place as described
19 in paragraph (3) and to conduct inspections in accordance with the
20 following paragraphs, inclusive.

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

24 (3) Inspections may be at any place at which cigarettes or
25 tobacco products are sold, produced, or stored or at any site where
26 evidence of activities involving evasion of cigarette or tobacco
27 products tax and violations of Section 30165.1 of the Revenue and
28 Taxation Code may be discovered.

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

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

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

35 22980.1. (a) No manufacturer or importer shall sell cigarettes
36 or tobacco products to a distributor, wholesaler, retailer, or any
37 other person who is not licensed pursuant to this division or whose
38 license has been suspended or revoked.

39 (b) (1) Except as provided in paragraph (2), no distributor or
40 wholesaler shall sell cigarettes or tobacco products to a retailer,

1 wholesaler, distributor, or any other person who is not licensed
2 pursuant to this division or whose license has been suspended or
3 revoked.

4 (2) This subdivision does not apply to any sale of cigarettes or
5 tobacco products by a distributor, wholesaler, or any other person
6 to a retailer, wholesaler, distributor, or any other person that the
7 state, pursuant to the United States Constitution, the laws of the
8 United States, or the California Constitution, is prohibited from
9 regulating.

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

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

17 (2) Notwithstanding subdivision (c), no distributor shall purchase
18 cigarettes or tobacco products from any person who is required to
19 be licensed pursuant to this division but who is not licensed or
20 whose license has been suspended or revoked.

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

24 (f) No manufacturer, distributor, wholesaler, or importer may
25 sell cigarette or tobacco products to any retailer or wholesaler
26 whose license has been suspended or revoked unless all outstanding
27 debts of that retailer or wholesaler that are owed to a wholesaler
28 or distributor for cigarette or tobacco products are paid and the
29 license of that retailer or wholesaler has been reinstated by the
30 board. Any payment received from a retailer or wholesaler shall
31 be credited first to the outstanding debt for cigarettes or tobacco
32 products and must be immediately reported to the board. The board
33 shall determine the debt status of a suspended retailer or wholesaler
34 licensee 25 days prior to the reinstatement of the license.

35 (g) No importer, distributor, or wholesaler, or distributor
36 functioning as a wholesaler, or retailer, shall purchase, obtain, or
37 otherwise acquire any package of cigarettes to which a stamp or
38 meter impression may not be affixed in accordance with
39 subdivision (b) of Section 30163 or subdivision (e) of Section
40 30165.1 of the Revenue and Taxation Code, or any cigarettes

1 obtained from a manufacturer or importer that cannot demonstrate
2 full compliance with all requirements of the federal Cigarette
3 Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for
4 the reporting of ingredients added to cigarettes.

5 (h) (1) Failure to comply with the provisions of this section
6 shall be a misdemeanor subject to penalties pursuant to Section
7 22981.

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

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

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

16 104557.1. (a) Notwithstanding subdivision (b) of Section
17 104557, a tobacco product manufacturer that elects to place funds
18 into escrow pursuant to paragraph (2) of subdivision (a) of Section
19 104557 may make an irrevocable assignment of its interest in the
20 funds to the benefit of the State of California. Such assignment
21 shall be permanent and apply to all funds in the subject escrow
22 account or that may subsequently come into the account, including
23 those deposited into the escrow account prior to the assignment
24 being executed, those deposited into the escrow account after the
25 assignment is executed, and interest or other appreciation on the
26 funds. The tobacco product manufacturer, the Attorney General,
27 and the financial institution where the escrow amount is maintained
28 may make such amendments to the qualified escrow account
29 agreement as may be necessary to effectuate an assignment of
30 rights executed pursuant to this subdivision or a withdrawal of
31 funds from the escrow amount pursuant to subdivision (b). An
32 assignment of rights executed pursuant to this section shall be in
33 writing, signed by a duly authorized representative of the tobacco
34 products manufacturer making the assignment, and shall become
35 effective upon delivery of the assignment to the Attorney General
36 and the financial institution where the escrow account is
37 maintained.

38 (b) Notwithstanding subdivision (b) of Section 104557, any
39 escrow funds assigned to the state pursuant to subdivision (a) shall
40 be withdrawn by the state upon the request by the Treasurer and

1 approval of the Attorney General. Any funds withdrawn pursuant
2 to this subdivision shall be deposited into the General Fund and
3 shall be calculated on a dollar-for-dollar basis as a credit against
4 any judgment or settlement described in subdivision (b) of Section
5 104557 which may be obtained against the tobacco product
6 manufacturer who has assigned the funds in the subject escrow
7 account. Nothing in this section shall be construed to relieve a
8 tobacco product manufacturer from any past, current, or future
9 obligations the manufacturer may have pursuant to this chapter.

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

11 308.1. (a) Notwithstanding any other law, no person shall sell,
12 offer for sale, distribute, or import any tobacco product commonly
13 referred to as “bidis” or “beedies,” unless that tobacco product is
14 sold, offered for sale, or intended to be sold in a business
15 establishment that prohibits the presence of persons under 18 years
16 of age on its premises.

17 (b) For purposes of this section, “bidis” or “beedies” means any
18 of the following:

19 (1) A product containing tobacco that is wrapped in temburni
20 leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros exculpra*).

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

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

28 ~~SEC. 6. Section 30163 of the Revenue and Taxation Code is~~
29 ~~amended to read:~~

30 ~~30163. (a) Except as otherwise provided in this section, an~~
31 ~~appropriate stamp shall be affixed to, or an appropriate meter~~
32 ~~impression shall be made on each package of cigarettes, or of any~~
33 ~~rolls of tobacco with a cellulose acetate or other integrated filter,~~
34 ~~or which has filler tobacco consisting primarily of flue-cured,~~
35 ~~burley, oriental, or unfermented tobaccos or yields smoking~~
36 ~~characteristics of those tobaccos or is wrapped in paper or any~~
37 ~~substance not containing tobacco, prior to the distribution of the~~
38 ~~cigarettes or the rolls of tobacco.~~

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

1 ~~(1) The package does not comply with all requirements of the~~
2 ~~Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.~~
3 ~~1331 and following) for the placement of labels, warnings, or any~~
4 ~~other information upon a package of cigarettes that is to be sold~~
5 ~~within the United States.~~

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

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

13 ~~(4) The package was imported into the United States after~~
14 ~~January 1, 2000, in violation of Section 5754 of Title 26 of the~~
15 ~~United States Code.~~

