

AMENDED IN SENATE JULY 15, 2010

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~~ *30101.7 and 30165.1* of, and to add ~~Sections~~ *Section 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~~ *or, in lieu of this consent, to post a surety bond, as specified*. The bill would provide that a licensee who does not waive the sovereign immunity defense or post the surety bond is ineligible to obtain or maintain a license and would also make a licensee who raises a sovereign immunity defense in a specified action subject to revocation of its license. 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~~

*The 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) Existing law prohibits the retail sale of cigarettes in California unless the sale is a vendor-assisted, face-to-face sale, as defined.*

*This bill would allow delivery sales, as defined, in specified circumstances. The bill would make violation of this provision a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.*

~~(2)~~

(3) 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)

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

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

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

This bill would establish circumstances under which a manufacturer and brand families are to be excluded from the directory of manufacturers and brand families, and would require ~~distributors, after receiving notice from~~ the Attorney General; *to provide distributors and wholesalers with written notice of each tobacco product that is added*

~~to or removed from the directory and to provide notice to each customer that is a licensed distributor, wholesaler, or retailer, or other person who purchased, within 2 years before the removal, the cigarettes of the tobacco product manufacturer or brand family removed or excluded from the directory has provided an electronic mail address for this purpose.~~

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 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,” 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

1 pursuant thereto, and appoint a registered agent for service of  
2 process in this state and identify the registered agent to the board  
3 and the Attorney General.

4 (4) Waive any sovereign immunity defense that may apply to  
5 any enforcement action brought by the Attorney General or the  
6 board to enforce this division, Sections 104555 to 104557,  
7 inclusive, of the Health and Safety Code, ~~Section 30165.1 or Part~~  
8 *13 (commencing with Section 30001) of Division 2 of the Revenue*  
9 *and Taxation Code, and regulations adopted thereto. Any waiver*  
10 *shall be express and in writing, in a form and manner acceptable*  
11 *to the Attorney General and the board. General. In lieu of this*  
12 *waiver, a manufacturer or importer may post a surety bond written*  
13 *in favor of the State of California and conditioned on the*  
14 *performance by the manufacturer or importer of all its duties and*  
15 *obligations under this division, Sections 104555 to 104557,*  
16 *inclusive, of the Health and Safety Code, Part 13 (commencing*  
17 *with Section 30001) of Division 2 of the Revenue and Taxation*  
18 *Code, and regulations adopted thereto. The bond shall be posted*  
19 *by a corporate surety located within the United States in an amount*  
20 *equal to the greater of fifty thousand dollars (\$50,000) or the*  
21 *amount of escrow the manufacturer or importer in either its current*  
22 *or predecessor form was required to deposit as a result of the*  
23 *largest of its most recent five calendar years' sales in California*  
24 *The bond may be drawn upon by the Attorney General to cover*  
25 *unsatisfied escrow obligations, tax obligations, claims for penalties,*  
26 *claims for monetary damages, and any other liabilities that are*  
27 *subject to the licensee's claim of sovereign immunity against*  
28 *enforcement of the laws specified above. In the event a*  
29 *nonparticipating manufacturer is required to post a surety bond*  
30 *under this paragraph, the amount of the bond shall be reduced by*  
31 *the amount of any surety bond that is in force and required of that*  
32 *nonparticipating manufacturer under paragraph (5) of subdivision*  
33 *(c) of Section 30165.1 of the Revenue and Taxation Code. A*  
34 *manufacturer or importer that has neither waived any sovereign*  
35 *immunity defense nor posted a surety bond as provided in this*  
36 *section shall not be eligible to obtain and maintain a license under*  
37 *this division.*

38 ~~(5) Provide a copy of any valid, corresponding federal permit~~  
39 ~~issued by the United States Treasury, Alcohol and Tobacco Tax~~  
40 ~~and Trade Bureau.~~

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

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

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

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

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

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

30 (c) The board may not grant or permit the maintenance of a  
31 license to any manufacturer or an importer of cigarettes that does  
32 not affirmatively certify, both at the time the license is granted and  
33 annually thereafter, *compliance with paragraph (4) of subdivision*  
34 *(a)*, that all packages of cigarettes manufactured or imported by  
35 that person and distributed in ~~this state~~ *California* fully comply  
36 with subdivision (b) of Section 30163 of the Revenue and Taxation  
37 Code, and that the cigarettes contained in those packages are the  
38 subject of filed reports that fully comply with all requirements of  
39 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.  
40 1331 et seq.) for the reporting of ingredients added to cigarettes.

1 For purposes of the federal Cigarette Labeling and Advertising  
2 Act requirement, cigars weighing three pounds or less per 1,000  
3 are excluded from the definition of cigarette.

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

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

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

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

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

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

36 (5) Any notice required by this subdivision shall be served  
37 personally or by mail. If served by mail, the notice shall be placed  
38 in a sealed envelope, with postage paid, addressed to the  
39 manufacturer or the importer at the address as it appears in the  
40 records of the board. The giving of notice shall be deemed complete



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

11 *(g) In any action brought by the Attorney General or the board*  
12 *to enforce this division, Sections 104555 to 104557, inclusive, of*  
13 *the Health and Safety Code, Part 13 (commencing with Section*  
14 *30001) of Division 2 of the Revenue and Taxation Code, or*  
15 *regulations adopted thereto, including, but not limited to, an action*  
16 *to suspend or revoke a license issued under this section, if the*  
17 *licensee raises a sovereign immunity defense with respect to an*  
18 *aspect of that proceeding, the license in question shall be subject*  
19 *to revocation. In the event of a revocation under this subdivision,*  
20 *the person whose license has been revoked shall not be eligible*  
21 *for a license under this section in the future, unless that person*  
22 *agrees to waive any sovereign immunity defense that may apply*  
23 *to an 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, Part 13 (commencing*  
26 *with Section 30001) of Division 2 of the Revenue and Taxation*  
27 *Code, or regulations adopted thereto. The Attorney General shall*  
28 *inform the board in the event a sovereign immunity defense is*  
29 *raised by a licenseholder.*

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

32 22980. (a) (1) Any peace officer, or board employee granted  
33 limited peace officer status pursuant to paragraph (6) of subdivision  
34 (a) of Section 830.11 of the Penal Code, upon presenting  
35 appropriate credentials, is authorized to enter any place as described  
36 in paragraph (3) and to conduct inspections in accordance with the  
37 following paragraphs, inclusive.

