

AMENDED IN SENATE AUGUST 18, 2010

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

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**ASSEMBLY BILL**

**No. 2496**

**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 30101.7 and 30165.1 of, and to add Section 30165.2 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 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.

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.

(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.

(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 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 licensed distributor, wholesaler, retailer,

or other person who 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.

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

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

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

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

*(7) This bill would incorporate additional changes in Section 22979 of the Business and Professions Code proposed by AB 2733, that would become operative only if AB 2733 and this bill are both chaptered and*

become operative on or before January 1, 2011, and this bill is chaptered last.

(7)

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

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

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

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

22 (4) Waive any sovereign immunity defense that may apply to  
23 any enforcement action brought by the Attorney General or the  
24 board to enforce this division, Sections 104555 to 104557,  
25 inclusive, of the Health and Safety Code, or Part 13 (commencing  
26 with Section 30001) of Division 2 of the Revenue and Taxation  
27 Code, and regulations adopted thereto. Any waiver shall be express

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

29 (b) In order to be eligible for obtaining and maintaining a license  
30 under this division, a manufacturer or importer that is a "tobacco  
31 product manufacturer" in subdivision (i) of Section 104556 of the  
32 Health and Safety Code, shall do all of the following in the manner  
33 specified by the board:

34 (1) Certify to the board that it is a "participating manufacturer"  
35 as defined in subsection II(jj) of the "Master Settlement  
36 Agreement" (MSA), or is in full compliance with paragraph (2)  
37 of subdivision (a) of Section 104557 of the Health and Safety  
38 Code, Section 30165.1 of the Revenue and Taxation Code, and  
39 regulations adopted pursuant thereto. Any person who makes a  
40 certification pursuant to this subdivision that asserts the truth of

1 any material matter that he or she knows to be false is guilty of a  
2 misdemeanor punishable by imprisonment of up to one year in the  
3 county jail, or a fine of not more than one thousand dollars  
4 (\$1,000), or both the imprisonment and the fine.

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

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

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

15 (C) The manufacturer or importer shall update the list whenever  
16 a new or additional brand is manufactured or imported or a listed  
17 brand is no longer manufactured or imported.

18 (c) The board may not grant or permit the maintenance of a  
19 license to any manufacturer or an importer of cigarettes that does  
20 not affirmatively certify, both at the time the license is granted and  
21 annually thereafter, compliance with paragraph (4) of subdivision  
22 (a), that all packages of cigarettes manufactured or imported by  
23 that person and distributed in California fully comply with  
24 subdivision (b) of Section 30163 of the Revenue and Taxation  
25 Code, and that the cigarettes contained in those packages are the  
26 subject of filed reports that fully comply with all requirements of  
27 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.  
28 1331 et seq.) for the reporting of ingredients added to cigarettes.  
29 For purposes of the federal Cigarette Labeling and Advertising  
30 Act requirement, cigars weighing three pounds or less per 1,000  
31 are excluded from the definition of cigarette.

32 (d) A license issued to a manufacturer or an importer under this  
33 division is only valid with respect to the manufacturer or importer  
34 designated on the license and may not be transferred or assigned  
35 to another manufacturer or importer.

36 (e) Any manufacturer or importer that is issued a license under  
37 this division that does not commence business in the manner  
38 specified or designated in the license, ceases to do business in the  
39 manner specified or designated in the license, or is notified that

1 the license is suspended or revoked, shall immediately surrender  
2 that license to the board.

3 (f) (1) Any manufacturer or any importer who is denied a  
4 license may petition for a redetermination of the board's denial of  
5 the license within 30 days after service upon that manufacturer or  
6 that importer of the notice of the denial of the license. If a petition  
7 for redetermination is not filed within the 30-day period, the  
8 determination of denial becomes final at the expiration of the  
9 30-day period.

10 (2) Every petition for redetermination shall be in writing and  
11 shall state the specific grounds upon which the petition is founded.  
12 The petition may be amended to state additional grounds at anytime  
13 prior to the date on which the board issues its order or decision  
14 upon the petition for redetermination.

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

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

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



1 (g) In any action brought by the Attorney General or the board  
2 to enforce this division, Sections 104555 to 104557, inclusive, of  
3 the Health and Safety Code, Part 13 (commencing with Section  
4 30001) of Division 2 of the Revenue and Taxation Code, or  
5 regulations adopted thereto, including, but not limited to, an action  
6 to suspend or revoke a license issued under this section, if the  
7 licensee raises a sovereign immunity defense with respect to an  
8 aspect of that proceeding, the license in question shall be subject  
9 to revocation. In the event of a revocation under this subdivision,  
10 the person whose license has been revoked shall not be eligible  
11 for a license under this section in the future, unless that person  
12 agrees to waive any sovereign immunity defense that may apply  
13 to an enforcement action brought by the Attorney General or the  
14 board to enforce this division, Sections 104555 to 104557,  
15 inclusive, of the Health and Safety Code, Part 13 (commencing  
16 with Section 30001) of Division 2 of the Revenue and Taxation  
17 Code, or regulations adopted thereto. The Attorney General shall  
18 inform the board in the event a sovereign immunity defense is  
19 raised by a licenseholder.