16 ~~(5) (A) The package bears a cigarette brand name which is a~~
17 ~~registered U.S. trademark of a participating manufacturer and the~~
18 ~~package was imported by anyone other than the participating~~
19 ~~manufacturer of that cigarette brand.~~

20 ~~(B) For purposes of this paragraph, “participating manufacturer”~~
21 ~~has the same meaning as defined in paragraph (1) of subdivision~~
22 ~~(a) of Section 104557 of the Health and Safety Code and in Section~~
23 ~~H(jj) of the Master Settlement Agreement described in Article 3~~
24 ~~(commencing with Section 104555) of Chapter 1 of Part 3 of~~
25 ~~Division 103 of the Health and Safety Code.~~

26 ~~(e) Pursuant to its authority under Section 30148, the board shall~~
27 ~~revoke the license issued to a distributor that is determined to be~~
28 ~~in violation of this section.~~

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

32 ~~SEC. 7.~~

33 ~~SEC. 6.~~ Section 30165.1 of the Revenue and Taxation Code is
34 amended to read:

35 30165.1. (a) The following definitions shall apply for purposes
36 of this section:

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

38 (2) “Brand family” means all styles of cigarettes sold under the
39 same trademark and differentiated from one another by means of
40 additional modifiers, including, but not limited to, “menthol,”

1 “lights,” “kings,” and “100s” and includes any brand name, alone
2 or in conjunction with any other word, trademark, logo, symbol,
3 motto, selling message, recognizable pattern of colors, or any other
4 indicia of product identification identical or similar to, or
5 identifiable with, a previously known brand of cigarettes.

6 (3) “Cigarette” has the same meaning as in subdivision (d) of
7 Section 104556 of the Health and Safety Code and includes, ~~but~~
8 ~~is not limited to,~~ tobacco products defined as a cigarette under that
9 subdivision ~~and any roll of tobacco with a cellulose acetate or other~~
10 ~~integrated filter, or which has filler tobacco consisting primarily~~
11 ~~of flue-cured, barley, oriental, or unfermented tobaccos or yielding~~
12 ~~smoking characteristics of those tobaccos or is wrapped in paper~~
13 ~~or any substance not containing tobacco, or any such cigarette that~~
14 ~~is distributed within the meaning of Section 30008..~~

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

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

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

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

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

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

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

28 (b) Every tobacco product manufacturer whose cigarettes are
29 sold in this state, whether directly or through a distributor, retailer,
30 or similar intermediary or intermediaries, shall execute and deliver
31 on a form and in the manner prescribed by the Attorney General,
32 information as the Attorney General deems reasonably necessary
33 to make the determinations required by subdivision (c), a
34 certification to the Attorney General no later than the 30th day of
35 April each year that, as of the date of the certification, the tobacco
36 product manufacturer is either a participating manufacturer that
37 has made all payments calculated by the independent auditor to
38 be due under the Master Settlement Agreement, except to the extent
39 the participating manufacturer is disputing any of payments, or is
40 in full compliance with Article 3 (commencing with Section

1 104555) of Chapter 1 of Part 3 of Division 103 of the Health and
2 Safety Code, including all installment payments required by that
3 article and this section, and any regulations promulgated pursuant
4 thereto. *The Attorney General shall calculate the costs of*
5 *investigating and processing the certifications, maintaining the*
6 *directory, providing the notices, and making the determinations*
7 *specified in subdivision (c), and shall assess each tobacco product*
8 *manufacturer a fee sufficient to recover those costs.* Any person
9 who makes a certification pursuant to this subdivision that asserts
10 the truth of any material matter that he or she knows to be false is
11 guilty of a misdemeanor punishable by imprisonment of up to one
12 year in the county jail, or a fine of not more than one thousand
13 dollars (\$1,000), or both the imprisonment and the fine.

14 (1) A participating manufacturer shall include in its certification
15 a complete list of its brand families. The participating manufacturer
16 shall update the list 30 days prior to any addition to or modification
17 of its brand families by executing and delivering a supplemental
18 certification to the Attorney General.

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

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

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

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

30 (D) Identifying by name and address any other manufacturer,
31 including all fabricators or makers of the brand families in the
32 preceding or current calendar year in a form, manner, and detail
33 as required by the Attorney General. The nonparticipating
34 manufacturer shall update the list 30 days prior to any change in
35 a fabricator for any brand family or any addition to or modification
36 of its brand families by executing and delivering a supplemental
37 certification to the Attorney General.

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

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

5 (B) That the nonparticipating manufacturer has done all of the
6 following:

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

10 (ii) Executed a qualified escrow agreement that has been
11 reviewed and approved by the Attorney General and that governs
12 the qualified escrow fund.

13 (iii) If the nonparticipating manufacturer is not the fabricator
14 or maker of the cigarettes, that the escrow agreement, certification,
15 reports, and any other forms required by Article 3 (commencing
16 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
17 the Health and Safety Code and implementing regulations are
18 signed by the company that fabricates or makes the cigarettes and
19 in the manner required by the Attorney General.

20 (C) That the nonparticipating manufacturer is in full compliance
21 with both of the following:

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

27 (ii) Division 8.6 (commencing with Section 22970) of the
28 Business and Professions Code, and any regulations promulgated
29 pursuant thereto.

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

31 (i) The name, address, and telephone number of the financial
32 institution where the nonparticipating manufacturer has established
33 the qualified escrow fund required pursuant to Article 3
34 (commencing with Section 104555) of Chapter 1 of Part 3 of
35 Division 103 of the Health and Safety Code and all regulations
36 promulgated thereto.

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

39 (iii) The amount the nonparticipating manufacturer placed in
40 the fund for cigarettes sold in the state during the preceding

1 calendar year, the date and amount of each deposit, and any
2 confirming evidence or verification as may be deemed necessary
3 by the Attorney General.

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

10 (E) In the case of a nonparticipating manufacturer located
11 outside the United States, that has provided a declaration in a form
12 prescribed by the Attorney General from each of its importers into
13 the United States of any of its brand families to be sold in
14 California, that the importer accepts joint and several liability with
15 the nonparticipating manufacturer for all escrow deposits due in
16 accordance with Article 3 (commencing with Section 104555), for
17 all penalties assessed in accordance with Article 3 (commencing
18 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
19 the Health and Safety Code, and for payment of ~~all costs and~~
20 ~~attorney's fees imposed in accordance with this~~ *all applicable state*
21 *taxes, fees, costs, attorney's fees, penalties, and refunds imposed*
22 *or required under this* section. The declaration shall appoint for
23 the declarant a resident agent for service of process in California
24 in accordance with subdivision (f) and that the importer is in
25 compliance with Division 8.6 (commencing with Section 22970)
26 of the Business and Professions Code.

