

AMENDED IN ASSEMBLY MAY 13, 2010

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 Sections 30165.1 and 30436.1 of, to repeal Section 30163 of, and to add 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.

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

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

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

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

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

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 This bill would require any funds assigned to the state that are withdrawn to be deposited into the General Fund as a credit against any judgment or settlement which may be obtained against the tobacco product manufacturer ~~who~~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

(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~~ *each customer that is a licensed distributor, wholesaler, or retailer who purchased, within 2 years before the removal, the cigarettes of any the tobacco product 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~~ *that* 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~~ *meet requirements specified by the board or the Attorney General.*

(5) Existing law prohibits the offer, sale, distribution, or importation of a tobacco product know 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”~~, *“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.
29 (5) Provide a copy of any valid, corresponding federal permit
30 issued by the United States Treasury, Alcohol and Tobacco Tax
31 and Trade Bureau.
32 (b) In order to be eligible for obtaining and maintaining a license
33 under this division, a manufacturer or importer that is a “tobacco
34 product manufacturer” in subdivision (i) of Section 104556 of the

1 Health and Safety Code, shall do all of the following in the manner
2 specified by the board:

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

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

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

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

24 (C) The manufacturer or importer shall update the list whenever
25 a new or additional brand is manufactured or imported or a listed
26 brand is no longer manufactured or imported.

27 (c) The board may not grant or permit the maintenance of a
28 license to any manufacturer or an importer of cigarettes that does
29 not affirmatively certify, both at the time the license is granted and
30 annually thereafter, that all packages of cigarettes manufactured
31 or imported by that person and distributed in this state fully comply
32 with subdivision (b) of Section 30163 of the Revenue and Taxation
33 Code, and that the cigarettes contained in those packages are the
34 subject of filed reports that fully comply with all requirements of
35 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.
36 1331 et seq.) for the reporting of ingredients added to cigarettes.
37 For purposes of the federal Cigarette Labeling and Advertising
38 Act requirement, cigars weighing three pounds or less per 1,000
39 are excluded from the definition of cigarette.

1 (d) A license issued to a manufacturer or an importer under this
2 division is only valid with respect to the manufacturer or importer
3 designated on the license and may not be transferred or assigned
4 to another manufacturer or importer.

5 (e) Any manufacturer or importer that is issued a license under
6 this division that does not commence business in the manner
7 specified or designated in the license, ceases to do business in the
8 manner specified or designated in the license, or is notified that
9 the license is suspended or revoked, shall immediately surrender
10 that license to the board.

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

18 (2) Every petition for redetermination shall be in writing and
19 shall state the specific grounds upon which the petition is founded.
20 The petition may be amended to state additional grounds at anytime
21 prior to the date on which the board issues its order or decision
22 upon the petition for redetermination.

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

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

33 (5) Any notice required by this subdivision shall be served
34 personally or by mail. If by mail, the notice shall be placed in a
35 sealed envelope, with postage paid, addressed to the manufacturer
36 or the importer at the address as it appears in the records of the
37 board. The giving of notice shall be deemed complete at the time
38 of deposit of the notice in the United States Post Office, or a
39 mailbox, subpost office, substation or mail chute or other facility
40 regularly maintained or provided by the United States Postal

1 Service, without extension of time for any reason. In lieu of
2 mailing, a notice may be served personally by delivering to the
3 person to be served and service shall be deemed complete at the
4 time of the delivery. Personal service to a corporation may be made
5 by delivery of a notice to any person designated in the Code of
6 Civil Procedure to be served for the corporation with summons
7 and complaint in a civil action.

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

10 22980. (a) (1) Any peace officer, or board employee granted
11 limited peace officer status pursuant to paragraph (6) of subdivision
12 (a) of Section 830.11 of the Penal Code, upon presenting
13 appropriate credentials, is authorized to enter any place as described
14 in paragraph (3) and to conduct inspections in accordance with the
15 following paragraphs, inclusive.

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

19 (3) Inspections may be at any place at which cigarettes or
20 tobacco products are sold, produced, or stored or at any site where
21 evidence of activities involving evasion of cigarette or tobacco
22 products tax and violations of Section 30165.1 of the Revenue and
23 Taxation Code may be discovered.

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

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

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

30 22980.1. (a) No manufacturer or importer shall sell cigarettes
31 or tobacco products to a distributor, wholesaler, retailer, or any
32 other person who is not licensed pursuant to this division or whose
33 license has been suspended or revoked.

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

39 (2) This subdivision does not apply to any sale of cigarettes or
40 tobacco products by a distributor, wholesaler, or any other person

1 to a retailer, wholesaler, distributor, or any other person that the
2 state, pursuant to the United States Constitution, the laws of the
3 United States, or the California Constitution, is prohibited from
4 regulating.

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

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

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

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

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

30 (g) No importer, distributor, or wholesaler, or distributor
31 functioning as a wholesaler, or retailer, shall purchase, obtain, or
32 otherwise acquire any package of cigarettes to which a stamp or
33 meter impression may not be affixed in accordance with
34 subdivision (b) of Section 30163 or subdivision (e) of Section
35 30165.1 of the Revenue and Taxation Code, or any cigarettes
36 obtained from a manufacturer or importer that cannot demonstrate
37 full compliance with all requirements of the federal Cigarette
38 Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for
39 the reporting of ingredients added to cigarettes.

1 (h) (1) Failure to comply with the provisions of this section
2 shall be a misdemeanor subject to penalties pursuant to Section
3 22981.

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

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

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

12 104557.1. (a) Notwithstanding subdivision (b) of Section
13 104557, a tobacco product manufacturer that elects to place funds
14 into escrow pursuant to paragraph (2) of subdivision (a) of Section
15 104557 may make an irrevocable assignment of its interest in the
16 funds to the benefit of the State of California. Such assignment
17 shall be permanent and apply to all funds in the subject escrow
18 account or that may subsequently come into the account, including
19 those deposited into the escrow account prior to the assignment
20 being executed, those deposited into the escrow account after the
21 assignment is executed, and interest or other appreciation on the
22 funds. The tobacco product manufacturer, the Attorney General,
23 and the financial institution where the escrow amount is maintained
24 may make such amendments to the qualified escrow account
25 agreement as may be necessary to effectuate an assignment of
26 rights executed pursuant to this subdivision or a withdrawal of
27 funds from the escrow amount pursuant to subdivision (b). An
28 assignment of rights executed pursuant to this section shall be in
29 writing, signed by a duly authorized representative of the tobacco
30 products manufacturer making the assignment, and shall become
31 effective upon delivery of the assignment to the Attorney General
32 and the financial institution where the escrow account is
33 maintained.