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

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

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

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

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

12 22980.1. (a) No manufacturer or importer shall sell cigarettes  
13 or tobacco products to a distributor, wholesaler, retailer, or any  
14 other person who is not licensed pursuant to this division or whose  
15 license has been suspended or revoked.

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

21 (2) This subdivision does not apply to any sale of cigarettes or  
22 tobacco products by a distributor, wholesaler, or any other person  
23 to a retailer, wholesaler, distributor, or any other person that the  
24 state, pursuant to the United States Constitution, the laws of the  
25 United States, or the California Constitution, is prohibited from  
26 regulating.

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

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

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

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

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

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

22 (h) (1) Failure to comply with the provisions of this section  
23 shall be a misdemeanor subject to penalties pursuant to Section  
24 22981.

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

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

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

33 104557.1. (a) Notwithstanding subdivision (b) of Section  
34 104557, a tobacco product manufacturer that elects to place funds  
35 into escrow pursuant to paragraph (2) of subdivision (a) of Section  
36 104557 may make an irrevocable assignment of its interest in the  
37 funds to the benefit of the State of California. Such assignment  
38 shall be permanent and apply to all funds in the subject escrow  
39 account or that may subsequently come into the account, including  
40 those deposited into the escrow account prior to the assignment

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

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

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

28 308.1. (a) Notwithstanding any other law, no person shall sell,  
29 offer for sale, distribute, or import any tobacco product commonly  
30 referred to as “bidis” or “beedies,” unless that tobacco product is  
31 sold, offered for sale, or intended to be sold in a business  
32 establishment that prohibits the presence of persons under 18 years  
33 of age on its premises.

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

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

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

39 (c) Any person who violates this section is guilty of a  
40 misdemeanor and is also subject to a civil action brought by the

1 Attorney General, a city attorney, county counsel, or district  
2 attorney for an injunction and a civil penalty of up to two thousand  
3 dollars (\$2,000) per violation. This subdivision does not affect any  
4 other remedies available for a violation of this section.

5 *SEC. 6. Section 30101.7 of the Revenue and Taxation Code is*  
6 *amended to read:*

7 30101.7. (a) It is the intent of the Legislature in enacting this  
8 section to facilitate the collection of all applicable state surtaxes  
9 ~~and~~, sales or use taxes, *and escrow and other payment obligations*  
10 *on cigarettes sold to residents of the state and to ensure compliance*  
11 *with the Prevent All Cigarette Trafficking Act of 2009 (PACT Act;*  
12 *Public Law 111-154).*

13 (b) Except as provided in subdivision (d), no person may engage  
14 in a retail sale of cigarettes in California unless the sale is a  
15 vendor-assisted, face-to-face sale.

16 (c) For the purposes of this section, ~~“face-to-face sale” means~~  
17 *the following definitions shall apply:*

18 (1) *“Consumer” means a person who purchases cigarettes or*  
19 *tobacco products. “Consumer” does not include any person*  
20 *licensed under this part or under Division 8.6 (commencing with*  
21 *Section 22970) of the Business and Professions Code and lawfully*  
22 *operating as a manufacturer, distributor, wholesaler, or retailer*  
23 *of cigarettes or tobacco products.*

24 (2) *“Delivery sale” means sale of cigarettes or tobacco products*  
25 *into and in this state in either of the following cases:*

26 (A) *The consumer submits the order for the sale by means of a*  
27 *telephone or other method of voice transmission, the mail, or the*  
28 *Internet or other online service, or the seller is otherwise not in*  
29 *the physical presence of the consumer when the request for*  
30 *purchase or order is made.*

31 (B) *The cigarettes or tobacco products are delivered to the*  
32 *consumer by common carrier, private delivery service, or other*  
33 *method of remote delivery, or the seller is not in the physical*  
34 *presence of the consumer when the consumer obtains possession*  
35 *of the cigarettes or tobacco products.*

36 (3) *“Delivery seller” means a person who makes a delivery*  
37 *sale.*

38 (4) *“Face-to-face sale” means a sale in which the purchaser is*  
39 *in the physical presence of the seller or the seller’s employee or*  
40 *agent at the time of the sale. A face-to-face sale does not include*

1 any transaction conducted by mail order, the Internet, telephone,  
2 or any other anonymous transaction method in which the buyer is  
3 not in the seller's physical presence or the physical presence of  
4 the seller's employee or agent at the time of the sale *a delivery*  
5 *sale*.

6 (5) "Indian country" shall have the same meaning as provided  
7 in Section 1151 of Title 18 of the United States Code, and includes  
8 any other land held by the United States in trust or restricted status  
9 for one or more Indian tribes.

10 (6) "Interstate commerce" means commerce between a state  
11 and any place outside the state, commerce between a state and  
12 Indian country in the state, or commerce between points in the  
13 same state but through a place outside of the state or through any  
14 Indian country.

15 (7) "Tobacco products" shall have the same meaning as  
16 otherwise defined under this part with the exception of cigars.

17 (d) A person may engage in a ~~non-face-to-face~~ *delivery* sale of  
18 cigarettes or tobacco products to a person in California provided  
19 that ~~both~~ all of the following conditions are met:

20 (1) The *delivery* seller has fully complied with all of the  
21 requirements of Chapter 10A (commencing with Section 375) of  
22 Title 15 of the United States Code, otherwise known as the Jenkins  
23 Act.