20 *SEC. 1.5. Section 22979 of the Business and Professions Code*  
21 *is amended to read:*

22 22979. (a) ~~Commencing on January 1, 2004, every~~ Every  
23 manufacturer and every importer, ~~as defined in subdivision (b) of~~  
24 ~~Section 22971,~~ shall obtain and maintain a license to engage in  
25 the sale of cigarettes. In order to be eligible for obtaining and  
26 maintaining a license under this division, a manufacturer or  
27 importer shall do all of the following in the manner specified by  
28 the board:

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

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

34 (3) Consent to jurisdiction of the California courts for the  
35 purpose of enforcement of this division, *Sections 104555 to*  
36 *104557, inclusive, of the Health and Safety Code, Section 30165.1*  
37 *of the Revenue and Taxation Code, and regulations adopted*  
38 *pursuant thereto, and appoint a registered agent for service of*  
39 *process in this state and identify the registered agent to the board*  
40 *and the Attorney General.*

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

36     (b) In order to be eligible for obtaining and maintaining a license  
37 under this division, a manufacturer or importer that is a "tobacco  
38 product manufacturer" in subdivision (i) of Section 104556 of the  
39 Health and Safety Code, shall do all of the following in the manner  
40 specified by the board:

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

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

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

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

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

25 (c) The board may not grant or permit the maintenance of a  
26 license to any manufacturer or an importer of cigarettes that does  
27 not affirmatively certify, both at the time the license is granted and  
28 annually thereafter, *compliance with paragraph (4) of subdivision*  
29 *(a)*, that all packages of cigarettes manufactured or imported by  
30 that person and distributed in ~~this state~~ *California* fully comply  
31 with subdivision (b) of Section 30163 of the Revenue and Taxation  
32 Code, and that the cigarettes contained in those packages are the  
33 subject of filed reports that fully comply with all requirements of  
34 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.  
35 1331 et seq.) for the reporting of ingredients added to cigarettes.  
36 For purposes of the federal Cigarette Labeling and Advertising  
37 Act requirement, cigars weighing three pounds or less per 1,000  
38 are excluded from the definition of cigarette.

39 (d) A license issued to a manufacturer or an importer under this  
40 division is only valid with respect to the manufacturer or importer

1 designated on the license and may not be transferred or assigned  
2 to another manufacturer or importer.

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

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

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

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

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

31 ~~(5) Any notice required by this subdivision shall be served~~  
32 ~~personally or by mail. If by mail, the notice shall be placed in a~~  
33 ~~sealed envelope, with postage paid, addressed to the manufacturer~~  
34 ~~or the importer at the address as it appears in the records of the~~  
35 ~~board. The giving of notice shall be deemed complete at the time~~  
36 ~~of deposit of the notice in the United States Post Office, or a~~  
37 ~~mailbox, subpost office, substation or mail chute or other facility~~  
38 ~~regularly maintained or provided by the United States Postal~~  
39 ~~Service, without extension of time for any reason. In lieu of~~  
40 ~~mailing, a notice may be served personally by delivering to the~~

1 ~~person to be served and service shall be deemed complete at the~~  
2 ~~time of the delivery. Personal service to a corporation may be made~~  
3 ~~by delivery of a notice to any person designated in the Code of~~  
4 ~~Civil Procedure to be served for the corporation with summons~~  
5 ~~and complaint in a civil action.~~

6 *(g) In any action brought by the Attorney General or the board*  
7 *to enforce this division, Sections 104555 to 104557, inclusive, of*  
8 *the Health and Safety Code, Part 13 (commencing with Section*  
9 *30001) of Division 2 of the Revenue and Taxation Code, or*  
10 *regulations adopted thereto, including, but not limited to, an action*  
11 *to suspend or revoke a license issued under this section, if the*  
12 *licensee raises a sovereign immunity defense with respect to an*  
13 *aspect of that proceeding, the license in question shall be subject*  
14 *to revocation. In the event of a revocation under this subdivision,*  
15 *the person whose license has been revoked shall not be eligible*  
16 *for a license under this section in the future, unless that person*  
17 *agrees to waive any sovereign immunity defense that may apply*  
18 *to an enforcement action brought by the Attorney General or the*  
19 *board to enforce this division, Sections 104555 to 104557,*  
20 *inclusive, of the Health and Safety Code, Part 13 (commencing*  
21 *with Section 30001) of Division 2 of the Revenue and Taxation*  
22 *Code, or regulations adopted thereto. The Attorney General shall*  
23 *inform the board in the event a sovereign immunity defense is*  
24 *raised by a licenseholder.*

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

27 22980. (a) (1) Any peace officer, or board employee granted  
28 limited peace officer status pursuant to paragraph (6) of subdivision  
29 (a) of Section 830.11 of the Penal Code, upon presenting  
30 appropriate credentials, is authorized to enter any place as described  
31 in paragraph (3) and to conduct inspections in accordance with the  
32 following paragraphs, inclusive.