34 (b) Notwithstanding subdivision (b) of Section 104557, any
35 escrow funds assigned to the state pursuant to subdivision (a) shall
36 be withdrawn by the state upon the request by the Treasurer and
37 approval of the Attorney General. Any funds withdrawn pursuant
38 to this subdivision shall be deposited into the General Fund and
39 shall be calculated on a dollar-for-dollar basis as a credit against
40 any judgment or settlement described in subdivision (b) of Section

1 104557 which may be obtained against the tobacco product
2 manufacturer who has assigned the funds in the subject escrow
3 account. Nothing in this section shall be construed to relieve a
4 tobacco product manufacturer from any past, current, or future
5 obligations the manufacturer may have pursuant to this chapter.

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

7 308.1. (a) Notwithstanding any other law, no person shall sell,
8 offer for sale, distribute, or import any tobacco product commonly
9 referred to as “bidis” or “beedies,” unless that tobacco product is
10 sold, offered for sale, or intended to be sold in a business
11 establishment that prohibits the presence of persons under 18 years
12 of age on its premises.

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

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

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

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

24 SEC. 6. Section 30165.1 of the Revenue and Taxation Code
25 is amended to read:

26 30165.1. (a) The following definitions shall apply for purposes
27 of this section:

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

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

37 (3) “Cigarette” has the same meaning as in subdivision (d) of
38 Section 104556 of the Health and Safety Code and includes tobacco
39 products defined as a cigarette under that subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (D) Identifying by name and address any other manufacturer,
18 including all fabricators or makers of the brand families in the
19 preceding or current calendar year in a form, manner, and detail
20 as required by the Attorney General. The nonparticipating
21 manufacturer shall update the list 30 days prior to any change in
22 a fabricator for any brand family or any addition to or modification
23 of its brand families by executing and delivering a supplemental
24 certification to the Attorney General.

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

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

31 (B) That the nonparticipating manufacturer has done all of the
32 following:

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

36 (ii) Executed a qualified escrow agreement that has been
37 reviewed and approved by the Attorney General and that governs
38 the qualified escrow fund.

39 (iii) If the nonparticipating manufacturer is not the fabricator
40 or maker of the cigarettes, that the escrow agreement, certification,

1 reports, and any other forms required by Article 3 (commencing
2 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
3 the Health and Safety Code and implementing regulations are
4 signed by the company that fabricates or makes the cigarettes and
5 in the manner required by the Attorney General.

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

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

13 (ii) Division 8.6 (commencing with Section 22970) of the
14 Business and Professions Code, and any regulations promulgated
15 pursuant thereto.

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

17 (i) The name, address, and telephone number of the financial
18 institution where the nonparticipating manufacturer has established
19 the qualified escrow fund required pursuant to Article 3
20 (commencing with Section 104555) of Chapter 1 of Part 3 of
21 Division 103 of the Health and Safety Code and all regulations
22 promulgated thereto.

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

25 (iii) The amount the nonparticipating manufacturer placed in
26 the fund for cigarettes sold in the state during the preceding
27 calendar year, the date and amount of each deposit, and any
28 confirming evidence or verification as may be deemed necessary
29 by the Attorney General.

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

36 (E) In the case of a nonparticipating manufacturer located
37 outside the United States, that has provided a declaration in a form
38 prescribed by the Attorney General from each of its importers into
39 the United States of any of its brand families to be sold in
40 California, that the importer accepts joint and several liability with

1 the nonparticipating manufacturer for all escrow deposits due in
2 accordance with Article 3 (commencing with Section 104555), for
3 all penalties assessed in accordance with Article 3 (commencing
4 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
5 the Health and Safety Code, and for payment of all applicable state
6 taxes, fees, costs, attorney's fees, penalties, and refunds imposed
7 or required under this section. The declaration shall appoint for
8 the declarant a resident agent for service of process in California
9 in accordance with subdivision (f) and that the importer is in
10 compliance with Division 8.6 (commencing with Section 22970)
11 of the Business and Professions Code.

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

15 (i) In the case of a participating manufacturer, the participating
16 manufacturer affirms that the brand family is to be deemed to be
17 its cigarettes for purposes of calculating its payments under the
18 MSA for the relevant year, in the volume and shares determined
19 pursuant to the MSA.

20 (ii) In the case of a nonparticipating manufacturer, the
21 nonparticipating manufacturer affirms that the brand family is to
22 be deemed to be its cigarettes for purposes of Article 3
23 (commencing with Section 104555) of Chapter 1 of Part 3 of
24 Division 103 of the Health and Safety Code, including paragraph
25 (2) of subdivision (a) of Section 104557 of the Health and Safety
26 Code, and any regulations promulgated pursuant thereto and this
27 section.

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

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

39 (c) Not later than June 30, 2004, the Attorney General shall
40 develop and publish on its Internet Web site a directory listing all

1 tobacco product manufacturers that have provided current, timely,
2 and accurate certifications conforming to the requirements of
3 subdivision (b) and all brand families that are listed in the
4 certifications, except as specified below.

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

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

11 (B) Any nonparticipating manufacturer that fails to provide the
12 required certification or whose certification the Attorney General
13 determines is not in compliance with subdivision (b), unless the
14 Attorney General has determined that the violation has been cured
15 to the satisfaction of the Attorney General.

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

19 (A) In the case of a nonparticipating manufacturer, any escrow
20 deposit required pursuant to Section 104557 of the Health and
21 Safety Code for any period for any brand family, whether or not
22 listed by the nonparticipating manufacturer, has not been fully
23 deposited into a qualified escrow fund governed by a qualified
24 escrow agreement that has been approved by the Attorney General.