24 ~~(2) The seller has fully complied with either of the following~~  
25 ~~requirements:~~

26 ~~(A) All applicable California taxes on the cigarettes have been~~  
27 ~~paid.~~

28 ~~(B) The seller includes on the outside of the shipping container~~  
29 ~~for any cigarettes shipped to a resident in California from any~~  
30 ~~source in the United States an externally visible and easily legible~~  
31 ~~notice located on the same side of the shipping container as the~~  
32 ~~address to which the package is delivered stating as follows:~~

33 ~~— "IF THESE CIGARETTES HAVE BEEN SHIPPED TO~~  
34 ~~YOU FROM A SELLER LOCATED OUTSIDE OF THE~~  
35 ~~STATE IN WHICH YOU RESIDE, THE SELLER HAS~~  
36 ~~REPORTED PURSUANT TO FEDERAL LAW THE SALE~~  
37 ~~OF THESE CIGARETTES TO YOUR STATE TAX~~  
38 ~~COLLECTION AGENCY, INCLUDING YOUR NAME~~  
39 ~~AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE~~

1 ~~FOR ALL APPLICABLE UNPAID STATE TAXES ON~~  
2 ~~THESE CIGARETTES.”~~

3 (2) *The delivery seller obtains and maintains any applicable*  
4 *license under this part and under Division 8.6 (commencing with*  
5 *Section 22970) of the Business and Professions Code, as if the*  
6 *delivery sales occurred entirely within this state.*

7 (3) *The delivery seller complies with any applicable state law*  
8 *that imposes escrow or other payment obligations on tobacco*  
9 *product manufacturers, including, but not limited to, Sections*  
10 *104555 to 104557, inclusive, of the Health and Safety Code.*

11 (4) *The delivery seller reports to the Attorney General its*  
12 *delivery sales of cigarettes and tobacco products to California*  
13 *consumers in the form and manner prescribed by the Attorney*  
14 *General.*

15 (e) *Any violation of this section by any person is a misdemeanor.*  
16 *Each offense shall be punishable by a fine not to exceed five*  
17 *thousand dollars (\$5,000), or imprisonment not to exceed one year*  
18 *in a county jail, or both the fine and imprisonment. The amount*  
19 *of any fines assessed shall be deposited in the Cigarette and*  
20 *Tobacco Products Compliance Fund.*

21 ~~(e)~~

22 (f) *The State Board of Equalization shall provide information*  
23 *relative to a seller’s failure or attempt to comply with the PACT*  
24 *Act and the Jenkins Act to the Attorney General.*

25 ~~(f)~~

26 (g) *The Attorney General or a city attorney, county counsel, or*  
27 *district attorney may bring a civil action to enforce this section*  
28 *against any a person that violates this section and, in addition to*  
29 *any other remedies remedy provided by law, the court shall assess*  
30 *a civil penalty in accordance with the following schedule:*

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

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

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

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

4 (5) A civil penalty of *up to* ten thousand dollars (\$10,000) for  
5 a fifth or subsequent violation within a five-year period.

6 ~~(g) The Attorney General shall provide an annual report to the~~  
7 ~~Legislature regarding all actions taken to comply with, and enforce,~~  
8 ~~the Jenkins Act.~~

9 (h) This section does not prohibit ~~any~~ *the* lawful sale of a  
10 tobacco product that occurs by means of a vending machine.

11 (i) Nothing in this section shall relieve the seller of cigarettes  
12 from any other applicable requirement of state law relating to the  
13 sale *or distribution* of cigarettes *or tobacco products in this state*.

14 (j) The provisions of this section are severable. If any provision  
15 of this section or its application is held invalid, that invalidity shall  
16 not affect other provisions or applications that can be given effect  
17 without the invalid provision or application.

18 ~~SEC. 6.~~

19 *SEC. 7.* Section 30165.1 of the Revenue and Taxation Code is  
20 amended to read:

21 30165.1. (a) The following definitions shall apply for purposes  
22 of this section:

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

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

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

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

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

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



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

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

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

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

9 (b) Every tobacco product manufacturer whose cigarettes are  
10 sold in this state, whether directly or through a distributor, retailer,  
11 or similar intermediary or intermediaries, shall execute and deliver  
12 on a form and in the manner prescribed by the Attorney General,  
13 ~~information as the Attorney General deems reasonably necessary~~  
14 ~~to make the determinations required by subdivision (c), a~~ *a*  
15 certification to the Attorney General no later than the 30th day of  
16 April each year that, as of the date of the certification, the tobacco  
17 product manufacturer is either a participating manufacturer that  
18 has made all payments calculated by the independent auditor to  
19 be due under the Master Settlement Agreement, except to the extent  
20 the participating manufacturer is disputing any of *the* payments,  
21 or is in full compliance with Article 3 (commencing with Section  
22 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
23 Safety Code, including all installment payments required by that  
24 article and this section, and any regulations promulgated pursuant  
25 thereto. *A tobacco product manufacturer located outside of the*  
26 *United States shall provide to the Attorney General and keep*  
27 *current, the names, and addresses, including electronic mail*  
28 *addresses, of all importers that sell or will be selling their*  
29 *cigarettes in this state and shall cause each importer to provide*  
30 *to the Attorney General a copy of a valid importer permit issued*  
31 *by the United States Treasury, Alcohol and Tobacco Tax and Trade*  
32 *Bureau, and the importer license issued by the board. The*  
33 *importers who sell or will be selling their cigarettes in this state*  
34 *shall obtain and maintain a license as an importer in compliance*  
35 *with Division 8.6 (commencing with Section 22970) of the Business*  
36 *and Professions Code. Any person who makes a certification*  
37 *pursuant to this subdivision that asserts the truth of any material*  
38 *matter that he or she knows to be false is guilty of a misdemeanor*  
39 *punishable by imprisonment of up to one year in the county jail,*

1 or a fine of not more than one thousand dollars (\$1,000), or both  
2 the imprisonment and the fine.