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

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

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

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

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

7 22980.1. (a) No manufacturer or importer shall sell cigarettes  
8 or tobacco products to a distributor, wholesaler, retailer, or any  
9 other person who is not licensed pursuant to this division or whose  
10 license has been suspended or revoked.

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

16 (2) This subdivision does not apply to any sale of cigarettes or  
17 tobacco products by a distributor, wholesaler, or any other person  
18 to a retailer, wholesaler, distributor, or any other person that the  
19 state, pursuant to the United States Constitution, the laws of the  
20 United States, or the California Constitution, is prohibited from  
21 regulating.

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

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

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

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

36 (f) No manufacturer, distributor, wholesaler, or importer may  
37 sell cigarette or tobacco products to any retailer or wholesaler  
38 whose license has been suspended or revoked unless all outstanding  
39 debts of that retailer or wholesaler that are owed to a wholesaler  
40 or distributor for cigarette or tobacco products are paid and the

1 license of that retailer or wholesaler has been reinstated by the  
2 board. Any payment received from a retailer or wholesaler shall  
3 be credited first to the outstanding debt for cigarettes or tobacco  
4 products and must be immediately reported to the board. The board  
5 shall determine the debt status of a suspended retailer or wholesaler  
6 licensee 25 days prior to the reinstatement of the license.

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

17 (h) (1) Failure to comply with the provisions of this section  
18 shall be a misdemeanor subject to penalties pursuant to Section  
19 22981.

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

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

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

28 104557.1. (a) Notwithstanding subdivision (b) of Section  
29 104557, a tobacco product manufacturer that elects to place funds  
30 into escrow pursuant to paragraph (2) of subdivision (a) of Section  
31 104557 may make an irrevocable assignment of its interest in the  
32 funds to the benefit of the State of California. Such assignment  
33 shall be permanent and apply to all funds in the subject escrow  
34 account or that may subsequently come into the account, including  
35 those deposited into the escrow account prior to the assignment  
36 being executed, those deposited into the escrow account after the  
37 assignment is executed, and interest or other appreciation on the  
38 funds. The tobacco product manufacturer, the Attorney General,  
39 and the financial institution where the escrow amount is maintained  
40 may make such amendments to the qualified escrow account

1 agreement as may be necessary to effectuate an assignment of  
 2 rights executed pursuant to this subdivision or a withdrawal of  
 3 funds from the escrow amount pursuant to subdivision (b). An  
 4 assignment of rights executed pursuant to this section shall be in  
 5 writing, signed by a duly authorized representative of the tobacco  
 6 products manufacturer making the assignment, and shall become  
 7 effective upon delivery of the assignment to the Attorney General  
 8 and the financial institution where the escrow account is  
 9 maintained.

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

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

23 308.1. (a) Notwithstanding any other law, no person shall sell,  
 24 offer for sale, distribute, or import any tobacco product commonly  
 25 referred to as “bidis” or “beedies,” unless that tobacco product is  
 26 sold, offered for sale, or intended to be sold in a business  
 27 establishment that prohibits the presence of persons under 18 years  
 28 of age on its premises.

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

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

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

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



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

3 30101.7. (a) It is the intent of the Legislature in enacting this  
4 section to facilitate the collection of all applicable state surtaxes,  
5 sales or use taxes, and escrow and other payment obligations on  
6 cigarettes sold to residents of the state and to ensure compliance  
7 with the Prevent All Cigarette Trafficking Act of 2009 (PACT  
8 Act; Public Law 111-154).

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

12 (c) For the purposes of this section, the following definitions  
13 shall apply:

14 (1) “Consumer” means a person who purchases cigarettes or  
15 tobacco products. “Consumer” does not include any person licensed  
16 under this part or under Division 8.6 (commencing with Section  
17 22970) of the Business and Professions Code and lawfully  
18 operating as a manufacturer, distributor, wholesaler, or retailer of  
19 cigarettes or tobacco products.

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

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

27 (B) The cigarettes or tobacco products are delivered to the  
28 consumer by common carrier, private delivery service, or other  
29 method of remote delivery, or the seller is not in the physical  
30 presence of the consumer when the consumer obtains possession  
31 of the cigarettes or tobacco products.

32 (3) “Delivery seller” means a person who makes a delivery sale.

33 (4) “Face-to-face sale” means a sale in which the purchaser is  
34 in the physical presence of the seller or the seller’s employee or  
35 agent at the time of the sale. A face-to-face sale does not include  
36 a delivery sale.

37 (5) “Indian country” shall have the same meaning as provided  
38 in Section 1151 of Title 18 of the United States Code, and includes  
39 any other land held by the United States in trust or restricted status  
40 for one or more Indian tribes.

1 (6) “Interstate commerce” means commerce between a state  
2 and any place outside the state, commerce between a state and  
3 Indian country in the state, or commerce between points in the  
4 same state but through a place outside of the state or through any  
5 Indian country.

6 (7) “Tobacco products” shall have the same meaning as  
7 otherwise defined under this part with the exception of cigars.