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

31 (C) In the case of a nonparticipating manufacturer or a tobacco
32 product manufacturer that became a participating manufacturer
33 after the Master Settlement Agreement execution date, as defined
34 by Section II (aa) of the Master Settlement Agreement, by reason
35 of the business plan, business history, trade connections, or
36 compliance and payment history under the Master Settlement
37 Agreement in California or any other state, or the business history,
38 trade connections, or compliance and payment history under the
39 Master Settlement Agreement in California or any other state of
40 any of the principals thereof, the nonparticipating manufacturer

1 or the tobacco product manufacturer fails to provide reasonable
2 assurance that it will comply with the requirements of this section,
3 Sections 30165.2 and 30165.3, and Article 3 (commencing with
4 Section 104555) of Chapter 1 of Part 3 of Division 103 of the
5 Health and Safety Code. As used in this section, “reasonable
6 assurance” may include information and documentation
7 establishing to the satisfaction of the Attorney General that a failure
8 to pay in California or elsewhere was the result of a good faith
9 dispute over the payment obligation.

10 (D) The manufacturer has knowingly failed to disclose any
11 material information required or knowingly made any material
12 false statements in the certification of any supporting information
13 or documentation provided.

14 (3) The Attorney General shall update the directory as necessary
15 in order to correct mistakes and to add or remove a tobacco product
16 manufacturer or brand family to keep the directory in conformity
17 with the requirements of this section, Sections 30165.2 and
18 30165.3, and Article 3 (commencing with Section 104555) of
19 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code.
20 The Attorney General shall promptly provide distributors *and*
21 *wholesalers* with written notice of each tobacco product
22 manufacturer and brand family that the Attorney General has added
23 to, or excluded or removed from the list.

24 (A) The Attorney General shall transmit, by electronic mail or
25 other practicable means, written notice to each licensed distributor
26 ~~and any each licensed wholesaler or and any retailer or other~~
27 ~~person~~ that has provided an electronic mail address to the Attorney
28 General of any addition to, or removal from, the directory of any
29 tobacco product manufacturer or brand family.

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

32 ~~(i) A copy of the removal notice to each of the distributor’s~~
33 ~~customers who purchased, within two years before the removal,~~
34 ~~the cigarettes of the tobacco product manufacturer or brand family~~
35 ~~that has been removed from the directory.~~

36 ~~(ii) To the board, a list of the customers to whom the removal~~
37 ~~notices were sent. Attorney General, each distributor shall provide~~
38 ~~a copy of the removal notice to each customer that is a licensed~~
39 ~~distributor, wholesaler, or retailer that purchased, within two~~
40 ~~years before removal, the cigarettes of the tobacco product~~

1 *manufacturer or brand family that has been removed from the*
2 *directory.*

3 (C) (i) The customer shall have 60 days from the effective date
4 of the removal notice to sell the affected cigarettes that the
5 customer purchased prior to the removal from the directory. On
6 and after the 61st day from the effective date of the removal notice,
7 the cigarettes are contraband and become subject to seizure and
8 destruction under subdivision (e) of Section 30436 and subdivision
9 (b) of Section 30449.

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

14 ~~(D) A licensed distributor or wholesaler shall be entitled to a~~
15 ~~refund from a tobacco product manufacturer or the importer of~~
16 ~~cigarettes or tobacco products from a nonparticipating manufacturer~~
17 ~~located outside the United States, of any money paid by the~~
18 ~~licensed distributor to the tobacco product manufacturer or importer~~
19 ~~for any cigarettes of the tobacco product manufacturer in the~~
20 ~~possession of the licensed distributor or wholesaler on the effective~~
21 ~~date of removal from the directory of that tobacco product~~
22 ~~manufacturer or brand family, provided the distributor or~~
23 ~~wholesaler is in full compliance with Division 8.6 (commencing~~
24 ~~with Section 22970) of the Business and Professions Code, and~~
25 ~~any regulations promulgated pursuant thereto.~~

26 (i) ~~The failure of the manufacturer or importer to refund the~~
27 ~~money paid, notwithstanding a written request from the licensed~~
28 ~~distributor or wholesaler, shall constitute unfair competition under~~
29 ~~Section 17200 of the Business and Professions Code.~~

30 (ii) ~~The board shall revoke any license issued to the~~
31 ~~manufacturer or importer pursuant to Division 8.6 (commencing~~
32 ~~with Section 22970) of the Business and Professions Code if the~~
33 ~~licensed distributor or wholesaler provides the board with a~~
34 ~~certified copy of a final judgment issued by a state or federal court~~
35 ~~ordering the manufacturer or importer to make a refund to the~~
36 ~~distributor or wholesaler, along with an affidavit attesting that the~~
37 ~~manufacturer or importer has failed to provide a refund,~~
38 ~~notwithstanding the final judgment. The board shall also file a lien~~
39 ~~against the manufacturer and the importer for a tax penalty in the~~
40 ~~same amount as the unpaid refund.~~

1 ~~(iii) The Attorney General shall not restore the manufacturer or~~
2 ~~the brand family to the directory, if the licensed distributor or~~
3 ~~wholesaler provides the Attorney General with an original affidavit~~
4 ~~and certified copy of a court judgment, as described in clause (ii);~~
5 ~~above until the refund has been paid to the distributor or wholesaler~~
6 ~~and the tax lien is paid to the board.~~

7 ~~(E) A licensed retailer shall be entitled to a refund from a~~
8 ~~licensed distributor or wholesaler of cigarettes or tobacco products~~
9 ~~from a tobacco products manufacturer or from the importer of~~
10 ~~cigarettes or tobacco products from a nonparticipating manufacturer~~
11 ~~located outside the United States, of any money paid by the~~
12 ~~licensed retailer to the licensed distributor or wholesaler or importer~~
13 ~~for any cigarettes or tobacco products in the possession of the~~
14 ~~licensed retailer on the effective date of removal from the directory~~
15 ~~of that tobacco product manufacturer or brand family, provided~~
16 ~~the retailer is in full compliance with Division 8.6 (commencing~~
17 ~~with Section 22970) of the Business and Professions Code, and~~
18 ~~any regulations promulgated pursuant thereto. The board shall also~~
19 ~~file a lien against the manufacturer and the importer for a tax~~
20 ~~penalty in the same amount as the unpaid refund.~~

21 ~~(i) The failure of the licensed distributor or wholesaler or~~
22 ~~importer to refund the money paid, notwithstanding a written~~
23 ~~request from the licensed retailer, shall constitute unfair~~
24 ~~competition under Section 17200 of the Business and Professions~~
25 ~~Code.~~