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

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

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

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

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

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

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

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

33 (B) That the nonparticipating manufacturer has done all of the  
34 following:

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

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

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

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

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

15 (ii) Division 8.6 (commencing with Section 22970) of the  
16 Business and Professions Code, and any regulations promulgated  
17 pursuant thereto. *The nonparticipating manufacturer shall also*  
18 *provide a copy of a valid, corresponding federal permit issued by*  
19 *the United States Treasury, Alcohol and Tobacco Tax and Trade*  
20 *Bureau.*

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

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

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

30 (iii) The amount the nonparticipating manufacturer placed in  
31 the fund for cigarettes sold in the state during the preceding  
32 calendar year, the date and amount of each deposit, and any  
33 confirming evidence or verification as may be deemed necessary  
34 by the Attorney General.

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

1 (E) In the case of a nonparticipating manufacturer located  
2 outside the United States, that *the manufacturer* has provided a  
3 declaration in a form prescribed by the Attorney General from  
4 each of its importers into the United States of any of its brand  
5 families to be sold in California, that the importer accepts joint  
6 and several liability with the nonparticipating manufacturer for all  
7 escrow deposits due in accordance with Article 3 (commencing  
8 with Section 104555), for all penalties assessed in accordance with  
9 Article 3 (commencing with Section 104555) of Chapter 1 of Part  
10 3 of Division 103 of the Health and Safety Code, and for payment  
11 of all ~~applicable state taxes~~, fees, costs, attorney's fees, penalties,  
12 and refunds imposed or required under this section, *including, but*  
13 *not limited to, all refunds resulting from the removal of the*  
14 *manufacturer or any of its brand families from the directory.* The  
15 declaration shall appoint for the declarant a resident agent for  
16 service of process in California in accordance with subdivision (f)  
17 and ~~that the importer is in compliance with~~ *affirm that it has caused*  
18 *every importer that will sell its tobacco products in this state to*  
19 *obtain and maintain a license as an importer pursuant to Division*  
20 *8.6 (commencing with Section 22970) of the Business and*  
21 *Professions Code.*

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

25 (i) In the case of a participating manufacturer, the participating  
26 manufacturer affirms that the brand family is to be deemed to be  
27 its cigarettes for purposes of calculating its payments under the  
28 MSA for the relevant year, in the volume and shares determined  
29 pursuant to the MSA.

30 (ii) In the case of a nonparticipating manufacturer, the  
31 nonparticipating manufacturer affirms that the brand family is to  
32 be deemed to be its cigarettes for purposes of Article 3  
33 (commencing with Section 104555) of Chapter 1 of Part 3 of  
34 Division 103 of the Health and Safety Code, including paragraph  
35 (2) of subdivision (a) of Section 104557 of the Health and Safety  
36 Code, and any regulations promulgated pursuant thereto and this  
37 section.

38 (B) Nothing in this section shall be construed as limiting or  
39 otherwise affecting the state's right to maintain that a brand family  
40 constitutes cigarettes of a different tobacco product manufacturer

1 for purposes of calculating payments under the MSA or for  
2 purposes of Article 3 (commencing with Section 104555) of  
3 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code  
4 and any regulations promulgated pursuant thereto.

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

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

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

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

21 (B) Any nonparticipating manufacturer that fails to provide the  
22 required certification or whose certification the Attorney General  
23 determines is not in compliance with subdivision (b), unless the  
24 Attorney General has determined that the violation has been cured  
25 to the satisfaction of the Attorney General.

26 (C) *A tobacco product manufacturer that does not hold a valid*  
27 *and current manufacturer's license under Section 22979 of the*  
28 *Business and Professions Code, including, but not limited to, a*  
29 *manufacturer whose license has been revoked under subdivision*  
30 *(g) of Section 22979 of the Business and Professions Code.*

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

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

1 (B) Any outstanding final judgment, including interest thereon,  
 2 for violations of Article 3 (commencing with Section 104555) of  
 3 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,  
 4 this section, *Sections 30101.7 and 30165.2*, and any regulations  
 5 promulgated pursuant thereto, has not been fully satisfied for the  
 6 brand family and the manufacturer.

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

27 (D) ~~The~~ *In the case of a nonparticipating manufacturer, the*  
 28 manufacturer has knowingly failed to disclose any material  
 29 information required or knowingly made any material false  
 30 statements in the certification of any supporting information or  
 31 documentation provided.

32 (E) *If the manufacturer or its importer, as defined in Section*  
 33 *30019, engages in delivery sales and the manufacturer fails to*  
 34 *provide or fails to cause his or her importer to provide reasonable*  
 35 *assurances that the delivery seller has fully complied with all*  
 36 *requirements of applicable federal and state law, including, but*  
 37 *not limited to, all of the following:*

38 (i) *The Prevent All Cigarette Trafficking Act of 2009 (PACT*  
 39 *Act; Public Law 111-154).*

1 (ii) *The Jenkins Act (Chapter 10A (commencing with Section*  
2 *375) of Title 15 of the United States Code).*

3 (iii) *The requirements of Section 30101.7.*

4 (iv) *All stamping, marking, and labeling requirements, including,*  
5 *but not limited to, Section 30163, and any other information or*  
6 *indicia requirements imposed by state or federal law.*

7 (v) *All other state laws generally applicable to the sale and*  
8 *distribution of tobacco products.*

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

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

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

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

38 ~~(ii) On and after the 61st day from the effective date of the~~  
39 ~~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 *(A) When the Attorney General's office informs a manufacturer*  
10 *that it will recommend to the Attorney General that the*  
11 *manufacturer or brand family be delisted for cause, the office shall*  
12 *transmit by electronic mail, or other practicable means, a copy of*  
13 *the notice of the pending administrative action to the manufacturer,*  
14 *all licensed distributors and wholesalers, and to any retailer or*  
15 *other person who has provided an electronic mail address to the*  
16 *Attorney General for this purpose.*

17 *(B) A licensed distributor may purchase, stamp, or sell, and a*  
18 *licensed wholesaler may purchase or sell, products affected by the*  
19 *notice of pending administrative action for no more than 40 days*  
20 *following issuance of the notice of pending administrative action.*  
21 *Prior to the sale of a product affected by the notice of pending*  
22 *administrative action, and no later than seven days after the notice*  
23 *of pending administrative action, a distributor or wholesaler shall*  
24 *notify each of its existing customers of the pending administrative*  
25 *action.*

