

## Assembly Bill No. 2496

### CHAPTER 265

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.

[Approved by Governor September 23, 2010. Filed with  
Secretary of State September 24, 2010.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2496, 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 know as “bidis” or “beedies,” as defined, unless it is sold or intended for sale in business establishments that exclude minors.

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

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

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

(7) 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.

(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.

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

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

22979. (a) Every manufacturer and every importer shall obtain and maintain a license to engage in the sale of cigarettes. In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer shall do all of the following in the manner specified by the board:

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

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

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

(4) Waive any sovereign immunity defense that may apply to any enforcement action brought by the Attorney General or the board to enforce this division, Sections 104555 to 104557, inclusive, of the Health and Safety Code, or Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, and regulations adopted thereto. Any waiver shall be express and in writing, in a form and manner acceptable to the Attorney General. In lieu of this waiver, a manufacturer or importer may file with the Attorney General a surety bond in a form and manner directed by the Attorney General, written in favor of the State of California and conditioned on the performance by the manufacturer or importer of all its duties and obligations under this division, Sections 104555 to 104557, inclusive, of the Health and Safety Code, Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, and regulations adopted thereto. The bond shall be posted by a corporate surety located within the United States in an amount equal to the greater of fifty thousand dollars (\$50,000) or the amount of escrow the manufacturer or importer in either its current or predecessor form was required to deposit as a result of the largest of its most recent five calendar years' sales in California. The bond may be drawn upon by the Attorney General to cover unsatisfied escrow obligations, tax obligations, claims for penalties, claims for monetary

damages, and any other liabilities that are subject to the licensee's claim of sovereign immunity against enforcement of the laws specified above. In the event a nonparticipating manufacturer is required to post a surety bond under this paragraph, the amount of the bond shall be reduced by the amount of any surety bond that is in force and required of that nonparticipating manufacturer under paragraph (5) of subdivision (c) of Section 30165.1 of the Revenue and Taxation Code. A manufacturer or importer that has neither waived any sovereign immunity defense nor posted a surety bond as provided in this section shall not be eligible to obtain and maintain a license under this division.

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

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

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

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

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

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

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

weighing three pounds or less per 1,000 are excluded from the definition of cigarette.

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

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

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

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

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

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

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

(g) In any action brought by the Attorney General or the board to enforce this division, Sections 104555 to 104557, inclusive, of the Health and Safety Code, Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, or regulations adopted thereto, including, but not limited to, an action to suspend or revoke a license issued under this

section, if the licensee raises a sovereign immunity defense with respect to an aspect of that proceeding, the license in question shall be subject to revocation. In the event of a revocation under this subdivision, the person whose license has been revoked shall not be eligible for a license under this section in the future, unless that person agrees to waive any sovereign immunity defense that may apply to an enforcement action brought by the Attorney General or the board to enforce this division, Sections 104555 to 104557, inclusive, of the Health and Safety Code, Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, or regulations adopted thereto. The Attorney General shall inform the board in the event a sovereign immunity defense is raised by a licensee.

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

22979. (a) Every manufacturer and every importer shall obtain and maintain a license to engage in the sale of cigarettes. In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer shall do all of the following in the manner specified by the board:

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

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

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

(4) Waive any sovereign immunity defense that may apply to any enforcement action brought by the Attorney General or the board to enforce this division, Sections 104555 to 104557, inclusive, of the Health and Safety Code, or Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, and regulations adopted thereto. Any waiver shall be express and in writing, in a form and manner acceptable to the Attorney General. In lieu of this waiver, a manufacturer or importer may file with the Attorney General a surety bond in a form and manner directed by the Attorney General, written in favor of the State of California and conditioned on the performance by the manufacturer or importer of all its duties and obligations under this division, Sections 104555 to 104557, inclusive, of the Health and Safety Code, Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, and regulations adopted thereto. The bond shall be posted by a corporate surety located within the United States in an amount equal to the greater of fifty thousand dollars (\$50,000) or the amount of escrow the manufacturer or importer in either its current or predecessor form was required to deposit as a result of the largest of its most recent five calendar years' sales in California. The

bond may be drawn upon by the Attorney General to cover unsatisfied escrow obligations, tax obligations, claims for penalties, claims for monetary damages, and any other liabilities that are subject to the licensee's claim of sovereign immunity against enforcement of the laws specified above. In the event a nonparticipating manufacturer is required to post a surety bond under this paragraph, the amount of the bond shall be reduced by the amount of any surety bond that is in force and required of that nonparticipating manufacturer under paragraph (5) of subdivision (c) of Section 30165.1 of the Revenue and Taxation Code. A manufacturer or importer that has neither waived any sovereign immunity defense nor posted a surety bond as provided in this section shall not be eligible to obtain and maintain a license under this division.