26 ~~(ii) The board shall revoke any license issued to the distributor~~
27 ~~or wholesaler or importer pursuant to Division 8.6 (commencing~~
28 ~~with Section 22970) of the Business and Professions Code if the~~
29 ~~licensed retailer provides the board with a certified copy of a final~~
30 ~~judgment issued by a state or federal court ordering the distributor~~
31 ~~or wholesaler to make a refund to the retailer, along with an~~
32 ~~affidavit attesting that the distributor or wholesaler has failed to~~
33 ~~provide a refund, notwithstanding the final judgment. The board~~
34 ~~shall also file a lien against the distributor or wholesaler or importer~~
35 ~~for a tax penalty in the same amount as the unpaid refund.~~

36 ~~(iii) The Attorney General shall not restore the manufacturer or~~
37 ~~the brand family to the directory if the licensed retailer provides~~
38 ~~the Attorney General with an original affidavit and certified copy~~
39 ~~of a court judgment, as described in clause (ii) of subparagraph (D)~~

1 above, until the refund has been paid to the distributor or
2 wholesaler and the tax lien is paid to the board.

3 (4) Every distributor and wholesaler shall provide to the
4 Attorney General and update, as necessary, an electronic mail
5 address for the purpose of receiving any notifications as may be
6 required by this section. Licensed retailers may also provide
7 electronic mail addresses to the Attorney General for the purposes
8 of receiving such notifications.

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

11 (A) Notwithstanding any other law, if a newly qualified
12 nonparticipating manufacturer is to be listed in the directory or if
13 the Attorney General reasonably determines that any
14 nonparticipating manufacturer who has filed a certification pursuant
15 to subdivision (b) poses an elevated risk for noncompliance with
16 this section, Section 30165.2 or 30165.3, or with Article 3
17 (commencing with Section 104555) of Chapter 1 of Part 3 of
18 Division 103 of the Health and Safety Code, neither the
19 nonparticipating manufacturer nor any of its brand families shall
20 be included in the directory unless and until the nonparticipating
21 manufacturer, or its United States importer that undertakes joint
22 and several liability for the manufacturer's performance in
23 accordance with subparagraph (E) of paragraph (3) of subdivision
24 (b), has posted a bond in accordance with this section.

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

1 (C) A nonparticipating manufacturer may be deemed to pose
2 an elevated risk for noncompliance with this section, Section
3 30165.2 or 30165.3, or Article 3 (commencing with Section
4 104555) of Chapter 1 of Part 3 of Division 103 of the Health and
5 Safety Code if:

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

11 (I) The manufacturer did not underdeposit knowingly or
12 recklessly and the manufacturer promptly cured the underdeposit
13 within 180 days of notice of it.

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

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

23 (iii) Any state has litigation pending against, or an unsatisfied
24 judgment against, the manufacturer or any affiliate thereof for
25 escrow or for penalties, ~~costs~~ *fees, costs, refunds*, or attorney's
26 fees related to noncompliance with state escrow laws.

27 (iv) The nonparticipating manufacturer sells its cigarettes or
28 tobacco products directly to consumers via remote or other
29 non-face-to-face means.

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

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

35 (vii) Any state or federal court has determined that it failed to
36 comply with state or federal law imposing marking, labeling, and
37 stamping requirements or requiring information to be affixed to,
38 or contained in, the labels, markings, or packaging.

39 (viii) The nonparticipating manufacturer fails to submit or
40 complete any required forms, documents, certification, or notices,

1 in a timely manner or, to the satisfaction of the Attorney General
2 or the State Board of Equalization.

3 (D) As used in this section, “newly qualified nonparticipating
4 manufacturer” means a nonparticipating manufacturer that has not
5 previously been listed in the California Tobacco Directory or
6 proposes to sell a brand family that has not been previously listed
7 in the directory. Such manufacturers may be required to post a
8 bond in accordance with this section for the first three years of
9 their listing, or longer if they have been determined to pose an
10 elevated risk for noncompliance.

11 (6) The Attorney General shall provide each tobacco product
12 manufacturer that has provided all certifications and other
13 information required by this section with a written acknowledgment
14 of receipt within seven business days after receiving the
15 certifications and other materials. Each tobacco product
16 manufacturer shall provide to each distributor to whom it sells or
17 ships cigarettes, or any tobacco product defined as a cigarette under
18 this section, a copy of each acknowledgment of receipt provided
19 to the manufacturer by the Attorney General. Upon request, the
20 Attorney General shall provide any distributor with a copy of the
21 most recent written acknowledgment of receipt provided to the
22 tobacco product manufacturer.

23 (d) (1) The Attorney General may exclude or remove from the
24 list required by subdivision (c) a tobacco product manufacturer or
25 any of its brand families, based on a determination that the
26 manufacturer is not a participating manufacturer that has provided
27 the required certification and made all payments calculated by the
28 independent auditor to be due from it under the Master Settlement
29 Agreement, except to the extent that it is disputing the payment,
30 ~~and~~ *or in the case of a nonparticipating manufacturer*, has not
31 made all escrow payments required by paragraph (2) of subdivision
32 (a) of Section 104557 of the Health and Safety Code, in accordance
33 with that subdivision, or has not complied with this section, Section
34 30165.2 or 30165.3, or any state or federal delivery sales laws
35 applicable to sales and distribution of tobacco products in this
36 state. Before the exclusion or removal may take effect, the Attorney
37 General shall notify the manufacturer of this determination.

38 (2) Upon receiving notice from the Attorney General pursuant
39 to paragraph (1), the manufacturer may challenge the Attorney
40 General’s determination as erroneous, and may seek relief from

1 the determination, by filing a petition for writ of mandate pursuant
2 to Section 1085 of the Code of Civil Procedure for that purpose
3 in the Superior Court for the County of Sacramento, or as otherwise
4 provided by law. The filing of the petition shall operate to stay the
5 Attorney General’s determination, if the manufacturer has paid
6 into escrow the full amount of any deficiency in the escrow
7 payments that the Attorney General has determined the tobacco
8 product manufacturer was required to have made under paragraph
9 (2) of subdivision (a) of Section 104557 of the Health and Safety
10 Code, including any installment payments required under
11 subdivision (h), pending final resolution of the action.