26 *(C) Upon removal from the directory of a tobacco product*  
27 *manufacturer or brand family, the Attorney General shall transmit*  
28 *by electronic mail, or other practicable means, a notice of removal,*  
29 *to the manufacturer, all licensed distributors and wholesalers, and*  
30 *to any retailer or other person who has provided an electronic*  
31 *mail address to the Attorney General for this purpose. No later*  
32 *than seven days after issuance of the notice of removal, a*  
33 *distributor or wholesaler shall provide each of its existing*  
34 *customers a copy of the notice of removal.*

35 *(D) A licensed retailer may sell the cigarettes of a manufacturer*  
36 *or brand family affected by the notice of removal for no more than*  
37 *60 days following the effective date of the manufacturer or brand*  
38 *family's removal from the directory.*

39 *(E) After 60 days following removal from the directory the*  
40 *cigarettes of a manufacturer or brand family identified in the notice*



1 of removal are contraband and are subject to seizure and  
2 destruction under subdivision (e) of Section 30436 and subdivision  
3 (b) of Section 30449, and may not be purchased or sold in  
4 California.

5 (F) In the event the Attorney General declines to remove a  
6 tobacco product manufacturer or brand family from the directory  
7 following issuance of the notice described in subparagraph (A),  
8 the Attorney General shall notify by electronic mail, or other  
9 practicable means, the manufacturer, all licensed distributors and  
10 wholesalers, and any retailer or other person who has provided  
11 an electronic mail address to the Attorney General for this purpose,  
12 of this decision. No later than seven days after issuance of this  
13 notice, a distributor or wholesaler shall provide each of its existing  
14 customers a copy of this notice.

15 (G) Upon request of the Attorney General, the board shall  
16 provide the Attorney General all electronic mail addresses for  
17 licensed distributors, wholesalers, and retailers in its possession.

18 ~~(5)~~

19 (4) Newly qualified and elevated-risk nonparticipating  
20 manufacturers shall post surety bonds as follows:

21 (A) Notwithstanding any other law, if a newly qualified  
22 nonparticipating manufacturer is to be listed in the directory or if  
23 the Attorney General reasonably determines that any  
24 nonparticipating manufacturer who has filed a certification pursuant  
25 to subdivision (b) poses an elevated risk for noncompliance with  
26 this section, Section 30165.2 or 30165.3, Part 13 (commencing  
27 with Section 30001) of Division 2, or with Article 3 (commencing  
28 with Section 104555) of Chapter 1 of Part 3 of Division 103 of  
29 the Health and Safety Code, neither the nonparticipating  
30 manufacturer nor any of its brand families shall be included in the  
31 directory unless and until the nonparticipating manufacturer, or  
32 its United States importer that undertakes joint and several liability  
33 for the manufacturer's performance in accordance with  
34 subparagraph (E) of paragraph (3) of subdivision (b), has posted  
35 a bond in accordance with this section.

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

1 year's sales in California. The bond shall be written in favor of  
2 the State of California and shall be conditioned on the performance  
3 by the nonparticipating manufacturer, or its United States importer  
4 that undertakes joint and several liability for the manufacturer's  
5 performance in accordance with subparagraph (E) of paragraph  
6 (3) of subdivision (b), of all its duties and obligations under this  
7 section and Article 3 (commencing with Section 104555) of  
8 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code  
9 *and payment of all state taxes for the sale or distribution of*  
10 *cigarettes and tobacco products in this state during the year in*  
11 *which the certification is filed and the next succeeding calendar*  
12 *year. The bond may be drawn upon by the board or the Attorney*  
13 *General to cover unsatisfied escrow obligations, tax obligations,*  
14 *claims for penalties, claims for monetary damages, and any other*  
15 *liabilities that are subject to the licensee's claim of sovereign*  
16 *immunity against enforcement of the laws specified above.*

17 (C) A nonparticipating manufacturer may be deemed to pose  
18 an elevated risk for noncompliance with this section, Section  
19 ~~30165.2~~ or 30165.3, or Article 3 (commencing with Section  
20 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
21 Safety Code if:

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

27 (I) The manufacturer did not underdeposit knowingly or  
28 recklessly and the manufacturer promptly cured the underdeposit  
29 within 180 days of notice of it.

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

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

39 (iii) Any state has litigation pending against, or an unsatisfied  
40 *final* judgment against, the manufacturer or any affiliate thereof

1 for escrow or for penalties, fees, costs, refunds, or attorney’s fees  
2 related to noncompliance with state escrow laws.

3 (iv) The nonparticipating manufacturer sells its cigarettes or  
4 tobacco products directly to consumers via remote or other  
5 non-face-to-face means.

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

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

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

15 (viii) The nonparticipating manufacturer fails to submit or  
16 complete any required forms, documents, certification, or notices,  
17 in a timely manner or, to the satisfaction of the Attorney General  
18 or the State Board of Equalization.

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

27 ~~(6)~~

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

1 (d) (1) The Attorney General may exclude or remove from the  
2 list required by subdivision (c) a tobacco product manufacturer or  
3 any of its brand families, based on a determination that the  
4 manufacturer is not a participating manufacturer that has provided  
5 the required certification and made all payments calculated by the  
6 independent auditor to be due from it under the Master Settlement  
7 Agreement, except to the extent that it is disputing the payment,  
8 or in the case of a nonparticipating manufacturer, has not made all  
9 escrow payments required by paragraph (2) of subdivision (a) of  
10 Section 104557 of the Health and Safety Code, in accordance with  
11 that subdivision, or has not complied with this section, Section  
12 30165.2 ~~or 30165.3, or~~, *or the tobacco product manufacturer has*  
13 *not complied with* any state or federal delivery sales laws applicable  
14 to sales and distribution of tobacco products in this state. Before  
15 the exclusion or removal may take effect, the Attorney General  
16 shall notify the manufacturer of this determination.