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

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

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

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

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

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

(c) The board may not grant or permit the maintenance of a license to any manufacturer or an importer of cigarettes that does not affirmatively certify, both at the time the license is granted and annually thereafter, compliance with paragraph (4) of subdivision (a), that all packages of cigarettes manufactured or imported by that person and distributed in California fully comply with subdivision (b) of Section 30163 of the Revenue and Taxation Code, and that the cigarettes contained in those packages are the subject of filed reports that fully comply with all requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 et

seq.) for the reporting of ingredients added to cigarettes. For purposes of the federal Cigarette Labeling and Advertising Act requirement, cigars weighing three pounds or less per 1,000 are excluded from the definition of cigarette.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

104557.1. (a) Notwithstanding subdivision (b) of Section 104557, a tobacco product manufacturer that elects to place funds into escrow pursuant to paragraph (2) of subdivision (a) of Section 104557 may make an irrevocable assignment of its interest in the funds to the benefit of the State of California. Such assignment shall be permanent and apply to all funds in the subject escrow account or that may subsequently come into the account, including those deposited into the escrow account prior to the assignment being executed, those deposited into the escrow account after the assignment is executed, and interest or other appreciation on the funds. The tobacco product manufacturer, the Attorney General, and the financial institution where the escrow amount is maintained may make such amendments to the qualified escrow account agreement as may be necessary to effectuate an assignment of rights executed pursuant to this subdivision or a withdrawal of funds from the escrow amount pursuant to subdivision (b). An assignment of rights executed pursuant to this section shall be in

writing, signed by a duly authorized representative of the tobacco products manufacturer making the assignment, and shall become effective upon delivery of the assignment to the Attorney General and the financial institution where the escrow account is maintained.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The Attorney General may require the delivery seller to report to the Attorney General its delivery sales of cigarettes and tobacco products to California consumers in the form and manner specified by the Attorney General.

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

(f) The State Board of Equalization may provide information relative to a seller's failure or attempt to comply with the PACT Act and the Jenkins Act to the Attorney General.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form and in the manner prescribed by the Attorney General, a certification to the Attorney General no later than the 30th day of April each year that, as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer that has made all payments calculated by the independent auditor to be due under the Master Settlement Agreement, except to the extent the participating manufacturer is disputing any of the payments, or is in full compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including all installment payments required by that article and this section, and any regulations promulgated pursuant thereto. A tobacco product manufacturer located outside of the United States shall provide to the Attorney General and keep current, the names, and addresses, including electronic mail addresses, of all importers that sell or will be selling their cigarettes in this state and shall cause each importer to provide to the Attorney General a copy of a valid importer permit issued by the United States Treasury, Alcohol and Tobacco Tax and Trade Bureau, and the importer license issued by the board. The importers who sell or will be selling their cigarettes in this state shall obtain and maintain a license as an importer in compliance with Division 8.6 (commencing with Section 22970) of the Business and Professions Code. Any person who makes a certification pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) In the case of a nonparticipating manufacturer by reason of the business plan, business history, trade connections, or compliance and

payment history in California or any other state of any of the principals thereof, the nonparticipating manufacturer fails to provide reasonable assurance that it will comply with the requirements of this section, Section 30165.2, and Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code. As used in this section, “reasonable assurance” may include information and documentation establishing to the satisfaction of the Attorney General that a failure to pay in California or elsewhere was the result of a good faith dispute over the payment obligation.

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

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

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

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

(iii) The requirements of Section 30101.7.

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

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

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

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

(B) A licensed distributor may purchase, stamp, or sell, and a licensed wholesaler may purchase or sell, products affected by the notice of pending administrative action for no more than 40 days following issuance of the

notice of pending administrative action. Prior to the sale of a product affected by the notice of pending administrative action, and no later than seven days after the notice of pending administrative action, a distributor or wholesaler shall notify each of its existing customers of the pending administrative action.

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

(D) Notwithstanding subdivision (e), a licensed retailer may possess, transport, and sell the tax-stamped cigarettes of a manufacturer or brand family affected by the notice of removal for no more than 60 days following the effective date of the manufacturer or brand family's removal from the directory.

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

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

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

(4) Newly qualified and elevated-risk nonparticipating manufacturers shall file with the Attorney General a surety bond in a form and manner directed by the Attorney General.