12 (e) (1) No person shall affix, or cause to be affixed, any tax
13 stamp or meter impression to a package of cigarettes pursuant to
14 subdivision (a) of Section 30163, or pay the tax levied pursuant
15 to Sections 30123 and 30131.2 on a tobacco product defined as a
16 cigarette under this section, unless the brand family of the cigarettes
17 or tobacco product, and the tobacco product manufacturer that
18 makes or sells the cigarettes or tobacco product, are included on
19 the list posted by the Attorney General pursuant to subdivision
20 (c).

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

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

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

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

32 (f) (1) Any nonresident or foreign nonparticipating manufacturer
33 that has not registered to do business in the state as a foreign
34 corporation or business entity shall, as a condition precedent to
35 having its brand families listed or retained in the directory, appoint
36 and continually engage without interruption the services of an
37 agent in this state to act as agent for the service of process on whom
38 all process, and any action or proceeding against it concerning or
39 arising out of the enforcement of this section, Article 3
40 (commencing with Section 104555) of Chapter 1 of Part 3 of

1 Division 103 of the Health and Safety Code, and any regulations
2 promulgated pursuant thereto, may be served in any manner
3 authorized by law. This service shall constitute legal and valid
4 service of process on the nonparticipating manufacturer. The
5 nonparticipating manufacturer shall provide the name, address,
6 telephone number, and proof of the appointment and availability
7 of the agent to the satisfaction of the Attorney General. Any
8 nonparticipating manufacturer located outside of the United States
9 shall, as an additional condition precedent to having its brand
10 families listed or retained in the directory, cause each of its
11 importers into the United States of any of its brand families to be
12 sold in California to appoint and continually engage without
13 interruption the services of an agent in the state in accordance with
14 this section. All obligations of a nonparticipating manufacturer
15 imposed by this section with respect to appointment of its agent
16 shall likewise apply to importers with respect to appointment of
17 their agents.

18 (2) The nonparticipating manufacturer shall provide notice to
19 the Attorney General 30 calendar days prior to termination of the
20 authority of an agent and shall further provide proof to the
21 satisfaction of the Attorney General of the appointment of a new
22 agent no less than five calendar days prior to the termination of
23 an existing agent appointment. In the event an agent terminates an
24 agency appointment, the nonparticipating manufacturer shall notify
25 the Attorney General of said termination within five calendar days
26 and shall include proof to the satisfaction of the Attorney General
27 of the appointment of a new agent.

28 (3) Any nonparticipating manufacturer whose products are sold
29 in this state without appointing or designating an agent as herein
30 required shall be deemed to have appointed the Secretary of State
31 as its agent, as provided in Section 2105 of the Corporations Code,
32 and may be proceeded against in courts of this state by service of
33 process upon the Secretary of State. However, the appointment of
34 the Secretary of State pursuant to this provision as the agent for
35 service of process does not satisfy the condition precedent specified
36 in paragraph (1) to having its brand families listed or retained in
37 the directory.

38 (4) For each nonparticipating manufacturer located outside the
39 United States, each importer into the United States of any
40 nonparticipating manufacturer's brand families that are sold in

1 California shall bear joint and several liability with the
2 nonparticipating manufacturer for deposit of all escrow due under
3 Section 104557 of the Health and Safety Code, payment of all
4 costs and attorney's fees imposed in accordance with Section
5 104557 of the Health and Safety Code, and payment of all
6 applicable state taxes, fees, costs, attorney's fees, penalties, and
7 refunds imposed or required by this section. Each manufacturer
8 and importer, *that sells or intends to sell cigarettes in California,*
9 ~~shall comply~~ *obtain and maintain a license as a manufacturer or*
10 *importer in compliance* with Division 8.6 (commencing with
11 Section 22970) of the Business and Professions Code. Each
12 manufacturer and its importers shall report in the manner, including
13 electronically, as required by the Attorney General and the board,
14 all cigarettes and tobacco products, including, but not limited to,
15 the quantity, *including, but not limited to weight, and sale price*
16 of each brand family, and shall make all escrow deposits and pay
17 state taxes due before the importer or manufacturer releases the
18 cigarettes and tobacco products for transport to or sale in
19 California. Any manufacturer or importer that fails to file the report
20 as required by the Attorney General or board shall be liable for a
21 civil penalty in an amount not to exceed the greater of either of
22 the following:

23 (A) Five times the retail value of the cigarettes or tobacco
24 products defined as cigarettes under this section that were not
25 reported prior to release for shipment to or sale in ~~California~~ *this*
26 *state.*

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

28 (g) (1) Not later than 25 days after the end of each calendar
29 quarter, and more frequently if so directed by the board or the
30 Attorney General, each distributor shall submit any information
31 as the board or Attorney General requires to facilitate compliance
32 with this section, including, but not limited to, a list by brand
33 family of the total number of cigarettes or in the case of roll your
34 own, the total ounces for which the distributor affixed stamps
35 during the previous calendar month or otherwise paid the tax due
36 for those cigarettes. The distributor shall maintain, and shall make
37 available to the board and the Attorney General, all invoices and
38 documentation of sales of all nonparticipating manufacturer
39 cigarettes and any other information relied upon in reporting to
40 the board and the Attorney General for a period of five years.

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

15 (3) At any time, the Attorney General may require from the
16 nonparticipating manufacturer proof from the financial institution
17 in which the manufacturer has established a qualified escrow fund
18 for the purpose of compliance with Article 3 (commencing with
19 Section 104555) of Chapter 1 of Part 3 of Division 103 of the
20 Health and Safety Code, and any regulations promulgated pursuant
21 thereto, of the amount of money in the fund being held on behalf
22 of the state and the dates of deposits, and listing the amounts of
23 all withdrawals from the fund and the dates thereof.

24 (4) In addition to the information required to be submitted
25 pursuant to this section or Article 3 (commencing with Section
26 104555) of Chapter 1 of Part 3 of Division 103 of the Health and
27 Safety Code and any regulations promulgated pursuant thereto,
28 the board or the Attorney General may require a retailer,
29 wholesaler, distributor, importer, or tobacco product manufacturer
30 to submit any additional information, including, but not limited
31 to, samples of the packaging or labeling of each brand family, as
32 is necessary to enable the Attorney General to determine whether
33 a tobacco product manufacturer or importer has complied, is in
34 compliance, and has provided reasonable assurance that it will
35 comply or continue to comply with this section, Sections 30165.2
36 and 30165.3, and Article 3 (commencing with Section 104555) of
37 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,
38 and any regulations promulgated pursuant thereto.