8 (d) A person may engage in delivery sale of cigarettes or tobacco  
9 products to a person in California provided that all of the following  
10 conditions are met:

11 (1) The delivery seller has fully complied with all of the  
12 requirements of Chapter 10A (commencing with Section 375) of  
13 Title 15 of the United States Code, otherwise known as the Jenkins  
14 Act.

15 (2) The delivery seller obtains and maintains any applicable  
16 license under this part and under Division 8.6 (commencing with  
17 Section 22970) of the Business and Professions Code, as if the  
18 delivery sales occurred entirely within this state.

19 (3) The delivery seller complies with any applicable state law  
20 that imposes escrow or other payment obligations on tobacco  
21 product manufacturers, including, but not limited to, Sections  
22 104555 to 104557, inclusive, of the Health and Safety Code.

23 (4) ~~The delivery seller reports~~ *Attorney General may require*  
24 *the delivery seller to report* to the Attorney General its delivery  
25 sales of cigarettes and tobacco products to California consumers  
26 in the form and manner ~~prescribed~~ *specified* by the Attorney  
27 General.

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

34 (f) The State Board of Equalization ~~shall~~ *may* provide  
35 information relative to a seller’s failure or attempt to comply with  
36 the PACT Act and the Jenkins Act to the Attorney General.

37 (g) The Attorney General or a city attorney, county counsel, or  
38 district attorney may bring a civil action to enforce this section  
39 against a person that violates this section and, in addition to any

1 other remedy provided by law, the court shall assess a civil penalty  
2 in accordance with the following schedule:

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

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

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

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

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

17 (h) This section does not prohibit the lawful sale of a tobacco  
18 product that occurs by means of a vending machine.

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

22 (j) *The board shall enforce the licensing and tax provisions of*  
23 *this section. Other provisions of this section shall be enforced by*  
24 *the Attorney General.*

25 (j)

26 (k) The provisions of this section are severable. If any provision  
27 of this section or its application is held invalid, that invalidity shall  
28 not affect other provisions or applications that can be given effect  
29 without the invalid provision or application.

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

32 30165.1. (a) The following definitions shall apply for purposes  
33 of this section:

34 (1) "Board" means the State Board of Equalization.

35 (2) "Brand family" means all styles of cigarettes sold under the  
36 same trademark and differentiated from one another by means of  
37 additional modifiers, including, but not limited to, "menthol,"  
38 "lights," "kings," and "100s" and includes any brand name, alone  
39 or in conjunction with any other word, trademark, logo, symbol,  
40 motto, selling message, recognizable pattern of colors, or any other

1 indicia of product identification identical or similar to, or  
2 identifiable with, a previously known brand of cigarettes.

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

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

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

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

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

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

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

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

19 (b) Every tobacco product manufacturer whose cigarettes are  
20 sold in this state, whether directly or through a distributor, retailer,  
21 or similar intermediary or intermediaries, shall execute and deliver  
22 on a form and in the manner prescribed by the Attorney General,  
23 a certification to the Attorney General no later than the 30th day  
24 of April each year that, as of the date of the certification, the  
25 tobacco product manufacturer is either a participating manufacturer  
26 that has made all payments calculated by the independent auditor  
27 to be due under the Master Settlement Agreement, except to the  
28 extent the participating manufacturer is disputing any of the  
29 payments, or is in full compliance with Article 3 (commencing  
30 with Section 104555) of Chapter 1 of Part 3 of Division 103 of  
31 the Health and Safety Code, including all installment payments  
32 required by that article and this section, and any regulations  
33 promulgated pursuant thereto. A tobacco product manufacturer  
34 located outside of the United States shall provide to the Attorney  
35 General and keep current, the names, and addresses, including  
36 electronic mail addresses, of all importers that sell or will be selling  
37 their cigarettes in this state and shall cause each importer to provide  
38 to the Attorney General a copy of a valid importer permit issued  
39 by the United States Treasury, Alcohol and Tobacco Tax and Trade  
40 Bureau, and the importer license issued by the board. The importers

1 who sell or will be selling their cigarettes in this state shall obtain  
2 and maintain a license as an importer in compliance with Division  
3 8.6 (commencing with Section 22970) of the Business and  
4 Professions Code. Any person who makes a certification pursuant  
5 to this subdivision that asserts the truth of any material matter that  
6 he or she knows to be false is guilty of a misdemeanor punishable  
7 by imprisonment of up to one year in the county jail, or a fine of  
8 not more than one thousand dollars (\$1,000), or both the  
9 imprisonment and the fine.

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

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

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

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

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

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

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

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

1 (B) That the nonparticipating manufacturer has done all of the  
2 following:

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

6 (ii) Executed a qualified escrow agreement that has been  
7 reviewed and approved by the Attorney General and that governs  
8 the qualified escrow fund.

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

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

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

23 (ii) Division 8.6 (commencing with Section 22970) of the  
24 Business and Professions Code, and any regulations promulgated  
25 pursuant thereto. The nonparticipating manufacturer shall also  
26 provide a copy of a valid, corresponding federal permit issued by  
27 the United States Treasury, Alcohol and Tobacco Tax and Trade  
28 Bureau.

