

AMENDED IN ASSEMBLY MAY 20, 2010

AMENDED IN ASSEMBLY MAY 13, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2496**

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**Introduced by Assembly Member Nava**

February 19, 2010

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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 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 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 each customer that is a licensed distributor, wholesaler, or retailer who purchased, within 2 years before the removal, the cigarettes of 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 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 would impose civil penalties, as provided.

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

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

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

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

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

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

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 22979 of the Business and Professions  
2 Code is amended to read:

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

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

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

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

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

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

1 product manufacturer” in subdivision (i) of Section 104556 of the  
2 Health and Safety Code, shall do all of the following in the manner  
3 specified by the board:

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

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

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

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

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

28 (c) The board may not grant or permit the maintenance of a  
29 license to any manufacturer or an importer of cigarettes that does  
30 not affirmatively certify, both at the time the license is granted and  
31 annually thereafter, that all packages of cigarettes manufactured  
32 or imported by that person and distributed in this state fully comply  
33 with subdivision (b) of Section 30163 of the Revenue and Taxation  
34 Code, and that the cigarettes contained in those packages are the  
35 subject of filed reports that fully comply with all requirements of  
36 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.  
37 1331 et seq.) for the reporting of ingredients added to cigarettes.  
38 For purposes of the federal Cigarette Labeling and Advertising  
39 Act requirement, cigars weighing three pounds or less per 1,000  
40 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 *served* by mail, the notice shall be placed  
35 in a sealed envelope, with postage paid, addressed to the  
36 manufacturer or the importer at the address as it appears in the  
37 records of the board. The giving of notice shall be deemed complete  
38 at the time of deposit of the notice in the United States Post Office,  
39 or a mailbox, subpost office, substation or mail chute or other  
40 facility regularly maintained or provided by the United States

1 Postal Service, without extension of time for any reason. In lieu  
2 of 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. Any person who makes a certification pursuant to this  
30 subdivision that asserts the truth of any material matter that he or  
31 she knows to be false is guilty of a misdemeanor punishable by  
32 imprisonment of up to one year in the county jail, or a fine of not  
33 more than one thousand dollars (\$1,000), or both the imprisonment  
34 and the fine.

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

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

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

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

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

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

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

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

26 (B) That the nonparticipating manufacturer has done all of the  
27 following:

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

31 (ii) Executed a qualified escrow agreement that has been  
32 reviewed and approved by the Attorney General and that governs  
33 the qualified escrow fund.

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

- 1 (C) That the nonparticipating manufacturer is in full compliance  
2 with both of the following:
- 3 (i) Article 3 (commencing with Section 104555) of Chapter 1  
4 of Part 3 of Division 103 of the Health and Safety Code, including  
5 paragraph (2) of subdivision (a) of Section 104557 of the Health  
6 and Safety Code, this section, and any regulations promulgated  
7 pursuant thereto.
- 8 (ii) Division 8.6 (commencing with Section 22970) of the  
9 Business and Professions Code, and any regulations promulgated  
10 pursuant thereto.
- 11 (D) That the manufacturer has provided all of the following:
- 12 (i) The name, address, and telephone number of the financial  
13 institution where the nonparticipating manufacturer has established  
14 the qualified escrow fund required pursuant to Article 3  
15 (commencing with Section 104555) of Chapter 1 of Part 3 of  
16 Division 103 of the Health and Safety Code and all regulations  
17 promulgated thereto.
- 18 (ii) The account number of the qualified escrow fund and  
19 subaccount number for the State of California.
- 20 (iii) The amount the nonparticipating manufacturer placed in  
21 the fund for cigarettes sold in the state during the preceding  
22 calendar year, the date and amount of each deposit, and any  
23 confirming evidence or verification as may be deemed necessary  
24 by the Attorney General.
- 25 (iv) The amounts and dates of any withdrawal or transfer of  
26 funds the nonparticipating manufacturer made at any time from  
27 the fund or from any other qualified escrow fund into which it ever  
28 made escrow payments pursuant to Article 3 (commencing with  
29 Section 104555) of Chapter 1 of Part 3 of Division 103 of the  
30 Health and Safety Code and all regulations promulgated thereto.
- 31 (E) In the case of a nonparticipating manufacturer located  
32 outside the United States, that has provided a declaration in a form  
33 prescribed by the Attorney General from each of its importers into  
34 the United States of any of its brand families to be sold in  
35 California, that the importer accepts joint and several liability with  
36 the nonparticipating manufacturer for all escrow deposits due in  
37 accordance with Article 3 (commencing with Section 104555), for  
38 all penalties assessed in accordance with Article 3 (commencing  
39 with Section 104555) of Chapter 1 of Part 3 of Division 103 of  
40 the Health and Safety Code, and for payment of all applicable state

1 taxes, fees, costs, attorney’s fees, penalties, and refunds imposed  
2 or required under this section. The declaration shall appoint for  
3 the declarant a resident agent for service of process in California  
4 in accordance with subdivision (f) and that the importer is in  
5 compliance with Division 8.6 (commencing with Section 22970)  
6 of the Business and Professions Code.