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

30 (i) In the case of a participating manufacturer, the participating
31 manufacturer affirms that the brand family is to be deemed to be
32 its cigarettes for purposes of calculating its payments under the
33 MSA for the relevant year, in the volume and shares determined
34 pursuant to the MSA.

35 (ii) In the case of a nonparticipating manufacturer, the
36 nonparticipating manufacturer affirms that the brand family is to
37 be deemed to be its cigarettes for purposes of Article 3
38 (commencing with Section 104555) of Chapter 1 of Part 3 of
39 Division 103 of the Health and Safety Code, including paragraph
40 (2) of subdivision (a) of Section 104557 of the Health and Safety

1 Code, and any regulations promulgated pursuant thereto and this
2 section.

3 (B) Nothing in this section shall be construed as limiting or
4 otherwise affecting the state's right to maintain that a brand family
5 constitutes cigarettes of a different tobacco product manufacturer
6 for purposes of calculating payments under the MSA or for
7 purposes of Article 3 (commencing with Section 104555) of
8 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code
9 and any regulations promulgated pursuant thereto.

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

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

20 (1) The Attorney General may not include or retain in the
21 directory the name or brand families of the following:

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

26 (B) Any nonparticipating manufacturer that fails to provide the
27 required certification or whose certification the Attorney General
28 determines is not in compliance with subdivision (b), unless the
29 Attorney General has determined that the violation has been cured
30 to the satisfaction of the Attorney General.

31 (2) Neither a tobacco product manufacturer nor brand family
32 shall be included or retained in the directory if the Attorney General
33 concludes that any of the following is true:

34 (A) In the case of a nonparticipating manufacturer, any escrow
35 deposit required pursuant to Section 104557 of the Health and
36 Safety Code for any period for any brand family, whether or not
37 listed by the nonparticipating manufacturer, has not been fully
38 deposited into a qualified escrow fund governed by a qualified
39 escrow agreement that has been approved by the Attorney General.

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

7 (C) In the case of a nonparticipating manufacturer or a tobacco
8 product manufacturer that became a participating manufacturer
9 after the Master Settlement Agreement execution date, as defined
10 by Section II (aa) of the Master Settlement Agreement, by reason
11 of the business plan, business history, trade connections, or
12 compliance and payment history under the Master Settlement
13 Agreement in California or any other state, or the business history,
14 trade connections, or compliance and payment history under the
15 Master Settlement Agreement in California or any other state of
16 any of the principals thereof, the nonparticipating manufacturer
17 or the tobacco product manufacturer fails to provide reasonable
18 assurance that it will comply with the requirements of this section
19 ~~or~~, *Sections 30165.2 and 30165.3, and Article 3* (commencing
20 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
21 the Health and Safety Code. As used in this section, “reasonable
22 assurance” may include information and documentation
23 establishing to the satisfaction of the Attorney General that a failure
24 to pay in California or elsewhere was the result of a good faith
25 dispute over the payment obligation.

26 (D) The manufacturer has knowingly failed to disclose any
27 material information required or knowingly made any material
28 false statements in the certification of any supporting information
29 or documentation provided.

30 (3) The Attorney General shall update the directory as necessary
31 in order to correct mistakes and to add or remove a tobacco product
32 manufacturer or brand family to keep the directory in conformity
33 with the requirements of this section, *Sections 30165.2 and*
34 *30165.3, and Article 3 (commencing with Section 104555) of*
35 *Chapter 1 of Part 3 of Division 103 of the Health and Safety Code.*
36 The Attorney General shall promptly provide distributors with
37 written notice of each tobacco product manufacturer and brand
38 family that the Attorney General has added to, or excluded or
39 removed from the list.

1 (A) The Attorney General shall transmit, by electronic mail or
2 ~~other practicable means, notice to each distributor of any addition~~
3 *other practicable means, written notice to each licensed distributor*
4 *and any licensed wholesaler or retailer that has provided an*
5 *electronic mail address to the Attorney General of any addition*
6 to, or removal from, the directory of any tobacco product
7 manufacturer or brand family.

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

10 (i) A copy of the removal notice to each of the distributor's
11 customers who purchased, *within two years before the removal,*
12 *the cigarettes of the tobacco product manufacturer or brand family*
13 *that has been removed from the directory.*

14 (ii) To the board, a list of the customers to whom the removal
15 notices were sent.

16 (C) (i) The customer shall have 60 days from the effective date
17 of the removal notice to sell the affected cigarettes that the
18 customer purchased prior to the removal from the directory. On
19 and after the 61st day from the effective date of the removal notice,
20 the cigarettes are contraband and become subject to seizure and
21 destruction under subdivision (e) of Section 30436 and subdivision
22 (b) of Section 30449.

23 (ii) On and after the 61st day from the effective date of the
24 removal notice, the customer shall not sell any cigarettes of a
25 tobacco manufacturer or brand family that has been removed from
26 the directory.

27 (D) *A licensed distributor or wholesaler shall be entitled to a*
28 *refund from a tobacco product manufacturer or the importer of*
29 *cigarettes or tobacco products from a nonparticipating*
30 *manufacturer located outside the United States, of any money paid*
31 *by the licensed distributor to the tobacco product manufacturer*
32 *or importer for any cigarettes of the tobacco product manufacturer*
33 *in the possession of the licensed distributor or wholesaler on the*
34 *effective date of removal from the directory of that tobacco product*
35 *manufacturer or brand family, provided the distributor or*
36 *wholesaler is in full compliance with Division 8.6 (commencing*
37 *with Section 22970) of the Business and Professions Code, and*
38 *any regulations promulgated pursuant thereto.*

39 (i) *The failure of the manufacturer or importer to refund the*
40 *money paid, notwithstanding a written request from the licensed*

1 distributor or wholesaler, shall constitute unfair competition under
2 Section 17200 of the Business and Professions Code.

3 (ii) The board shall revoke any license issued to the
4 manufacturer or importer pursuant to Division 8.6 (commencing
5 with Section 22970) of the Business and Professions Code if the
6 licensed distributor or wholesaler provides the board with a
7 certified copy of a final judgment issued by a state or federal court
8 ordering the manufacturer or importer to make a refund to the
9 distributor or wholesaler, along with an affidavit attesting that
10 the manufacturer or importer has failed to provide a refund,
11 notwithstanding the final judgment. The board shall also file a
12 lien against the manufacturer and the importer for a tax penalty
13 in the same amount as the unpaid refund.