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

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

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

38 (iii) The amount the nonparticipating manufacturer placed in  
39 the fund for cigarettes sold in the state during the preceding  
40 calendar year, the date and amount of each deposit, and any

1 confirming evidence or verification as may be deemed necessary  
2 by the Attorney General.

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

9 (E) In the case of a nonparticipating manufacturer located  
10 outside the United States, that the manufacturer has provided a  
11 declaration in a form prescribed by the Attorney General from  
12 each of its importers into the United States of any of its brand  
13 families to be sold in California, that the importer accepts joint  
14 and several liability with the nonparticipating manufacturer for all  
15 escrow deposits due in accordance with Article 3 (commencing  
16 with Section 104555), for all penalties assessed in accordance with  
17 Article 3 (commencing with Section 104555) of Chapter 1 of Part  
18 3 of Division 103 of the Health and Safety Code, and for payment  
19 of all fees, costs, attorney's fees, penalties, and refunds imposed  
20 or required under this section, including, but not limited to, all  
21 refunds resulting from the removal of the manufacturer or any of  
22 its brand families from the directory. The declaration shall appoint  
23 for the declarant a resident agent for service of process in California  
24 in accordance with subdivision (f) and affirm that it has caused  
25 every importer that will sell its tobacco products in this state to  
26 obtain and maintain a license as an importer pursuant to Division  
27 8.6 (commencing with Section 22970) of the Business and  
28 Professions Code.

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

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

37 (ii) In the case of a nonparticipating manufacturer, the  
38 nonparticipating manufacturer affirms that the brand family is to  
39 be deemed to be its cigarettes for purposes of Article 3  
40 (commencing with Section 104555) of Chapter 1 of Part 3 of

1 Division 103 of the Health and Safety Code, including paragraph  
2 (2) of subdivision (a) of Section 104557 of the Health and Safety  
3 Code, and any regulations promulgated pursuant thereto and this  
4 section.

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

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

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

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

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

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

33 (C) A tobacco product manufacturer that does not hold a valid  
34 and current manufacturer’s license under Section 22979 of the  
35 Business and Professions Code, including, but not limited to, a  
36 manufacturer whose license has been revoked under subdivision  
37 (g) of Section 22979 of the Business and Professions Code.

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



1 (A) In the case of a nonparticipating manufacturer, any escrow  
2 deposit required pursuant to Section 104557 of the Health and  
3 Safety Code for any period for any brand family, whether or not  
4 listed by the nonparticipating manufacturer, has not been fully  
5 deposited into a qualified escrow fund governed by a qualified  
6 escrow agreement that has been approved by the Attorney General.

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

13 (C) In the case of a nonparticipating manufacturer by reason of  
14 the business plan, business history, trade connections, or  
15 compliance and payment history in California or any other state  
16 of any of the principals thereof, the nonparticipating manufacturer  
17 fails to provide reasonable assurance that it will comply with the  
18 requirements of this section, Section 30165.2, and Article 3  
19 (commencing with Section 104555) of Chapter 1 of Part 3 of  
20 Division 103 of the Health and Safety Code. As used in this section,  
21 “reasonable assurance” may include information and  
22 documentation establishing to the satisfaction of the Attorney  
23 General that a failure to pay in California or elsewhere was the  
24 result of a good faith dispute over the payment obligation.

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

30 (E) If the manufacturer or its importer, as defined in Section  
31 30019, engages in delivery sales and the manufacturer fails to  
32 provide or fails to cause his or her importer to provide reasonable  
33 assurances that the delivery seller has fully complied with all  
34 requirements of applicable federal and state law, including, but  
35 not limited to, all of the following:

36 (i) The Prevent All Cigarette Trafficking Act of 2009 (PACT  
37 Act; Public Law 111-154).

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

40 (iii) The requirements of Section 30101.7.

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

4 (v) All other state laws generally applicable to the sale and  
5 distribution of tobacco products.

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

16 (A) When the Attorney General’s office informs a manufacturer  
17 that it will recommend to the Attorney General that the  
18 manufacturer or brand family be delisted for cause, the office shall  
19 transmit by electronic mail, or other practicable means, a copy of  
20 the notice of the pending administrative action to the manufacturer,  
21 all licensed distributors and wholesalers, and to any retailer or  
22 other person who has provided an electronic mail address to the  
23 Attorney General for this purpose.

24 (B) A licensed distributor may purchase, stamp, or sell, and a  
25 licensed wholesaler may purchase or sell, products affected by the  
26 notice of pending administrative action for no more than 40 days  
27 following issuance of the notice of pending administrative action.  
28 Prior to the sale of a product affected by the notice of pending  
29 administrative action, and no later than seven days after the notice  
30 of pending administrative action, a distributor or wholesaler shall  
31 notify each of its existing customers of the pending administrative  
32 action.