17 (2) Upon receiving notice from the Attorney General pursuant  
18 to paragraph (1), the manufacturer may challenge the Attorney  
19 General's determination as erroneous, and may seek relief from  
20 the determination, by filing a petition for writ of mandate pursuant  
21 to Section 1085 of the Code of Civil Procedure for that purpose  
22 in the Superior Court for the County of Sacramento, or as otherwise  
23 provided by law. The filing of the petition shall operate to stay the  
24 Attorney General's determination, if the *participating manufacturer*  
25 *has made all payments calculated by the independent auditor to*  
26 *be due from it under the Master Settlement Agreement, except to*  
27 *the extent that it is disputing payment, or if a nonparticipating*  
28 manufacturer has paid into escrow the full amount of any  
29 deficiency in the escrow payments that the Attorney General has  
30 determined the tobacco product manufacturer was required to have  
31 made under paragraph (2) of subdivision (a) of Section 104557 of  
32 the Health and Safety Code, including any installment payments  
33 required under subdivision (h), pending final resolution of the  
34 action.

35 (e) (1) No person shall affix, or cause to be affixed, any tax  
36 stamp or meter impression to a package of cigarettes pursuant to  
37 subdivision (a) of Section 30163, or pay the tax levied pursuant  
38 to Sections 30123 and 30131.2 on a tobacco product defined as a  
39 cigarette under this section, unless the brand family of the cigarettes  
40 or tobacco product, and the tobacco product manufacturer that

1 makes or sells the cigarettes or tobacco product, are included on  
2 the list posted by the Attorney General pursuant to subdivision  
3 (c).

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

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

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

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

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

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

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

21 (4) For each nonparticipating manufacturer located outside the  
22 United States, each importer into the United States of any  
23 nonparticipating manufacturer's brand families that are sold in  
24 California shall bear joint and several liability with the  
25 nonparticipating manufacturer for deposit of all escrow due under  
26 Section 104557 of the Health and Safety Code, payment of all  
27 costs and attorney's fees imposed in accordance with Section  
28 104557 of the Health and Safety Code, and payment of all  
29 ~~applicable state taxes, fees, costs, attorney's fees, penalties, and~~  
30 ~~refunds imposed or required by this section or Section 30165.2.~~  
31 Each manufacturer and importer, that sells or intends to sell  
32 cigarettes in California, shall obtain and maintain a license as a  
33 manufacturer or importer in compliance with Division 8.6  
34 (commencing with Section 22970) of the Business and Professions  
35 Code. Each *nonparticipating* manufacturer and its importers shall  
36 report in the manner, including electronically, as required by the  
37 Attorney General ~~and the board~~, all cigarettes and tobacco products  
38 *sold in this state each month*, including, but not limited to, the  
39 quantity, including, ~~but not limited to weight, tobacco weight and~~  
40 *number of cigarette sticks, the wholesale cost and sale price of*

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

8 (A) Five times the retail value of the cigarettes, *loose tobacco*  
9 *and smokeless tobacco*, or tobacco products defined as cigarettes  
10 under this section that were not ~~reported prior to release for~~  
11 ~~shipment to or sale in this state.~~ *reported as required by the*  
12 *Attorney General.*

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

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

27 (2) Notwithstanding Section 30455, the board is authorized to  
28 disclose to the Attorney General any information received under  
29 this part for purposes of determining compliance with and  
30 enforcing the provisions of this section, *Sections 30101.7 and*  
31 *30165.2*, and Article 3 (commencing with Section 104555) of  
32 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,  
33 and any regulations promulgated pursuant thereto. The board and  
34 Attorney General shall share with each other the information  
35 received under this section, and may share that information with  
36 other federal, state, or local agencies, only for purposes of  
37 enforcement of this section, Article 3 (commencing with Section  
38 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
39 Safety Code, and any regulations promulgated pursuant thereto,  
40 or corresponding laws of other states.

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

10 (4) In addition to the information required to be submitted  
11 pursuant to this section or Article 3 (commencing with Section  
12 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
13 Safety Code and any regulations promulgated pursuant thereto,  
14 the board or the Attorney General may require a retailer,  
15 wholesaler, distributor, importer, or tobacco product manufacturer  
16 to submit any additional information, including, but not limited  
17 to, samples of the packaging or labeling of each brand family, as  
18 is necessary to enable the Attorney General to determine whether  
19 a tobacco product manufacturer or importer has complied, is in  
20 compliance, and, *if applicable pursuant to subparagraph (C) of*  
21 *paragraph (2) of subdivision (c)*, has provided reasonable assurance  
22 that it will comply or continue to comply with this section, ~~Sections~~  
23 ~~30165.2 and 30165.3~~ *Section 30165.2, Part 8 (commencing with*  
24 *Section 14950) of Division 12 of the Health and Safety Code*, and  
25 Article 3 (commencing with Section 104555) of Chapter 1 of Part  
26 3 of Division 103 of the Health and Safety Code, and any  
27 regulations promulgated pursuant thereto.

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

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



1 (A) In the case of the first offense, the board may revoke or  
2 suspend the license or licenses issued to the person by the board,  
3 pursuant to the procedures applicable to the revocation of a license  
4 set forth in Sections 30148 and 30158, and Section 22980.3 of the  
5 Business and Professions Code. Each stamp affixed and each sale  
6 or offer to sell cigarettes in violation of subdivision (e) shall  
7 constitute a separate violation.

8 (B) In the case of a second or any subsequent offense, ~~which~~  
9 ~~that~~ the board determines to be a violation of subdivision (e) ~~or~~  
10 ~~any regulations adopted pursuant to this section~~, in addition to the  
11 action authorized under subparagraph (A), the board may impose  
12 a civil penalty in an amount not to exceed the greater of either of  
13 the following:

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

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

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

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

23 (B) At the time of the violation, the distributor possessed a copy  
24 of the Attorney General's most recent written acknowledgment of  
25 receipt of the certifications and other information required as a  
26 condition of including the brand family on the list required by  
27 subdivision (c).