14 (iii) The Attorney General shall not restore the manufacturer
15 or the brand family to the directory, if the licensed distributor or
16 wholesaler provides the Attorney General with an original affidavit
17 and certified copy of a court judgment, as described in clause (ii),
18 above until the refund has been paid to the distributor or
19 wholesaler and the tax lien is paid to the board.

20 (E) A licensed retailer shall be entitled to a refund from a
21 licensed distributor or wholesaler of cigarettes or tobacco products
22 from a tobacco products manufacturer or from the importer of
23 cigarettes or tobacco products from a nonparticipating
24 manufacturer located outside the United States, of any money paid
25 by the licensed retailer to the licensed distributor or wholesaler
26 or importer for any cigarettes or tobacco products in the possession
27 of the licensed retailer on the effective date of removal from the
28 directory of that tobacco product manufacturer or brand family,
29 provided the retailer is in full compliance with Division 8.6
30 (commencing with Section 22970) of the Business and Professions
31 Code, and any regulations promulgated pursuant thereto. The
32 board shall also file a lien against the manufacturer and the
33 importer for a tax penalty in the same amount as the unpaid refund.

34 (i) The failure of the licensed distributor or wholesaler or
35 importer to refund the money paid, notwithstanding a written
36 request from the licensed retailer, shall constitute unfair
37 competition under Section 17200 of the Business and Professions
38 Code.

39 (ii) The board shall revoke any license issued to the distributor
40 or wholesaler or importer pursuant to Division 8.6 (commencing

1 *with Section 22970) of the Business and Professions Code if the*
2 *licensed retailer provides the board with a certified copy of a final*
3 *judgment issued by a state or federal court ordering the distributor*
4 *or wholesaler to make a refund to the retailer, along with an*
5 *affidavit attesting that the distributor or wholesaler has failed to*
6 *provide a refund, notwithstanding the final judgment. The board*
7 *shall also file a lien against the distributor or wholesaler or*
8 *importer for a tax penalty in the same amount as the unpaid refund.*

9 *(iii) The Attorney General shall not restore the manufacturer*
10 *or the brand family to the directory if the licensed retailer provides*
11 *the Attorney General with an original affidavit and certified copy*
12 *of a court judgment, as described in clause (ii) of subparagraph*
13 *(D) above, until the refund has been paid to the distributor or*
14 *wholesaler and the tax lien is paid to the board.*

15 (4) Every distributor *and wholesaler* shall provide to the
16 Attorney General and update, as necessary, an electronic mail
17 address for the purpose of receiving any notifications as may be
18 required by this section. Licensed retailers ~~and wholesalers~~ may
19 also provide electronic mail addresses to the Attorney General for
20 the purposes of receiving such notifications.

21 (5) Newly qualified and elevated-risk nonparticipating
22 manufacturers shall post surety bonds as follows:

23 (A) Notwithstanding any other law, if a newly qualified
24 nonparticipating manufacturer is to be listed in the directory or if
25 the Attorney General reasonably determines that any
26 nonparticipating manufacturer who has filed a certification pursuant
27 to subdivision (b) poses an elevated risk for noncompliance with
28 this section, *Section 30165.2 or 30165.3*, or with Article 3
29 (commencing with Section 104555) of Chapter 1 of Part 3 of
30 Division 103 of the Health and Safety Code, neither the
31 nonparticipating manufacturer nor any of its brand families shall
32 be included in the directory unless and until the nonparticipating
33 manufacturer, or its United States importer that undertakes joint
34 and several liability for the manufacturer's performance in
35 accordance with subparagraph (E) of paragraph (3) of subdivision
36 (b), has posted a bond in accordance with this section.

37 (B) The bonds shall be posted by a corporate surety located
38 within the United States in an amount equal to the greater of fifty
39 thousand dollars (\$50,000) or the amount of escrow the
40 manufacturer in either its current or predecessor form was required

1 to deposit as a result of ~~its previous~~ *the largest of its most recent*
2 *five* calendar year's sales in California. The bond shall be written
3 in favor of the State of California and shall be conditioned on the
4 performance by the nonparticipating manufacturer, or its United
5 States importer that undertakes joint and several liability for the
6 manufacturer's performance in accordance with subparagraph (E)
7 of paragraph (3) of subdivision (b), of all its duties and obligations
8 under this section and Article 3 (commencing with Section 104555)
9 of Chapter 1 of Part 3 of Division 103 of the Health and Safety
10 Code during the year in which the certification is filed and the next
11 succeeding calendar year.

12 (C) A nonparticipating manufacturer may be deemed to pose
13 an elevated risk for noncompliance with this section, *Section*
14 *30165.2 or 30165.3*, or Article 3 (commencing with Section
15 104555) of Chapter 1 of Part 3 of Division 103 of the Health and
16 Safety Code if:

17 (i) The nonparticipating manufacturer or any affiliate thereof
18 has failed to deposit fully the amount due on an escrow obligation
19 with respect to any state at any time during the calendar year or
20 within the past three calendar years unless either of the following
21 occur:

22 (I) The manufacturer did not underdeposit knowingly or
23 recklessly and the manufacturer promptly cured the underdeposit
24 within 180 days of notice of it.

25 (II) The underdeposit or lack of deposit is the subject of a good
26 faith dispute as documented to the satisfaction of the Attorney
27 General and the underdeposit is cured within 180 days of entry of
28 a final order establishing the amount of the required escrow deposit.

29 (ii) Any state has removed the manufacturer or its brands or
30 brand families or an affiliate or any of the affiliate's brands or
31 brand families from the state's tobacco directory for noncompliance
32 with a state escrow deposit or tobacco tax law at any time during
33 the calendar year or within the past three calendar years.

34 (iii) Any state has litigation pending against, or an unsatisfied
35 judgment against, the manufacturer or any affiliate thereof for
36 escrow or for penalties, costs, or attorney's fees related to
37 noncompliance with state escrow laws.

38 (iv) The nonparticipating manufacturer sells its cigarettes or
39 tobacco products directly to consumers via remote or other
40 non-face-to-face means.

1 (v) A state or federal court determining that the nonparticipating
2 manufacturer has violated any tobacco tax or tobacco control law
3 or engaged in unfair business practice or unfair competition.