33 (C) Upon removal from the directory of a tobacco product  
34 manufacturer or brand family, the Attorney General shall transmit  
35 by electronic mail, or other practicable means, a notice of removal,  
36 to the manufacturer, all licensed distributors and wholesalers, and  
37 to any retailer or other person who has provided an electronic mail  
38 address to the Attorney General for this purpose. No later than  
39 seven days after issuance of the notice of removal, a distributor or

1 wholesaler shall provide each of its existing customers a copy of  
2 the notice of removal.

3 (D) ~~A licensed retailer may sell the~~ *Notwithstanding subdivision*  
4 *(e), a licensed retailer may possess, transport, and sell the*  
5 *tax-stamped* cigarettes of a manufacturer or brand family affected  
6 by the notice of removal for no more than 60 days following the  
7 effective date of the manufacturer or brand family’s removal from  
8 the directory.

9 (E) After 60 days following removal from the directory the  
10 cigarettes of a manufacturer or brand family identified in the notice  
11 of removal are contraband and are subject to seizure and destruction  
12 under subdivision (e) of Section 30436 and subdivision (b) of  
13 Section 30449, and may not be purchased or sold in California.

14 (F) In the event the Attorney General declines to remove a  
15 tobacco product manufacturer or brand family from the directory  
16 following issuance of the notice *of pending administrative action*  
17 described in subparagraph (A), the Attorney General shall notify  
18 by electronic mail, or other practicable means, the manufacturer,  
19 all licensed distributors and wholesalers, and any retailer or other  
20 person who has provided an electronic mail address to the Attorney  
21 General for this purpose, ~~of this decision~~ *the decision not to pursue*  
22 *administrative action*. No later than seven days after issuance of  
23 this notice, a distributor or wholesaler shall provide each of its  
24 existing customers a copy of this notice, *and the purchase,*  
25 *stamping, and sales restrictions imposed by subparagraph (B)*  
26 *shall have no further effect*.

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

30 (4) Newly qualified and elevated-risk nonparticipating  
31 manufacturers shall ~~post surety bonds as follows:~~ *file with the*  
32 *Attorney General a surety bond in a form and manner directed by*  
33 *the Attorney General*.

34 (A) Notwithstanding any other law, if a newly qualified  
35 nonparticipating manufacturer is to be listed in the directory or if  
36 the Attorney General reasonably determines that any  
37 nonparticipating manufacturer who has filed a certification pursuant  
38 to subdivision (b) poses an elevated risk for noncompliance with  
39 this section, Section 30165.2, Part 13 (commencing with Section  
40 30001) of Division 2, or with Article 3 (commencing with Section

1 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
2 Safety Code, neither the nonparticipating manufacturer nor any of  
3 its brand families shall be included in the directory unless and until  
4 the nonparticipating manufacturer, or its United States importer  
5 that undertakes joint and several liability for the manufacturer's  
6 performance in accordance with subparagraph (E) of paragraph  
7 (3) of subdivision (b), has posted a bond in accordance with this  
8 section.

9 (B) The bonds shall be posted by a corporate surety located  
10 within the United States in an amount equal to the greater of fifty  
11 thousand dollars (\$50,000) or the amount of escrow the  
12 manufacturer in either its current or predecessor form was required  
13 to deposit as a result of the largest of its most recent five calendar  
14 year's sales in California. The bond shall be written in favor of  
15 the State of California and shall be conditioned on the performance  
16 by the nonparticipating manufacturer, or its United States importer  
17 that undertakes joint and several liability for the manufacturer's  
18 performance in accordance with subparagraph (E) of paragraph  
19 (3) of subdivision (b), of all its duties and obligations under this  
20 section and Article 3 (commencing with Section 104555) of  
21 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code  
22 and payment of all state taxes for the sale or distribution of  
23 cigarettes and tobacco products in this state during the year in  
24 which the certification is filed and the next succeeding calendar  
25 year. The bond may be drawn upon by the board or the Attorney  
26 General to cover unsatisfied escrow obligations, tax obligations,  
27 claims for penalties, claims for monetary damages, and any other  
28 liabilities that are subject to the licensee's claim of sovereign  
29 immunity against enforcement of the laws specified above.

30 (C) A nonparticipating manufacturer may be deemed to pose  
31 an elevated risk for noncompliance with this section, Section  
32 30165.2, or Article 3 (commencing with Section 104555) of  
33 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code  
34 if:

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

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

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

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

13 (iii) Any state has litigation pending against, or an unsatisfied  
14 final judgment against, the manufacturer or any affiliate thereof  
15 for escrow or for penalties, fees, costs, refunds, or attorney’s fees  
16 related to noncompliance with state escrow laws.

17 (iv) The nonparticipating manufacturer sells its cigarettes or  
18 tobacco products directly to consumers via remote or other  
19 non-face-to-face means.