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

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

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

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

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

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

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

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

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

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

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

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

27 (C) In the case of a nonparticipating manufacturer or a tobacco  
28 product manufacturer that became a participating manufacturer  
29 after the Master Settlement Agreement execution date, as defined  
30 by Section II (aa) of the Master Settlement Agreement, by reason  
31 of the business plan, business history, trade connections, or  
32 compliance and payment history under the Master Settlement  
33 Agreement in California or any other state, or the business history,  
34 trade connections, or compliance and payment history under the  
35 Master Settlement Agreement in California or any other state of  
36 any of the principals thereof, the nonparticipating manufacturer  
37 or the tobacco product manufacturer fails to provide reasonable  
38 assurance that it will comply with the requirements of this section,  
39 Sections 30165.2 and 30165.3, and Article 3 (commencing with  
40 Section 104555) of Chapter 1 of Part 3 of Division 103 of the

1 Health and Safety Code. As used in this section, “reasonable  
2 assurance” may include information and documentation  
3 establishing to the satisfaction of the Attorney General that a failure  
4 to pay in California or elsewhere was the result of a good faith  
5 dispute over the payment obligation.

6 (D) The manufacturer has knowingly failed to disclose any  
7 material information required or knowingly made any material  
8 false statements in the certification of any supporting information  
9 or documentation provided.

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

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

26 (B) Within seven days of receiving a removal notice from the  
27 Attorney General, each distributor shall provide a copy of the  
28 removal notice to each customer that is a licensed distributor,  
29 wholesaler, or retailer that purchased, within two years before  
30 removal, the cigarettes of the tobacco product manufacturer or  
31 brand family that has been removed from the directory.

32 (C) (i) The customer shall have 60 days from the effective date  
33 of the removal notice to sell the affected cigarettes that the  
34 customer purchased prior to the removal from the directory. On  
35 and after the 61st day from the effective date of the removal notice,  
36 the cigarettes are contraband and become subject to seizure and  
37 destruction under subdivision (e) of Section 30436 and subdivision  
38 (b) of Section 30449.

39 (ii) On and after the 61st day from the effective date of the  
40 removal notice, the customer shall not sell any cigarettes of a

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

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, fees, costs, refunds, or attorney's fees  
26 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 or in the case of a nonparticipating manufacturer, has not made all  
31 escrow payments required by paragraph (2) of subdivision (a) of  
32 Section 104557 of the Health and Safety Code, in accordance with  
33 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 obtain and maintain a license as a manufacturer or importer  
10 in compliance with Division 8.6 (commencing with Section 22970)  
11 of the Business and Professions Code. Each manufacturer and its  
12 importers shall report in the manner, including electronically, as  
13 required by the Attorney General and the board, all cigarettes and  
14 tobacco products, including, but not limited to, the quantity,  
15 including, but not limited to weight, and sale price of each brand  
16 family, and shall make all escrow deposits and pay state taxes due  
17 before the importer or manufacturer releases the cigarettes and  
18 tobacco products for transport to or sale in California. Any  
19 manufacturer or importer that fails to file the report as required by  
20 the Attorney General or board shall be liable for a civil penalty in  
21 an amount not to exceed the greater of either of the following:

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

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

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

39 (2) Notwithstanding Section 30455, the board is authorized to  
40 disclose to the Attorney General any information received under

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

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

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

37 (h) To promote compliance with this section, the Attorney  
38 General may promulgate regulations requiring a tobacco product  
39 manufacturer subject to the requirements of paragraph (2) of  
40 subdivision (a) of Section 104557 to make the escrow deposits

1 required in quarterly or other specified installments during the year  
2 in which the sales covered by the deposits are made. The Attorney  
3 General may require production of information sufficient to enable  
4 the Attorney General to determine the adequacy of the amount of  
5 the installment deposit.

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

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

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

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

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

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

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

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

37 (3) The defense described in subparagraph (B) of paragraph (2)  
38 is not available to a distributor if, at the time of the violation, the  
39 Attorney General had provided the distributor with written notice  
40 that the brand family had been excluded or removed from the list

1 required by subdivision (c), or the distributor failed to provide the  
2 Attorney General with a current address for the receipt of written  
3 notice through electronic mail as required by paragraph (4) of  
4 subdivision (c).

5 (4) A violation of paragraph (3) of subdivision (e) shall  
6 constitute a misdemeanor.

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

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

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

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

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

34 (2) That the tobacco product manufacturer is a participating  
35 manufacturer.

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

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

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

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

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

22 (o) The Attorney General may adopt rules and regulations to  
23 implement this section and Sections 30165.2 and 30165.3. The  
24 rules and regulations may establish procedures for including in  
25 the list described in subdivision (c) tobacco product manufacturers  
26 that are not participating manufacturers and were not required to  
27 make escrow payments under paragraph (2) of subdivision (a) of  
28 Section 104557 of the Health and Safety Code, for sales made  
29 during any preceding calendar year, and brand families of those  
30 manufacturers. The rules and regulations may also establish  
31 procedures for seizure and destruction of cigarettes forfeited to  
32 the state pursuant to Section 30436 or Section 30449, including,  
33 but not limited to, the state facilities that may be used for the  
34 destruction of contraband cigarettes. Nothing in this section shall  
35 affect the authority of local law enforcement and local government  
36 officials to seize and destroy contraband under existing state or  
37 local law. The regulations adopted to effect the purposes of this  
38 section are emergency regulations in accordance with Chapter 3.5  
39 (commencing with Section 11340) of Part 1 of Division 3 of Title  
40 2 of the Government Code. For purposes of that chapter, including

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

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

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

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

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

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

26 (C) Persons or entities engaged in delivery sales as defined in  
27 Section 30165.3.