4 (vi) *Any state has suspended or revoked its license to engage*
5 *in any aspect of tobacco business.*

6 (vii) *Any state or federal court has determined that it failed to*
7 *comply with state or federal law imposing marking, labeling, and*
8 *stamping requirements or requiring information to be affixed to,*
9 *or contained in, the labels, markings, or packaging.*

10 ~~(vi)~~

11 (viii) The nonparticipating manufacturer fails to submit or
12 complete any required forms, documents, certification, or notices,
13 in a timely manner or, to the satisfaction of the Attorney General
14 or the State Board of Equalization.

15 (D) As used in this section, “newly qualified nonparticipating
16 manufacturer” means a nonparticipating manufacturer that has not
17 previously been listed in the California Tobacco Directory or
18 proposes to sell a brand family that has not been previously listed
19 in the directory. Such manufacturers may be required to post a
20 bond in accordance with this section for the first three years of
21 their listing, or longer if they have been determined to pose an
22 elevated risk for noncompliance.

23 (6) The Attorney General shall provide each tobacco product
24 manufacturer that has provided all certifications and other
25 information required by this section with a written acknowledgment
26 of receipt within seven business days after receiving the
27 certifications and other materials. Each tobacco product
28 manufacturer shall provide to each distributor to whom it sells or
29 ships cigarettes, or any tobacco product defined as a cigarette under
30 this section, a copy of each acknowledgment of receipt provided
31 to the manufacturer by the Attorney General. Upon request, the
32 Attorney General shall provide any distributor with a copy of the
33 most recent written acknowledgment of receipt provided to the
34 tobacco product manufacturer.

35 (d) (1) The Attorney General may exclude or remove from the
36 list required by subdivision (c) a tobacco product manufacturer or
37 any of its brand families, based on a determination that the
38 manufacturer is not a participating manufacturer that has provided
39 the required certification and made all payments calculated by the
40 independent auditor to be due from it under the Master Settlement

1 Agreement, except to the extent that it is disputing the payment,
 2 and has not made all escrow payments required by paragraph (2)
 3 of subdivision (a) of Section 104557 of the Health and Safety
 4 Code, in accordance with that subdivision, or has not complied
 5 with this section, ~~or any applicable state or federal laws Section~~
 6 ~~30165.2 or 30165.3, or any state or federal delivery sales laws~~
 7 ~~applicable to sales and distribution of tobacco products in this~~
 8 ~~state.~~ Before the exclusion or removal may take effect, the Attorney
 9 General shall notify the manufacturer of this determination.

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

24 (e) (1) No person shall affix, or cause to be affixed, any tax
 25 stamp or meter impression to a package of cigarettes pursuant to
 26 subdivision (a) of Section 30163, or pay the tax levied pursuant
 27 to Sections 30123 and 30131.2 on a tobacco product defined as a
 28 cigarette under this section, unless the brand family of the cigarettes
 29 or tobacco product, and the tobacco product manufacturer that
 30 makes or sells the cigarettes or tobacco product, are included on
 31 the list posted by the Attorney General pursuant to subdivision
 32 (c).

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

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

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

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

4 (f) (1) Any nonresident or foreign nonparticipating manufacturer
5 that has not registered to do business in the state as a foreign
6 corporation or business entity shall, as a condition precedent to
7 having its brand families listed or retained in the directory, appoint
8 and continually engage without interruption the services of an
9 agent in this state to act as agent for the service of process on whom
10 all process, and any action or proceeding against it concerning or
11 arising out of the enforcement of this section, Article 3
12 (commencing with Section 104555) of Chapter 1 of Part 3 of
13 Division 103 of the Health and Safety Code, and any regulations
14 promulgated pursuant thereto, may be served in any manner
15 authorized by law. This service shall constitute legal and valid
16 service of process on the nonparticipating manufacturer. The
17 nonparticipating manufacturer shall provide the name, address,
18 telephone number, and proof of the appointment and availability
19 of the agent to the satisfaction of the Attorney General. Any
20 nonparticipating manufacturer located outside of the United States
21 shall, as an additional condition precedent to having its brand
22 families listed or retained in the directory, cause each of its
23 importers into the United States of any of its brand families to be
24 sold in California to appoint and continually engage without
25 interruption the services of an agent in the state in accordance with
26 this section. All obligations of a nonparticipating manufacturer
27 imposed by this section with respect to appointment of its agent
28 shall likewise apply to importers with respect to appointment of
29 their agents.

30 (2) The nonparticipating manufacturer shall provide notice to
31 the Attorney General 30 calendar days prior to termination of the
32 authority of an agent and shall further provide proof to the
33 satisfaction of the Attorney General of the appointment of a new
34 agent no less than five calendar days prior to the termination of
35 an existing agent appointment. In the event an agent terminates an
36 agency appointment, the nonparticipating manufacturer shall notify
37 the Attorney General of said termination within five calendar days
38 and shall include proof to the satisfaction of the Attorney General
39 of the appointment of a new agent.

1 (3) Any nonparticipating manufacturer whose products are sold
2 in this state without appointing or designating an agent as herein
3 required shall be deemed to have appointed the Secretary of State
4 as its agent, as provided in Section 2105 of the Corporations Code,
5 and may be proceeded against in courts of this state by service of
6 process upon the Secretary of State. However, the appointment of
7 the Secretary of State pursuant to this provision as the agent for
8 service of process does not satisfy the condition precedent specified
9 in paragraph (1) to having its brand families listed or retained in
10 the directory.

11 (4) For each nonparticipating manufacturer located outside the
12 United States, each importer into the United States of any
13 nonparticipating manufacturer's brand families that are sold in
14 California shall bear joint and several liability with the
15 nonparticipating manufacturer for deposit of all escrow due under
16 Section 104557 of the Health and Safety Code, payment of all
17 costs and attorney's fees imposed in accordance with Section
18 104557 of the Health and Safety Code, and payment of all ~~costs~~
19 ~~and attorney's fees imposed in accordance with~~ *applicable state*
20 *taxes, fees, costs, attorney's fees, penalties, and refunds imposed*
21 *or required* by this section. Each manufacturer and importer shall
22 comply with Division 8.6 (commencing with Section 22970) of
23 the Business and Professions Code. Each manufacturer and its
24 importers shall report in the manner, including electronically, as
25 required by the Attorney General and the board, all cigarettes and
26 tobacco products, including, but not limited to, the quantity of each
27 brand family, and shall make all escrow deposits and pay state
28 taxes due before the importer or manufacturer releases the
29 cigarettes and tobacco products for transport to or sale in
30 California. Any manufacturer or importer that fails to file the report
31 as required by the Attorney General or board shall be liable for a
32 civil penalty in an amount not to exceed the greater of either of
33 the following:

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

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

38 (g) (1) Not later than 25 days after the end of each calendar
39 quarter, and more frequently if so directed by the board or the
40 Attorney General, each distributor shall submit any information

1 as the board or Attorney General requires to facilitate compliance
2 with this section, including, but not limited to, a list by brand
3 family of the total number of cigarettes or in the case of roll your
4 own, the total ounces for which the distributor affixed stamps
5 during the previous calendar month or otherwise paid the tax due
6 for those cigarettes. The distributor shall maintain, and shall make
7 available to the board and the Attorney General, all invoices and
8 documentation of sales of all nonparticipating manufacturer
9 cigarettes and any other information relied upon in reporting to
10 the board and the Attorney General for a period of five years.