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

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

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

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

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

39 (5) The Attorney General shall provide each tobacco product  
40 manufacturer that has provided all certifications and other

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

11 (d) (1) The Attorney General may exclude or remove from the  
12 list required by subdivision (c) a tobacco product manufacturer or  
13 any of its brand families, based on a determination that the  
14 manufacturer is not a participating manufacturer that has provided  
15 the required certification and made all payments calculated by the  
16 independent auditor to be due from it under the Master Settlement  
17 Agreement, except to the extent that it is disputing the payment,  
18 or in the case of a nonparticipating manufacturer, has not made all  
19 escrow payments required by paragraph (2) of subdivision (a) of  
20 Section 104557 of the Health and Safety Code, in accordance with  
21 that subdivision, or has not complied with this section, Section  
22 30165.2, or the tobacco product manufacturer has not complied  
23 with any state or federal delivery sales laws applicable to sales  
24 and distribution of tobacco products in this state. Before the  
25 exclusion or removal may take effect, the Attorney General shall  
26 notify the manufacturer of this determination.

27 (2) Upon receiving notice from the Attorney General pursuant  
28 to paragraph (1), the manufacturer may challenge the Attorney  
29 General's determination as erroneous, and may seek relief from  
30 the determination, by filing a petition for writ of mandate pursuant  
31 to Section 1085 of the Code of Civil Procedure for that purpose  
32 in the Superior Court for the County of Sacramento, or as otherwise  
33 provided by law. The filing of the petition shall operate to stay the  
34 Attorney General's determination, if the participating manufacturer  
35 has made all payments calculated by the independent auditor to  
36 be due from it under the Master Settlement Agreement, except to  
37 the extent that it is disputing payment, or if a nonparticipating  
38 manufacturer has paid into escrow the full amount of any  
39 deficiency in the escrow payments that the Attorney General has  
40 determined the tobacco product manufacturer was required to have

1 made under paragraph (2) of subdivision (a) of Section 104557 of  
2 the Health and Safety Code, including any installment payments  
3 required under subdivision (h), pending final resolution of the  
4 action.

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

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

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

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

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

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

1 nonparticipating manufacturer located outside of the United States  
2 shall, as an additional condition precedent to having its brand  
3 families listed or retained in the directory, cause each of its  
4 importers into the United States of any of its brand families to be  
5 sold in California to appoint and continually engage without  
6 interruption the services of an agent in the state in accordance with  
7 this section. All obligations of a nonparticipating manufacturer  
8 imposed by this section with respect to appointment of its agent  
9 shall likewise apply to importers with respect to appointment of  
10 their agents.

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

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

31 (4) For each nonparticipating manufacturer located outside the  
32 United States, each importer into the United States of any  
33 nonparticipating manufacturer's brand families that are sold in  
34 California shall bear joint and several liability with the  
35 nonparticipating manufacturer for deposit of all escrow due under  
36 Section 104557 of the Health and Safety Code, payment of all  
37 costs and attorney's fees imposed in accordance with Section  
38 104557 of the Health and Safety Code, and payment of all fees,  
39 costs, attorney's fees, penalties, and refunds imposed or required  
40 by this section or Section 30165.2. Each manufacturer and



1 importer, that sells or intends to sell cigarettes in California, shall  
2 obtain and maintain a license as a manufacturer or importer in  
3 compliance with Division 8.6 (commencing with Section 22970)  
4 of the Business and Professions Code. Each nonparticipating  
5 manufacturer and its importers shall report in the manner, including  
6 electronically, as required by the Attorney General, all cigarettes  
7 and tobacco products sold in this state each month, including, but  
8 not limited to, the quantity, including tobacco weight and number  
9 of cigarette sticks, the wholesale cost and sale price of each brand  
10 family. Any manufacturer or importer that fails to file the report  
11 as required by the Attorney General shall be liable for a civil  
12 penalty in an amount not to exceed the greater of either of the  
13 following:

14 (A) Five times the retail value of the cigarettes, loose tobacco  
15 and smokeless tobacco, or tobacco products defined as cigarettes  
16 under this section that were not reported as required by the  
17 Attorney General.

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

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

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

1 other federal, state, or local agencies, only for purposes of  
 2 enforcement of this section, Article 3 (commencing with Section  
 3 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
 4 Safety Code, and any regulations promulgated pursuant thereto,  
 5 or corresponding laws of other states.

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

15 (4) In addition to the information required to be submitted  
 16 pursuant to this section or Article 3 (commencing with Section  
 17 104555) of Chapter 1 of Part 3 of Division 103 of the Health and  
 18 Safety Code and any regulations promulgated pursuant thereto,  
 19 ~~the board~~ or the Attorney General may require a retailer,  
 20 wholesaler, distributor, importer, or tobacco product manufacturer  
 21 to submit any additional information, including, but not limited  
 22 to, samples of the packaging or labeling of each brand family, as  
 23 is necessary to enable the Attorney General to determine whether  
 24 a tobacco product manufacturer or importer has complied, is in  
 25 compliance, and, if applicable pursuant to subparagraph (C) of  
 26 paragraph (2) of subdivision (c), has provided reasonable assurance  
 27 that it will comply or continue to comply with this section, Section  
 28 30165.2, Part 8 (commencing with Section 14950) of Division 12  
 29 of the Health and Safety Code, and Article 3 (commencing with  
 30 Section 104555) of Chapter 1 of Part 3 of Division 103 of the  
 31 Health and Safety Code, and any regulations promulgated pursuant  
 32 thereto.