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

36 (4) A violation of paragraph (3) of subdivision (e) shall  
37 constitute a misdemeanor.

38 (j) If a distributor affixes a stamp or meter impression to a  
39 package of cigarettes under subdivision (a) of Section 30163, or  
40 pays the tax levied under Sections 30123 and 30131.2 on a tobacco

1 product defined as a cigarette under this section, during the period  
2 between the date on which the brand family of the cigarettes or  
3 tobacco product was excluded or removed from the list required  
4 by subdivision (c) and the date on which the distributor received  
5 notice of the exclusion or removal under paragraph (4) of  
6 subdivision (c), then both of the following shall apply:

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

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

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

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

25 (2) That the tobacco product manufacturer is a participating  
26 manufacturer.

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

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

33 (l) A violation of subdivision (e) shall constitute unfair  
34 competition under Section 17200 of the Business and Professions  
35 Code.

36 (m) No person shall be issued a distributor's license, pursuant  
37 to Section 30140, unless that person has certified in writing that  
38 the person will comply fully with this section. Any person who  
39 makes a certification pursuant to this subdivision that asserts the  
40 truth of any material matter that he or she knows to be false is

1 guilty of a misdemeanor punishable by imprisonment of up to one  
2 year in the county jail, or a fine of not more than one thousand  
3 dollars (\$1,000), or both the imprisonment and the fine.

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

12 (o) The Attorney General may adopt rules and regulations to  
13 implement this section ~~and Sections 30165.2 and 30165.3~~. The  
14 rules and regulations may establish procedures for including in  
15 the list described in subdivision (c) tobacco product manufacturers  
16 that are not participating manufacturers and were not required to  
17 make escrow payments under paragraph (2) of subdivision (a) of  
18 Section 104557 of the Health and Safety Code, for sales made  
19 during any preceding calendar year, and brand families of those  
20 manufacturers. The rules and regulations may also establish  
21 procedures for seizure and destruction of cigarettes forfeited to  
22 the state pursuant to Section 30436 or Section 30449, including,  
23 but not limited to, the state facilities that may be used for the  
24 destruction of contraband cigarettes. Nothing in this section shall  
25 affect the authority of local law enforcement and local government  
26 officials to seize and destroy contraband under existing state or  
27 local law. The regulations adopted to effect the purposes of this  
28 section are emergency regulations in accordance with Chapter 3.5  
29 (commencing with Section 11340) of Part 1 of Division 3 of Title  
30 2 of the Government Code. For purposes of that chapter, including  
31 Section 11349.6 of the Government Code, the adoption of the  
32 regulations shall be considered by the Office of Administrative  
33 Law to be necessary for the immediate preservation of the public  
34 peace, health and safety, and general welfare. Notwithstanding  
35 subdivision (e) of Section 11346.1 of the Government Code, the  
36 regulations shall be repealed 180 days after their effective date,  
37 unless the adopting authority or agency complies with that chapter,  
38 as provided in subdivision (e) of Section 11346.1 of the  
39 Government Code.

1 (p) In any action brought by the state to enforce this section,  
2 the state shall be entitled to recover the costs of investigation,  
3 expert witness fees, costs of the action, and reasonable attorney’s  
4 fees.

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

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

8 (A) A nonparticipating manufacturer and its importers ~~or a~~  
9 ~~tobacco product manufacturer as defined in subdivision (i) of~~  
10 ~~Section 104556 of the Health and Safety Code that became a~~  
11 ~~participating manufacturer on or after the Master Settlement~~  
12 ~~execution date, as defined in Section II (aa) of the Master~~  
13 ~~Settlement Agreement, and its importers.~~

14 (B) Exclusive distributors, retailers, stamping agents, and  
15 wholesalers, as defined in Division 8.6 (commencing with Section  
16 22970) of the Business and Profession Code, and this part.

17 (C) Persons or entities engaged in delivery sales as defined in  
18 Section ~~30165.3~~ 30101.7.

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

1 a document, record, or other evidence, the court may order  
2 compliance with the subpoena and assess all costs and reasonable  
3 attorney’s fees against the person. If the motion for an order is  
4 granted and the person thereafter fails to comply with the order,  
5 the court may make orders as are provided for by law. Subpoenas  
6 shall be served and witness fees and mileage paid as allowed in  
7 civil cases in the courts of the State of California.

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

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

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

37 ~~SEC. 7.~~

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

1 30165.2. (a) For purposes of this section, “applicable returns”  
 2 means the following returns or reports relating to cigarettes that  
 3 are filed or required to be filed with the Alcohol and Tobacco Tax  
 4 and Trade Bureau of the United States Department of Treasury;  
 5 *(TTB), the federal Department of Homeland Security, and the*  
 6 *United States Customs and Border Patrol (CBP) after the effective*  
 7 *date of the act adding this section:*

- 8 (1) Alcohol and Tobacco Tax and Trade Bureau Form 5000.24.
- 9 (2) Alcohol and Tobacco Tax and Trade Bureau Form 5210.5.
- 10 (3) Alcohol and Tobacco Tax and Trade Bureau Form 5220.6.
- 11 (4) *United States Customs and Border Protection Form 7501.*
- 12 ~~(4)~~
- 13 (5) Any successor returns or reports intended to replace ~~Alcohol~~  
 14 ~~and Tobacco Tax and Trade Bureau Form 5000.24, 5210.5, or~~  
 15 ~~5220.6.~~ *the forms specified in paragraphs (1) to (4), inclusive.*

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

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

25 (2) Submit to the United States Treasury a request or consent  
 26 under Internal Revenue Code Section 6103(c) authorizing the  
 27 Alcohol and Tobacco Tax and Trade Bureau to disclose the  
 28 applicable returns of manufacturer to the Attorney General. ~~A~~