39 (h) To promote compliance with this section, the Attorney
40 General may promulgate regulations requiring a tobacco product

1 manufacturer subject to the requirements of paragraph (2) of
2 subdivision (a) of Section 104557 to make the escrow deposits
3 required in quarterly or other specified installments during the year
4 in which the sales covered by the deposits are made. The Attorney
5 General may require production of information sufficient to enable
6 the Attorney General to determine the adequacy of the amount of
7 the installment deposit.

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

12 (A) In the case of the first offense, the board may revoke or
13 suspend the license or licenses issued to the person by the board,
14 pursuant to the procedures applicable to the revocation of a license
15 set forth in Sections 30148 and 30158, and Section 22980.3 of the
16 Business and Professions Code. Each stamp affixed and each sale
17 or offer to sell cigarettes in violation of subdivision (e) shall
18 constitute a separate violation.

19 (B) In the case of a second or any subsequent offense, which
20 the board determines to be a violation of subdivision (e) or any
21 regulations adopted pursuant to this section, in addition to the
22 action authorized under subparagraph (A), the board may impose
23 a civil penalty in an amount not to exceed the greater of either of
24 the following:

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

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

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

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

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

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

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

7 (4) A violation of paragraph (3) of subdivision (e) shall
8 constitute a misdemeanor.

9 (j) If a distributor affixes a stamp or meter impression to a
10 package of cigarettes under subdivision (a) of Section 30163, or
11 pays the tax levied under Sections 30123 and 30131.2 on a tobacco
12 product defined as a cigarette under this section, during the period
13 between the date on which the brand family of the cigarettes or
14 tobacco product was excluded or removed from the list required
15 by subdivision (c) and the date on which the distributor received
16 notice of the exclusion or removal under paragraph (4) of
17 subdivision (c), then both of the following shall apply:

18 (1) The distributor shall be entitled to a credit for the tax paid
19 by the distributor with respect to the cigarette or tobacco product
20 to which the stamp or meter impression was affixed, or the tax
21 paid during that period. The distributor shall comply with
22 regulations prescribed by the board regarding refunds and credits
23 that are adopted pursuant to Section 30177.5. If the distributor has
24 sold the cigarette or tobacco product to a wholesaler or retailer,
25 and has received payment from the wholesaler or retailer, the
26 distributor shall provide the credit to the wholesaler or retailer.

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

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

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

36 (2) That the tobacco product manufacturer is a participating
37 manufacturer.

38 (3) That the tobacco product manufacturer or any other person
39 has made any or all escrow payments required by paragraph (2)

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

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

5 (l) A violation of subdivision (e) shall constitute unfair
6 competition under Section 17200 of the Business and Professions
7 Code.

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

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

24 (o) The Attorney General may adopt rules and regulations to
25 implement this section and Sections 30165.2 and 30165.3. The
26 rules and regulations may establish procedures for including in
27 the list described in subdivision (c) tobacco product manufacturers
28 that are not participating manufacturers and were not required to
29 make escrow payments under paragraph (2) of subdivision (a) of
30 Section 104557 of the Health and Safety Code, for sales made
31 during any preceding calendar year, and brand families of those
32 manufacturers. The rules and regulations may also establish
33 procedures for seizure and destruction of cigarettes forfeited to
34 the state pursuant to Section 30436 or Section 30449, including,
35 but not limited to, the state facilities that may be used for the
36 destruction of contraband cigarettes. Nothing in this section shall
37 affect the authority of local law enforcement and local government
38 officials to seize and destroy contraband under existing state or
39 local law. The regulations adopted to effect the purposes of this
40 section are emergency regulations in accordance with Chapter 3.5

1 (commencing with Section 11340) of Part 1 of Division 3 of Title
2 2 of the Government Code. For purposes of that chapter, including
3 Section 11349.6 of the Government Code, the adoption of the
4 regulations shall be considered by the Office of Administrative
5 Law to be necessary for the immediate preservation of the public
6 peace, health and safety, and general welfare. Notwithstanding
7 subdivision (e) of Section 11346.1 of the Government Code, the
8 regulations shall be repealed 180 days after their effective date,
9 unless the adopting authority or agency complies with that chapter,
10 as provided in subdivision (e) of Section 11346.1 of the
11 Government Code.

12 (p) In any action brought by the state to enforce this section,
13 the state shall be entitled to recover the costs of investigation,
14 expert witness fees, costs of the action, and reasonable attorney's
15 fees.

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

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

19 (A) A nonparticipating manufacturer and its importers or a
20 tobacco product manufacturer as defined in subdivision (i) of
21 Section 104556 of the Health and Safety Code that became a
22 participating manufacturer *on or* after the Master Settlement
23 execution date, as defined in Section II (aa) of the Master
24 Settlement Agreement, and its importers.

25 (B) Exclusive distributors, retailers, stamping agents, and
26 wholesalers, as defined in Division 8.6 (commencing with Section
27 22970) of the Business and Profession Code, and this part.

28 (C) Persons or entities engaged in delivery sales as defined in
29 ~~Section 22963 of the Business and Professions Code~~ 30165.3.

30 (2) Upon reasonable cause to believe that a violation of this
31 article or of Article 3 (commencing with Section 104555) of
32 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,
33 or of Section 22963 of the Business and Professions Code, or of
34 Section 30101.7, has occurred or is reasonably likely to occur,
35 issue subpoenas, compel the attendance of witnesses, administer
36 oaths, certify to official acts, take depositions within and without
37 the state, as now provided by law, and compel the production of
38 pertinent books, payrolls, accounts, papers, records, documents,
39 and testimony relevant to investigations. If a person refuses,
40 without good cause, to be examined or to answer a legal and

1 pertinent question, or to produce a document or other evidence
2 when ordered to do so by the Attorney General or his or her
3 authorized representative, the Attorney General or his or her
4 authorized representative may apply to the superior court of the
5 county where the person is in attendance or located, upon affidavit,
6 for an order returnable in no less than two nor more than five days,
7 directing the person to show cause why he or she should not be
8 examined, answer a legal or pertinent question or produce a
9 document, record or other evidence. Upon the hearing, if the court
10 determines that the person, without good cause, has refused to be
11 examined or to answer legal or pertinent questions, or to produce
12 a document, record, or other evidence, the court may order
13 compliance with the subpoena and assess all costs and reasonable
14 attorney's fees against the person. If the motion for an order is
15 granted and the person thereafter fails to comply with the order,
16 the court may make orders as are provided for by law. Subpoenas
17 shall be served and witness fees and mileage paid as allowed in
18 civil cases in the courts of the State of California.