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

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

17 (r) In any action regarding a violation of this article or of Article  
18 3 (commencing with Section 104555) of Chapter 1 of Part 3 of  
19 Division 103 of the Health and Safety Code, or of Section 22963  
20 of the Business and Professions Code, or of Section 30101.7, or  
21 of Section 17200 of the Business and Professions Code, reports  
22 submitted to the board pursuant to Section 30182 or Section  
23 22978.1, 22978.4, or 22978.5 of the Business and Professions  
24 Code, shall be admissible in evidence and shall be presumed to  
25 accurately state the number of cigarettes stamped during the time  
26 period by the stamping agent that submitted the report absent a  
27 contrary showing by the nonparticipating manufacturer or importer.  
28 Nothing in this section shall be construed as limiting or otherwise  
29 affecting the right of the state to maintain that reports are incorrect  
30 or do not accurately reflect a nonparticipating manufacturer's sales  
31 in the state during the time period in question, and the presumption  
32 shall not apply in the event the state does so maintain.

33 (s) In any action regarding a violation of this article or of Article  
34 3 (commencing with Section 104555) of Chapter 1 of Part 3 of  
35 Division 103 of the Health and Safety Code, or of Section 22963  
36 of the Business and Professions Code, or of Section 30101.7, or  
37 of Section 17200 of the Business and Professions Code, sufficient  
38 notice of the action to the alleged violator shall be given by  
39 complaint written in the English language. The state shall not be

1 required to bear any expense of translating complaint into another  
2 language.

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

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

9 30165.2. (a) For purposes of this section, “applicable returns”  
10 means the following returns or reports relating to cigarettes that  
11 are filed or required to be filed with the Alcohol and Tobacco Tax  
12 and Trade Bureau of the United States Department of Treasury,  
13 after the effective date of the act adding this section:

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

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

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

17 (4) Any successor returns or reports intended to replace Alcohol  
18 and Tobacco Tax and Trade Bureau Form 5000.24, 5210.5, or  
19 5220.6.

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

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

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

1 out the functions and duties of the Department of Justice or board,  
2 or as provided in subdivision (c).

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

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

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

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

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

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

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

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

32 30165.3. (a) Unless the federal Prevent All Cigarette  
33 Trafficking Act of 2009 (PACT ACT) provides otherwise, every  
34 person selling or taking a delivery sale order or engaging in any  
35 other non-face-to-face sale of cigarettes, as defined in Section  
36 30101.7, or distributing or engaging in the sale or nonsale  
37 distribution of tobacco products, as defined in Section 22963 of  
38 the Business and Professions Code, to a person in the state shall  
39 do all of the following:

1 (1) Obtain and maintain license in compliance with Division  
2 8.6 (commencing with Section 22970) of the Business and  
3 Professions Code and this code, and sell only through other  
4 licensed importers, wholesalers, distributors, and retailers.

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

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

14 (4) Comply with Sections 30165.1 and 30165.2.

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

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

22 (1) The name of the manufacturer.

23 (2) The brand families.

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

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

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

28 (6) The date of shipment.

29 (7) The point of departure.

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

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

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

35 (1) "Delivery seller" is any person, within or outside the state,  
36 who agrees to make a delivery sale to a customer in this state. The  
37 United States Postal Service or any other public or private postal  
38 or package delivery service is not a seller within the meaning of  
39 this section.

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

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

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

11 (3) “Delivery sales laws” are any state or federal laws applicable  
12 to delivery sale.

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

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

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

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

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

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

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

33 30436. The following property, upon seizure by the board, is  
34 hereby forfeited to the state:

35 (a) Cigarettes or tobacco products transported upon the  
36 highways, roads, or streets of this state in violation of Section  
37 30431 or Section 30432.

38 (b) Cigarettes not contained in packages to which are affixed  
39 California cigarette tax stamp or meter impressions or tobacco  
40 products upon which the tobacco products surtax has not been

1 paid, which are offered for sale, possessed, kept, stored, or owned  
2 by any person with the intent of the person to sell the cigarettes or  
3 tobacco products without payment of the taxes imposed by this  
4 part.

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

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

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

26 SEC. 10. The Legislature finds and declares that the  
27 amendments made to paragraph (2) of subdivision (e) of Section  
28 30165.1 of the Revenue and Taxation Code by Section 6 of this  
29 act are declaratory of, and do not constitute a change in, existing  
30 law.

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

39 SEC. 12. The provisions of this act are severable. If any  
40 provision of this act or its application is held invalid, that invalidity

1 does not affect other provisions of applications that can be given  
2 effect without the invalid provision or application.

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

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