29 (c) A foreign tobacco product manufacturer whose cigarettes  
 30 are imported into the United States by an importer or importers  
 31 shall submit, or shall ~~cause~~ *cause* each of its importers to submit,  
 32 to the Attorney General and the board ~~each~~ *both of the following:*  
 33 (1) *Each and every applicable return, form, or report filed with*  
 34 *TTB and CBP that includes any information about cigarettes of*  
 35 *that foreign tobacco product manufacturer imported into the United*  
 36 *States.*

37 (3) *A report of the sales of each brand family in this state in the*  
 38 *form and manner specified by the Attorney General or the board.*

39 (d) *A foreign tobacco manufacturer shall also cause every*  
 40 *importer who will sell its cigarettes in this state to obtain and*

1 *maintain a license as an importer in compliance with Division 8.6*  
2 *(commencing with Section 22970) of the Business and Professions*  
3 *Code.*

4 (e) The Attorney General and the board shall not disclose any  
5 applicable returns or any information contained therein, except as  
6 necessary to carry out the functions and duties of the Department  
7 of Justice or board, or as provided in subdivision ~~(e)~~ (f).

8 ~~(e)~~

9 (f) The Attorney General and the board may compile data on  
10 cigarette shipments from the applicable returns and may share data  
11 with other states that are signatories to the Master Settlement  
12 Agreement, as defined in paragraph (5) of subdivision (a) of  
13 Section 30165.1, provided that states impose *or agree to provide*  
14 protections against disclosure of the applicable returns, or any  
15 information from applicable returns, that are equivalent to the  
16 protections provided under subdivision ~~(b)~~ (e).

17 ~~(d)~~

18 (g) A tobacco product manufacturer who does not comply with  
19 the requirements of ~~subdivision (b)~~ subdivisions (b), (c), and (d)  
20 shall, after 30 days notice by the Attorney General or the board to  
21 the tobacco product manufacturer of the failure to comply, be  
22 removed, along with its brand families, from the tobacco directory  
23 unless the tobacco product manufacturer has brought itself into  
24 compliance by the end of the 30-day period.

25 ~~(e)~~

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

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

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

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

36 ~~(f)~~

37 (i) The Attorney General may promulgate regulations to  
38 implement and carry out this section.

39 ~~SEC. 8. Section 30165.3 is added to the Revenue and Taxation~~  
40 ~~Code, to read:~~

1     ~~30165.3.—(a) Unless the federal Prevent All Cigarette~~  
2 ~~Trafficking Act of 2009 (PACT ACT) provides otherwise, every~~  
3 ~~person selling or taking a delivery sale order or engaging in any~~  
4 ~~other non-face-to-face sale of cigarettes, as defined in Section~~  
5 ~~30101.7, or distributing or engaging in the sale or nonsale~~  
6 ~~distribution of tobacco products, as defined in Section 22963 of~~  
7 ~~the Business and Professions Code, to a person in the state shall~~  
8 ~~do all of the following:~~

9     ~~(1) Obtain and maintain license in compliance with Division~~  
10 ~~8.6 (commencing with Section 22970) of the Business and~~  
11 ~~Professions Code and this code, and sell only through other~~  
12 ~~licensed importers, wholesalers, distributors, and retailers.~~

13     ~~(2) Comply with state laws imposing eserow or other payment~~  
14 ~~obligations, including, but not limited to, Sections 104555 to~~  
15 ~~104557, inclusive, of the Health and Safety Code.~~

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

22     ~~(4) Comply with Sections 30165.1 and 30165.2.~~

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

25     ~~(b) Each delivery seller shall report to the Attorney General and~~  
26 ~~to the board its sales of cigarettes and tobacco products to persons~~  
27 ~~in this state in the form and manner as required by the Attorney~~  
28 ~~General or the board, including, but not limited to, the following~~  
29 ~~information:~~

30     ~~(1) The name of the manufacturer.~~

31     ~~(2) The brand families.~~

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

33     ~~(4) The name and address of the purchaser.~~

34     ~~(5) The name and address of the person to whom shipment was~~  
35 ~~made.~~

36     ~~(6) The date of shipment.~~

37     ~~(7) The point of departure.~~

38     ~~(8) The name and address of the common carrier, delivery~~  
39 ~~service, or other consignee.~~



1 ~~(9) The amount of each and every state or local government~~  
2 ~~taxes paid.~~

3 ~~(e) For purposes of this section, the following definitions apply:~~

4 ~~(1) “Delivery seller” is any person, within or outside the state,~~  
5 ~~who agrees to make a delivery sale to a customer in this state. The~~  
6 ~~United States Postal Service or any other public or private postal~~  
7 ~~or package delivery service is not a seller within the meaning of~~  
8 ~~this section.~~

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

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

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

19 ~~(3) “Delivery sales laws” are any state or federal laws applicable~~  
20 ~~to delivery sale.~~

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

25 ~~(1) A civil penalty of not less than one thousand dollars (\$1,000)~~  
26 ~~and not more than two thousand dollars (\$2,000) for the first~~  
27 ~~violation.~~

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

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

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

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

39 ~~SEC. 9. Section 30436 of the Revenue and Taxation Code is~~  
40 ~~amended to read:~~

1 30436. The following property, upon seizure by the board, is  
2 hereby forfeited to the state:

3 (a) Cigarettes or tobacco products transported upon the  
4 highways, roads, or streets of this state in violation of Section  
5 30431 or Section 30432.

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

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

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

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

34 ~~SEC. 10.~~

35 *SEC. 9.* The Legislature finds and declares that the  
36 amendments made to paragraph (2) of subdivision (e) of Section  
37 30165.1 of the Revenue and Taxation Code by ~~Section 6~~ of this  
38 act are declaratory of, and do not constitute a change in, existing  
39 law.

1     ~~SEC. 11.~~

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

10    ~~SEC. 12.~~

11    *SEC. 11.* The provisions of this act are severable. If any  
12 provision of this act or its application is held invalid, that invalidity  
13 does not affect other provisions of applications that can be given  
14 effect without the invalid provision or application.

15    ~~SEC. 13.~~

16    *SEC. 12.* No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.