19 (r) In any action regarding a violation of this article or of Article
20 3 (commencing with Section 104555) of Chapter 1 of Part 3 of
21 Division 103 of the Health and Safety Code, or of Section 22963
22 of the Business and Professions Code, or of Section 30101.7, or
23 of Section 17200 of the Business and Professions Code, reports
24 submitted to the board pursuant to Section 30182 or Section
25 22978.1, 22978.4, or 22978.5 of the Business and Professions
26 Code, shall be admissible in evidence and shall be presumed to
27 accurately state the number of cigarettes stamped during the time
28 period by the stamping agent that submitted the report absent a
29 contrary showing by the nonparticipating manufacturer or importer.
30 Nothing in this section shall be construed as limiting or otherwise
31 affecting the right of the state to maintain that reports are incorrect
32 or do not accurately reflect a nonparticipating manufacturer's sales
33 in the state during the time period in question, and the presumption
34 shall not apply in the event the state does so maintain.

35 (s) In any action regarding a violation of this article or of Article
36 3 (commencing with Section 104555) of Chapter 1 of Part 3 of
37 Division 103 of the Health and Safety Code, or of Section 22963
38 of the Business and Professions Code, or of Section 30101.7, or
39 of Section 17200 of the Business and Professions Code, sufficient
40 notice of the action to the alleged violator shall be given by

1 complaint written in the English language. The state shall not be
2 required to bear any expense of translating complaint into another
3 language.

4 (t) Unless otherwise expressly provided, the remedies or
5 penalties provided by this section are cumulative to each other and
6 to the remedies or penalties available under all other laws of this
7 state.

8 SEC. 7. Section 30165.2 is added to the Revenue and Taxation
9 Code, to read:

10 30165.2. (a) For purposes of this section, “applicable returns”
11 means the following returns or reports relating to cigarettes that
12 are filed or required to be filed with the Alcohol and Tobacco Tax
13 and Trade Bureau of the United States Department of Treasury,
14 after the effective date of the act adding this section:

- 15 (1) Alcohol and Tobacco Tax and Trade Bureau Form 5000.24.
- 16 (2) Alcohol and Tobacco Tax and Trade Bureau Form 5210.5.
- 17 (3) Alcohol and Tobacco Tax and Trade Bureau Form 5220.6.
- 18 (4) Any successor returns or reports intended to replace Alcohol
19 and Tobacco Tax and Trade Bureau Form 5000.24, 5210.5, or
20 5220.6.

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

27 (1) Submit to the Attorney General a true and correct copy of
28 each and every applicable return of *the* tobacco product
29 manufacturer.

30 (2) Submit to the United States Treasury a request or consent
31 under Internal Revenue Code Section 6103(c) authorizing the
32 Alcohol and Tobacco Tax and Trade Bureau to disclose the
33 applicable returns of manufacturer to the Attorney General. A
34 foreign tobacco product manufacturer whose cigarettes are
35 imported into the United States by an importer or importers shall
36 submit, or shall cause each of its importers to submit, to the Attorney
37 General *and the board* each and every applicable return that
38 includes any information about cigarettes of that foreign tobacco
39 product manufacturer imported into the United States. The Attorney
40 General *and the board* shall not disclose any applicable returns or

1 any information contained therein, except as necessary to carry
2 out the functions and duties of the Department of Justice or ~~State~~
3 ~~Board of Equalization~~ *board*, or as provided in subdivision (c).

4 (c) The Attorney General *and the board* may compile data on
5 cigarette shipments from the applicable returns and may share data
6 with other states that are signatories to the Master Settlement
7 Agreement, as defined paragraph (5) of subdivision (a) of Section
8 30165.1, provided that states impose protections against disclosure
9 of the applicable returns, or any information from applicable
10 returns, that are equivalent to the protections provided under
11 subdivision (b).

12 (d) A tobacco product manufacturer who does not comply with
13 the requirements of subdivision (b) shall, after 30 days notice by
14 the ~~state~~ *Attorney General or the board* to the tobacco product
15 manufacturer of the failure to comply, be removed, along with its
16 brand families, from the tobacco directory unless the tobacco
17 product manufacturer has brought itself into compliance by the
18 end of the 30-day period.

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

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

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

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

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

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

33 ~~30165.3. (a) Unless the federal Jenkins Act (Chapter 10A~~
34 ~~(commencing with Section 375) of Title 15 of the United States~~
35 ~~Code) or the federal Prevent All Cigarette Trafficking Act of 2009~~
36 ~~(PACT ACT) provides otherwise, every person selling or taking~~
37 ~~a delivery sale order or engaging in any other non-face-to-face~~
38 ~~sale of cigarettes, as defined in Section 30101.7, or distributing or~~
39 ~~engaging in the sale or nonsale distribution of tobacco products,~~

1 as defined in Section 22963 of the Business and Professions Code,
2 to a person in the state shall do all of the following:

3 (1) Obtain and maintain a license in compliance with Division
4 8.6 (commencing with Section 22970) of the Business and
5 Professions Code and this code, and sell only through other
6 importers, wholesalers, distributors, and retailers so licensed.

7 (2) Comply with state laws imposing escrow or other payment
8 obligations, including, but not limited to, Sections 104555 to
9 104557, inclusive, of the Health and Safety Code.

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

16 (4) Comply with Sections 30165.1 and 30165.2.

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

19 (b) Each delivery seller shall report to the Attorney General and
20 to the board its sales of cigarettes and tobacco products to persons
21 in this state in the form and manner as required by the Attorney
22 General and the board, including, but not limited to, the following
23 information:

24 (1) The name of the manufacturer.

25 (2) The brand families.

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

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

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

30 (6) The date of shipment.

31 (7) The point of departure.

32 (8) The name and address of the common carrier, delivery
33 service, or other consignee.

34 (9) The amount of each and every state or local government
35 taxes paid.