11 (2) Notwithstanding Section 30455, the board is authorized to
12 disclose to the Attorney General any information received under
13 this part for purposes of determining compliance with and
14 enforcing the provisions of this section and Article 3 (commencing
15 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
16 the Health and Safety Code, and any regulations promulgated
17 pursuant thereto. The board and Attorney General shall share with
18 each other the information received under this section, and may
19 share that information with other federal, state, or local agencies,
20 only for purposes of enforcement of this section, Article 3
21 (commencing with Section 104555) of Chapter 1 of Part 3 of
22 Division 103 of the Health and Safety Code, and any regulations
23 promulgated pursuant thereto, or corresponding laws of other
24 states.

25 (3) At any time, the Attorney General may require from the
26 nonparticipating manufacturer proof from the financial institution
27 in which the manufacturer has established a qualified escrow fund
28 for the purpose of compliance with Article 3 (commencing with
29 Section 104555) of Chapter 1 of Part 3 of Division 103 of the
30 Health and Safety Code, and any regulations promulgated pursuant
31 thereto, of the amount of money in the fund being held on behalf
32 of the state and the dates of deposits, and listing the amounts of
33 all withdrawals from the fund and the dates thereof.

34 (4) In addition to the information required to be submitted
35 pursuant to this section or Article 3 (commencing with Section
36 104555) of Chapter 1 of Part 3 of Division 103 of the Health and
37 Safety Code and any regulations promulgated pursuant thereto,
38 the board or the Attorney General may require a retailer,
39 wholesaler, distributor, importer, or tobacco product manufacturer
40 to submit any additional information, including, but not limited

1 to, samples of the packaging or labeling of each brand family, as
 2 is necessary to enable the Attorney General to determine whether
 3 a tobacco product manufacturer or importer has complied, is in
 4 compliance, ~~and will continue in compliance with this section, or~~
 5 *and has provided reasonable assurance that it will comply or*
 6 *continue to comply with this section, Sections 30165.2 and 30165.3,*
 7 *and Article 3 (commencing with Section 104555) of Chapter 1 of*
 8 *Part 3 of Division 103 of the Health and Safety Code, and any*
 9 *regulations promulgated pursuant thereto.*

10 (h) To promote compliance with this section, the Attorney
 11 General may promulgate regulations requiring a tobacco product
 12 manufacturer subject to the requirements of paragraph (2) of
 13 subdivision (a) of Section 104557 to make the escrow deposits
 14 required in quarterly or other specified installments during the year
 15 in which the sales covered by the deposits are made. The Attorney
 16 General may require production of information sufficient to enable
 17 the Attorney General to determine the adequacy of the amount of
 18 the installment deposit.

19 (i) (1) In addition to any other civil or criminal penalty provided
 20 by law, upon a finding that a person has violated subdivision (e),
 21 or paragraph (1) of subdivision (g), the board may take the
 22 following actions:

23 (A) In the case of the first offense, the board may revoke or
 24 suspend the license or licenses issued to the person by the board,
 25 pursuant to the procedures applicable to the revocation of a license
 26 set forth in Sections 30148 and 30158, and Section 22980.3 of the
 27 Business and Professions Code. Each stamp affixed and each sale
 28 or offer to sell cigarettes in violation of subdivision (e) shall
 29 constitute a separate violation.

30 (B) In the case of a second or any subsequent offense, which
 31 the board determines to be a violation of subdivision (e) or any
 32 regulations adopted pursuant to this section, in addition to the
 33 action authorized under subparagraph (A), the board may impose
 34 a civil penalty in an amount not to exceed the greater of either of
 35 the following:

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

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

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

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

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

10 (3) The defense described in subparagraph (B) of paragraph (2)
11 is not available to a distributor if, at the time of the violation, the
12 Attorney General had provided the distributor with written notice
13 that the brand family had been excluded or removed from the list
14 required by subdivision (c), or the distributor failed to provide the
15 Attorney General with a current address for the receipt of written
16 notice through electronic mail as required by paragraph (4) of
17 subdivision (c).

18 (4) A violation of paragraph (3) of subdivision (e) shall
19 constitute a misdemeanor.

20 (j) If a distributor affixes a stamp or meter impression to a
21 package of cigarettes under subdivision (a) of Section 30163, or
22 pays the tax levied under Sections 30123 and 30131.2 on a tobacco
23 product defined as a cigarette under this section, during the period
24 between the date on which the brand family of the cigarettes or
25 tobacco product was excluded or removed from the list required
26 by subdivision (c) and the date on which the distributor received
27 notice of the exclusion or removal under paragraph (4) of
28 subdivision (c), then both of the following shall apply:

29 (1) The distributor shall be entitled to a credit for the tax paid
30 by the distributor with respect to the cigarette or tobacco product
31 to which the stamp or meter impression was affixed, or the tax
32 paid during that period. The distributor shall comply with
33 regulations prescribed by the board regarding refunds and credits
34 that are adopted pursuant to Section 30177.5. If the distributor has
35 sold the cigarette or tobacco product to a wholesaler or retailer,
36 and has received payment from the wholesaler or retailer, the
37 distributor shall provide the credit to the wholesaler or retailer.

38 (2) The brand family may not be included on or restored to the
39 list until the tobacco product manufacturer has reimbursed the
40 distributor for the cost to the distributor of the cigarettes or tobacco

1 product to which the stamp or meter impression was affixed, or
2 the tax paid, during that period.

3 (k) Any tobacco product manufacturer that falsely represents
4 any of the following to any person shall be guilty of a misdemeanor
5 for each false representation:

6 (1) Any information required under subdivision (b).

7 (2) That the tobacco product manufacturer is a participating
8 manufacturer.