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

1 the Attorney General to determine the adequacy of the amount of  
2 the installment deposit.

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

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

14 (B) In the case of a second or any subsequent offense that the  
15 board determines to be a violation of subdivision (e), in addition  
16 to the action authorized under subparagraph (A), the board may  
17 impose a civil penalty in an amount not to exceed the greater of  
18 either of the following:

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

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

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

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

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

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

1 (4) A violation of paragraph (3) of subdivision (e) shall  
2 constitute a misdemeanor.

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

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

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

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

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

30 (2) That the tobacco product manufacturer is a participating  
31 manufacturer.

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

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

38 (l) A violation of subdivision (e) shall constitute unfair  
39 competition under Section 17200 of the Business and Professions  
40 Code.

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

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

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

1 repealed 180 days after their effective date, unless the adopting  
2 authority or agency complies with that chapter, as provided in  
3 subdivision (e) of Section 11346.1 of the Government Code.

4 (p) In any action brought by the state to enforce this section,  
5 the state shall be entitled to recover the costs of investigation,  
6 expert witness fees, costs of the action, and reasonable attorney's  
7 fees.

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

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

11 (A) A nonparticipating manufacturer and its importers.

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

15 (C) Persons or entities engaged in delivery sales as defined in  
16 Section 30101.7.

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

1 attorney’s fees against the person. If the motion for an order is  
2 granted and the person thereafter fails to comply with the order,  
3 the court may make orders as are provided for by law. Subpoenas  
4 shall be served and witness fees and mileage paid as allowed in  
5 civil cases in the courts of the State of California.

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

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

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

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

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

1 (TTB), the federal Department of Homeland Security, and the  
2 United States Customs and Border Patrol (CBP) after the effective  
3 date of the act adding this section:

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

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

- 16 (1) Submit to the Attorney General a true and correct copy of  
17 each and every applicable return of the tobacco product  
18 manufacturer.
- 19 (2) Submit to the United States Treasury a request or consent  
20 under Internal Revenue Code Section 6103(c) authorizing the  
21 Alcohol and Tobacco Tax and Trade Bureau to disclose the  
22 applicable returns of manufacturer to the Attorney General.

23 (c) A foreign tobacco product manufacturer whose cigarettes  
24 are imported into the United States by an importer or importers  
25 shall submit, or shall cause each of its importers to submit, to the  
26 Attorney General and the board both of the following:

- 27 (1) Each and every applicable return, form, or report filed with  
28 TTB and CBP that includes any information about cigarettes of  
29 that foreign tobacco product manufacturer imported into the United  
30 States.

31 ~~(3)~~

- 32 (2) A report of the sales of each brand family in this state in the  
33 form and manner specified by the Attorney General or the board.

34 (d) A foreign tobacco manufacturer shall also cause every  
35 importer who will sell its cigarettes in this state to obtain and  
36 maintain a license as an importer in compliance with Division 8.6  
37 (commencing with Section 22970) of the Business and Professions  
38 Code.

39 (e) The Attorney General and the board shall not disclose any  
40 applicable returns or any information contained therein, except as



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

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

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

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

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

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

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

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

30 ~~SEC. 9. The Legislature finds and declares that the amendments  
31 made to paragraph (2) of subdivision (e) of Section 30165.1 of the  
32 Revenue and Taxation Code by this act are declaratory of, and do  
33 not constitute a change in, existing law.~~

34 *SEC. 9. The Legislature finds and declares all of the following:*

35 *(a) Cigarette smoking and tobacco products present serious  
36 public health concerns to the state and to the citizens of the state.*

37 *(b) Cheap cigarettes and tobacco products are being made  
38 available through the evasion of state taxes, fees, payments, and  
39 deposits required for sales of cigarettes and tobacco products in  
40 this state.*

1 (c) Cheap cigarettes and tobacco products pose a public health  
2 hazard because their lower price makes them more accessible and  
3 affordable to youth to become addicted to smoking and tobacco  
4 products.

5 (d) It is the policy of the state to require that cigarettes and  
6 tobacco products be sold at prices that reflect the payment of all  
7 state taxes, fees, payments, and deposits required by law on sales  
8 of cigarettes and tobacco products in this state in order to prevent  
9 the public health hazard posed by cheap cigarettes and tobacco  
10 products, especially to our youth.

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

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

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

27 SEC. 12. Section 1.5 of this bill incorporates amendments to  
28 Section 22979 of the Business and Professions Code proposed by  
29 both this bill and AB 2733. It shall only become operative if (1)  
30 both bills are enacted and become effective on or before January  
31 1, 2011, (2) each bill amends Section 22979 of the Business and  
32 Professions Code, and (3) this bill is enacted after AB 2733, in  
33 which case Section 1 of this bill shall not become operative.

34 ~~SEC. 12.~~

35 SEC. 13. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 the only costs that may be incurred by a local agency or school  
38 district will be incurred because this act creates a new crime or  
39 infraction, eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within  
2 the meaning of Section 6 of Article XIII B of the California  
3 Constitution.

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