(A) Notwithstanding any other law, if a newly qualified nonparticipating manufacturer is to be listed in the directory or if the Attorney General reasonably determines that any nonparticipating manufacturer who has filed a certification pursuant to subdivision (b) poses an elevated risk for noncompliance with this section, Section 30165.2, Part 13 (commencing with Section 30001) of Division 2, or with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and

Safety Code, neither the nonparticipating manufacturer nor any of its brand families shall be included in the directory unless and until the nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with subparagraph (E) of paragraph (3) of subdivision (b), has posted a bond in accordance with this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) For each nonparticipating manufacturer located outside the United States, each importer into the United States of any nonparticipating manufacturer's brand families that are sold in California shall bear joint and several liability with the nonparticipating manufacturer for deposit of all escrow due under Section 104557 of the Health and Safety Code, payment of all costs and attorney's fees imposed in accordance with Section 104557 of the Health and Safety Code, and payment of all fees, costs, attorney's fees, penalties, and refunds imposed or required by this section or Section 30165.2. Each manufacturer and importer, that sells or intends to sell cigarettes in California, shall obtain and maintain a license as a manufacturer or importer in compliance with Division 8.6 (commencing with Section 22970) of the Business and Professions Code. Each nonparticipating manufacturer and its importers shall report in the manner, including electronically, as required by the Attorney General, all cigarettes and tobacco products sold in this state each month, including, but not limited to, the quantity, including tobacco weight and number of cigarette sticks, the wholesale cost and sale price of each brand family. Any manufacturer or importer that fails to file the report as required by the Attorney General shall be liable for a civil penalty in an amount not to exceed the greater of either of the following:

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

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

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

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

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

(4) In addition to the information required to be submitted pursuant to this section or Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and any regulations promulgated pursuant thereto, the Attorney General may require a retailer, wholesaler, distributor, importer, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer or importer has complied, is in compliance, and, if applicable pursuant to subparagraph (C) of paragraph (2) of subdivision (c), has provided reasonable assurance that it will comply or continue to comply with this section, Section

30165.2, Part 8 (commencing with Section 14950) of Division 12 of the Health and Safety Code, and Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Conduct audits and investigations of the following:

(A) A nonparticipating manufacturer and its importers.

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

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

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

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

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

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

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

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

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

Homeland Security, and the United States Customs and Border Patrol (CBP) after the effective date of the act adding this section:

- (1) Alcohol and Tobacco Tax and Trade Bureau Form 5000.24.
  - (2) Alcohol and Tobacco Tax and Trade Bureau Form 5210.5.
  - (3) Alcohol and Tobacco Tax and Trade Bureau Form 5220.6.
  - (4) United States Customs and Border Protection Form 7501.
  - (5) Any successor returns or reports intended to replace the forms specified in paragraphs (1) to (4), inclusive.
- (b) As a condition of selling cigarettes in the state, every tobacco product manufacturer, as defined in paragraph (9) of subdivision (a) of Section 30165.1, whose cigarettes are to be sold in the state whether directly or through a distributor, importer, retailer, or similar intermediary or intermediaries shall, at the election of tobacco product manufacturer, either:
- (1) Submit to the Attorney General a true and correct copy of each and every applicable return of the tobacco product manufacturer.
  - (2) Submit to the United States Treasury a request or consent under Internal Revenue Code Section 6103(c) authorizing the Alcohol and Tobacco Tax and Trade Bureau to disclose the applicable returns of manufacturer to the Attorney General.
- (c) A foreign tobacco product manufacturer whose cigarettes are imported into the United States by an importer or importers shall submit, or shall cause each of its importers to submit, to the Attorney General and the board both of the following:
- (1) Each and every applicable return, form, or report filed with TTB and CBP that includes any information about cigarettes of that foreign tobacco product manufacturer imported into the United States.
  - (2) A report of the sales of each brand family in this state in the form and manner specified by the Attorney General or the board.
- (d) A foreign tobacco manufacturer shall also cause every importer who will sell its cigarettes in this state to obtain and maintain a license as an importer in compliance with Division 8.6 (commencing with Section 22970) of the Business and Professions Code.
- (e) The Attorney General and the board shall not disclose any applicable returns or any information contained therein, except as necessary to carry out the functions and duties of the Department of Justice or board, or as provided in subdivision (f).
- (f) The Attorney General and the board may compile data on cigarette shipments from the applicable returns and may share data with other states that are signatories to the Master Settlement Agreement, as defined in paragraph (5) of subdivision (a) of Section 30165.1, provided that states impose or agree to provide protections against disclosure of the applicable returns, or any information from applicable returns, that are equivalent to the protections provided under subdivision (e).
- (g) A tobacco product manufacturer who does not comply with the requirements of subdivisions (b), (c), and (d) shall, after 30 days notice by the Attorney General or the board to the tobacco product manufacturer of the failure to comply, be removed, along with its brand families, from the

tobacco directory unless the tobacco product manufacturer has brought itself into compliance by the end of the 30-day period.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 12. Section 1.5 of this bill incorporates amendments to Section 22979 of the Business and Professions Code proposed by both this bill and AB 2733. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 22979 of the Business and Professions Code, and (3) this bill is enacted

after AB 2733, in which case Section 1 of this bill shall not become operative.

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