36 (c) Unless the federal Jenkins Act (Chapter 10A (commencing
37 with Section 375) of Title 15 of the United States Code) or the
38 federal Prevent All Cigarette Trafficking Act of 2009 (PACT ACT)
39 provides otherwise, no person selling or distributing cigarettes or
40 tobacco products may engage in the non-face-to-face sale of those

1 products to a person in the state unless that person has fully
2 complied with subdivision (a) of this section, Section 30101.7,
3 and Section 22963 of the Business and Professions Code. For
4 purposes of this section, a “seller” is any person, within or outside
5 the state, who agrees to sell tobacco products to a customer in this
6 state. The United States Postal Service or any other public or
7 private postal or package delivery service are not sellers within
8 the meaning of this section. A “delivery sales order” is the
9 placement of an order for cigarettes or other tobacco products from
10 a consumer in this state to a seller where either of the following
11 applies:

12 (1) The consumer submits the order for the sale by means of a
13 telephonic or other method of voice transmission, data transfer via
14 computer networks, including the Internet and other online services,
15 facsimile, or the mail.

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

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

22 (1) A civil penalty of not less than one thousand dollars (\$1,000)
23 and not more than two thousand dollars (\$2,000) for the first
24 violation.

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

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

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

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

36 30165.3. (a) *Unless the federal Prevent All Cigarette*
37 *Trafficking Act of 2009 (PACT ACT) provides otherwise, every*
38 *person selling or taking a delivery sale order or engaging in any*
39 *other non-face-to-face sale of cigarettes, as defined in Section*
40 *30101.7, or distributing or engaging in the sale or nonsale*

1 *distribution of tobacco products, as defined in Section 22963 of*
2 *the Business and Professions Code, to a person in the state shall*
3 *do all of the following:*

4 (1) *Obtain and maintain license in compliance with Division*
5 *8.6 (commencing with Section 22970) of the Business and*
6 *Professions Code and this code, and sell only through other*
7 *licensed importers, wholesalers, distributors, and retailers.*

8 (2) *Comply with state laws imposing escrow or other payment*
9 *obligations, including, but not limited to, Sections 104555 to*
10 *104557, inclusive, of the Health and Safety Code.*

11 (3) *Comply with all marking, labeling, and stamping*
12 *requirements, including, but not limited to, Section 30163, and*
13 *any other information required to be affixed to or contained in the*
14 *labels, markings, or packaging in the form and manner specified*
15 *by the board or the Attorney General to promote, ensure, monitor,*
16 *or determine compliance with the laws of this state.*

17 (4) *Comply with Sections 30165.1 and 30165.2.*

18 (5) *Comply with all other laws of this state generally applicable*
19 *to sales and distribution of tobacco products that occur in this*
20 *state.*

21 (b) *Each delivery seller shall report to the Attorney General*
22 *and to the board its sales of cigarettes and tobacco products to*
23 *persons in this state in the form and manner as required by the*
24 *Attorney General or the board, including, but not limited to, the*
25 *following information:*

26 (1) *The name of the manufacturer.*

27 (2) *The brand families.*

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

29 (4) *The name and address of the purchaser.*

30 (5) *The name and address of the person to whom shipment was*
31 *made.*

32 (6) *The date of shipment.*

33 (7) *The point of departure.*

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

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

38 (c) *For purposes of this section, the following definitions apply:*

39 (1) *“Delivery seller” is any person, within or outside the state,*
40 *who agrees to make a delivery sale to a customer in this state. The*

1 *United States Postal Service or any other public or private postal*
2 *or package delivery service is not a seller within the meaning of*
3 *this section.*

4 (2) A “*delivery sale*” is the sale of cigarettes or other tobacco
5 products where either of the following applies:

6 (A) The consumer or user submits the order for the sale by
7 means of a telephonic or other method of voice transmission, data
8 transfer via computer networks, including the Internet and other
9 online services, facsimile, or the mail, or the seller is otherwise
10 not in the physical presence of the consumer or user when the
11 request for the purchase or order is made.

12 (B) The cigarettes or tobacco products are delivered to a person
13 in this state by use of the mail or a delivery service.

14 (3) “*Delivery sales laws*” are any state or federal laws
15 applicable to delivery sale.

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

20 (1) A civil penalty of not less than one thousand dollars (\$1,000)
21 and not more than two thousand dollars (\$2,000) for the first
22 violation.

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

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

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

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

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

36 30436. The following property, upon seizure by the board, is
37 hereby forfeited to the state:

38 (a) Cigarettes or tobacco products transported upon the
39 highways, roads, or streets of this state in violation of Section
40 30431 or Section 30432.

1 (b) Cigarettes not contained in packages to which are affixed
2 California cigarette tax stamp or meter impressions or tobacco
3 products upon which the tobacco products surtax has not been
4 paid, which are offered for sale, possessed, kept, stored, or owned
5 by any person with the intent of the person to sell the cigarettes or
6 tobacco products without payment of the taxes imposed by this
7 part.

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

14 (d) Cigarettes contained in packages to which are affixed
15 California cigarette tax stamps or meter impressions in violation
16 of Section 30163 or packages that fail to meet the marking,
17 labeling, and stamping requirements or provide or affix the
18 information in the manner specified by the board or the Attorney
19 General in violation of Section 30165.3.

20 (e) Cigarettes or tobacco products of a tobacco product
21 manufacturer or its brand families that do not appear on the
22 directory maintained by the Attorney General pursuant to
23 subdivision (c) of Section 30165.1 or to which are affixed
24 California cigarette tax stamps or meter impressions, or for which
25 tax is paid pursuant to Sections 30123 and 30131.2, in violation
26 of Section 30165.1, regardless of whether the violation is subject
27 to the defense described in paragraph (2) of subdivision (i) of
28 Section 30165.1.

29 SEC. 10. The *Legislature finds and declares that the*
30 *amendments made to paragraph (2) of subdivision (e) of Section*
31 *30165.1 of the Revenue and Taxation Code by Section 7 6 of this*
32 *act are declaratory of, and do not constitute a change in, existing*
33 *law.*

34 SEC. 11. Nothing in this act preempts or supersedes any local
35 tobacco control law or ordinance other than those laws or
36 ordinances that are related to the collection of state taxes. Local
37 licensing laws or ordinances may provide for the suspension or
38 revocation of licenses issued by a local government or agency for
39 a violation of the laws imposed under the Cigarette and Tobacco

1 Products Tax Law (Part 13 (commencing with Section 30001) of
2 Division 2 of the Revenue and Taxation Code).

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

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

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