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

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

15 (l) A violation of subdivision (e) shall constitute unfair
16 competition under Section 17200 of the Business and Professions
17 Code.

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

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

34 (o) The Attorney General may adopt rules and regulations to
35 implement this section *and Sections 30165.2 and 30165.3*. The
36 rules and regulations may establish procedures for including in
37 the list described in subdivision (c) tobacco product manufacturers
38 that are not participating manufacturers and were not required to
39 make escrow payments under paragraph (2) of subdivision (a) of
40 Section 104557 of the Health and Safety Code, for sales made

1 during any preceding calendar year, and brand families of those
2 manufacturers. The rules and regulations may also establish
3 procedures for seizure and destruction of cigarettes forfeited to
4 the state pursuant to Section 30436 or Section 30449, including,
5 but not limited to, the state facilities that may be used for the
6 destruction of contraband cigarettes. Nothing in this section shall
7 affect the authority of local law enforcement and local government
8 officials to seize and destroy contraband under existing state or
9 local law. The regulations adopted to effect the purposes of this
10 section are emergency regulations in accordance with Chapter 3.5
11 (commencing with Section 11340) of Part 1 of Division 3 of Title
12 2 of the Government Code. For purposes of that chapter, including
13 Section 11349.6 of the Government Code, the adoption of the
14 regulations shall be considered by the Office of Administrative
15 Law to be necessary for the immediate preservation of the public
16 peace, health and safety, and general welfare. Notwithstanding
17 subdivision (e) of Section 11346.1 of the Government Code, the
18 regulations shall be repealed 180 days after their effective date,
19 unless the adopting authority or agency complies with that chapter,
20 as provided in subdivision (e) of Section 11346.1 of the
21 Government Code.

22 (p) In any action brought by the state to enforce this section,
23 the state shall be entitled to recover the costs of investigation,
24 expert witness fees, costs of the action, and reasonable attorney's
25 fees.

26 (q) The Attorney General or his or her authorized representative
27 shall have the authority to:

28 (1) Conduct audits and investigations of the following:

29 (A) A nonparticipating manufacturer and its importers or a
30 tobacco product manufacturer as defined in subdivision (i) of
31 Section 104556 of the Health and Safety Code that became a
32 participating manufacturer after the Master Settlement execution
33 date, as defined in Section II (aa) of the Master Settlement
34 Agreement, and its importers.

35 (B) Exclusive distributors, retailers, stamping agents, and
36 wholesalers, as defined in Division 8.6 (commencing with Section
37 22970) of the Business and Profession Code, and this part.

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

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

30 (r) In any action regarding a violation of this article or of Article
31 3 (commencing with Section 104555) of Chapter 1 of Part 3 of
32 Division 103 of the Health and Safety Code, or of Section 22963
33 of the Business and Professions Code, or of Section 30101.7, or
34 of Section 17200 of the Business and Professions Code, reports
35 submitted to the board pursuant to Section 30182 or Section
36 22978.1, 22978.4, or 22978.5 of the Business and Professions
37 Code, shall be admissible in evidence and shall be presumed to
38 accurately state the number of cigarettes stamped during the time
39 period by the stamping agent that submitted the report absent a
40 contrary showing by the nonparticipating manufacturer or importer.

1 Nothing in this section shall be construed as limiting or otherwise
2 affecting the right of the state to maintain that reports are incorrect
3 or do not accurately reflect a nonparticipating manufacturer's sales
4 in the state during the time period in question, and the presumption
5 shall not apply in the event the state does so maintain.

6 (s) In any action regarding a violation of this article or of Article
7 3 (commencing with Section 104555) of Chapter 1 of Part 3 of
8 Division 103 of the Health and Safety Code, or of Section 22963
9 of the Business and Professions Code, or of Section 30101.7, or
10 of Section 17200 of the Business and Professions Code, sufficient
11 notice of the action to the alleged violator shall be given by
12 complaint written in the English language. The state shall not be
13 required to bear any expense of translating complaint into another
14 language.

15 (t) Unless otherwise expressly provided, the remedies or
16 penalties provided by this section are cumulative to each other and
17 to the remedies or penalties available under all other laws of this
18 state.

19 ~~SEC. 8.~~

20 *SEC. 7.* Section 30165.2 is added to the Revenue and Taxation
21 Code, to read:

22 30165.2. (a) For purposes of this section, "applicable returns"
23 means the following returns or reports relating to cigarettes that
24 are filed or required to be filed with the Alcohol and Tobacco Tax
25 and Trade Bureau of the United States Department of Treasury,
26 after the effective date of the act adding this section:

- 27 (1) Alcohol and Tobacco Tax and Trade Bureau Form 5000.24.
28 (2) Alcohol and Tobacco Tax and Trade Bureau Form 5210.5.
29 (3) Alcohol and Tobacco Tax and Trade Bureau Form 5220.6.
30 (4) Any successor returns or reports intended to replace Alcohol
31 and Tobacco Tax and Trade Bureau Form 5000.24, 5210.5, or
32 5220.6.

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

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

1 (2) Submit to the United States Treasury a request or consent
2 under Internal Revenue Code Section 6103(c) authorizing the
3 Alcohol and Tobacco Tax and Trade Bureau to disclose the
4 applicable returns of manufacturer to the Attorney General. A
5 foreign tobacco product manufacturer whose cigarettes are
6 imported into the United States by an importer or importers shall
7 submit, or shall cause each of its importers to submit, to the Attorney
8 General each and every applicable return that includes any
9 information about cigarettes of that foreign tobacco product
10 manufacturer imported into the United States. The Attorney
11 General shall not disclose any applicable returns or any information
12 contained therein, except as necessary to carry out the functions
13 and duties of the Department of Justice or State Board of
14 Equalization, or as provided in subdivision (c).

15 (c) The Attorney General may compile data on cigarette
16 shipments from the applicable returns and may share data with
17 other states that are signatories to the Master Settlement
18 Agreement, as defined paragraph (5) of subdivision (a) of Section
19 30165.1, provided that states impose protections against disclosure
20 of the applicable returns, or any information from applicable
21 returns, that are equivalent to the protections provided under
22 subdivision (b).

23 (d) A tobacco product manufacturer who does not comply with
24 the requirements of subdivision (b) shall, after 30 days notice by
25 the state to the tobacco product manufacturer of the failure to
26 comply, be removed, along with its brand families, from the
27 tobacco directory unless the tobacco product manufacturer has
28 brought itself into compliance by the end of the 30-day period.

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

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

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

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

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

1 SEC. 8. Section 30165.3 is added to the Revenue and Taxation
2 Code, to read:

3 30165.3. (a) Unless the federal Jenkins Act (Chapter 10A
4 (commencing with Section 375) of Title 15 of the United States
5 Code) or the federal Prevent All Cigarette Trafficking Act of 2009
6 (PACT ACT) provides otherwise, every person selling or taking a
7 delivery sale order or engaging in any other non-face-to-face sale
8 of cigarettes, as defined in Section 30101.7, or distributing or
9 engaging in the sale or nonsale distribution of tobacco products,
10 as defined in Section 22963 of the Business and Professions Code,
11 to a person in the state shall do all of the following:

12 (1) Obtain and maintain a license in compliance with Division
13 8.6 (commencing with Section 22970) of the Business and
14 Professions Code and this code, and sell only through other
15 importers, wholesalers, distributors, and retailers so licensed.

16 (2) Comply with state laws imposing escrow or other payment
17 obligations, including, but not limited to, Sections 104555 to
18 104557, inclusive, of the Health and Safety Code.

19 (3) Comply with all marking, labeling, and stamping
20 requirements, including, but not limited to, Section 30163, and
21 any other information required to be affixed to or contained in the
22 labels, markings, or packaging in the form and manner specified
23 by the board or the Attorney General to promote, ensure, monitor,
24 track, trace, or determine compliance with the laws of this state.

25 (4) Comply with Sections 30165.1 and 30165.2.

26 (5) Comply with all other laws of this state generally applicable
27 to sales and distribution of tobacco products that occur in this
28 state.

29 (b) Each delivery seller shall report to the Attorney General
30 and to the board its sales of cigarettes and tobacco products to
31 persons in this state in the form and manner as required by the
32 Attorney General and the board, including, but not limited to, the
33 following information:

34 (1) The name of the manufacturer.

35 (2) The brand families.

36 (3) The quantity and price of each brand family sold.

37 (4) The name and address of the purchaser.

38 (5) The name and address of the person to whom shipment was
39 made.

40 (6) The date of shipment.

1 (7) *The point of departure.*

2 (8) *The name and address of the common carrier, delivery*
3 *service, or other consignee.*

4 (9) *The amount of each and every state or local government*
5 *taxes paid.*

6 (c) *Unless the federal Jenkins Act (Chapter 10A (commencing*
7 *with Section 375) of Title 15 of the United States Code) or the*
8 *federal Prevent All Cigarette Trafficking Act of 2009 (PACT ACT)*
9 *provides otherwise, no person selling or distributing cigarettes or*
10 *tobacco products may engage in the non-face-to-face sale of those*
11 *products to a person in the state unless that person has fully*
12 *complied with subdivision (a) of this section, Section 30101.7, and*
13 *Section 22963 of the Business and Professions Code. For purposes*
14 *of this section, a “seller” is any person, within or outside the state,*
15 *who agrees to sell tobacco products to a customer in this state.*
16 *The United States Postal Service or any other public or private*
17 *postal or package delivery service are not sellers within the*
18 *meaning of this section. A “delivery sales order” is the placement*
19 *of an order for cigarettes or other tobacco products from a*
20 *consumer in this state to a seller where either of the following*
21 *applies:*

22 (1) *The consumer submits the order for the sale by means of a*
23 *telephonic or other method of voice transmission, data transfer*
24 *via computer networks, including the Internet and other online*
25 *services, facsimile, or the mail.*

26 (2) *The cigarettes or other tobacco products are delivered to a*
27 *person in this state by use of the mail or a delivery service.*

28 (d) *A district attorney, city attorney, the Attorney General, or*
29 *the board may assess civil penalties against any person, including*
30 *an individual, firm, corporation, or other entity that violates this*
31 *section according to the following schedule:*

32 (1) *A civil penalty of not less than one thousand dollars (\$1,000)*
33 *and not more than two thousand dollars (\$2,000) for the first*
34 *violation.*

35 (2) *A civil penalty of not less than two thousand five hundred*
36 *dollars (\$2,500) and not more than three thousand five hundred*
37 *dollars (\$3,500) for the second violation.*

38 (3) *A civil penalty of not less than four thousand dollars (\$4,000)*
39 *and not more than five thousand dollars (\$5,000) for the third*
40 *violation within a five-year period.*

1 (4) A civil penalty of not less than five thousand five hundred
2 dollars (\$5,500) and not more than six thousand five hundred
3 dollars (\$6,500) for the fourth violation within a five-year period.

4 (5) A civil penalty of not less than ten thousand dollars (\$10,000)
5 for the fifth or subsequent violation within a five-year period.

6 SEC. 9. Section 30436 of the Revenue and Taxation Code is
7 amended to read:

8 30436. The following property, upon seizure by the board, is
9 hereby forfeited to the state:

10 (a) Cigarettes or tobacco products transported upon the
11 highways, roads, or streets of this state in violation of Section
12 30431 or Section 30432.

13 (b) Cigarettes not contained in packages to which are affixed
14 California cigarette tax stamp or meter impressions or tobacco
15 products upon which the tobacco products surtax has not been
16 paid, which are offered for sale, possessed, kept, stored, or owned
17 by any person with the intent of the person to sell the cigarettes or
18 tobacco products without payment of the taxes imposed by this
19 part.

20 (c) Any cigarette or tobacco product vending machine, together
21 with the cigarettes, tobacco products, money or other contents
22 thereof, that has been loaded, in whole or in part, with packages
23 of cigarettes that do not have California cigarette tax stamps or
24 meter impressions affixed or tobacco products upon which the
25 tobacco products surtax has not been paid.

26 (d) Cigarettes contained in packages to which are affixed
27 California cigarette tax stamps or meter impressions in violation
28 of Section 30163 or packages that fail to meet the marking,
29 labeling, and stamping requirements or provide or affix the
30 information in the manner specified by the board or the Attorney
31 General in violation of Section 30165.3.

32 (e) Cigarettes or tobacco products of a tobacco product
33 manufacturer or its brand families that do not appear on the
34 directory maintained by the Attorney General pursuant to
35 subdivision (c) of Section 30165.1 or to which are affixed
36 California cigarette tax stamps or meter impressions, or for which
37 tax is paid pursuant to Sections 30123 and 30131.2, in violation
38 of Section 30165.1, regardless of whether the violation is subject
39 to the defense described in paragraph (2) of subdivision (i) of
40 Section 30165.1.

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

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

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

17 SEC. 13. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.