

AMENDED IN SENATE AUGUST 18, 2010

AMENDED IN SENATE JULY 15, 2010

AMENDED IN ASSEMBLY MAY 12, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2733

Introduced by Assembly Member Ruskin
(Coauthor: Senator Padilla)

February 19, 2010

An act to amend Sections 22971, 22973.1, 22977.2, 22979, 22980.2, and 22980.3 of, and to add Sections 22971.5, 22980.4, and 22980.5 to, the Business and Professions Code, relating to cigarette and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 2733, as amended, Ruskin. Cigarettes and tobacco products.

Existing law, the California Cigarette and Tobacco Products Licensing Act of 2003, 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. The act prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are licensed. The act authorizes the board to suspend or revoke the license of any manufacturer, distributor, wholesaler, importer, or retailer of tobacco products that is in violation of the act's provisions. Violation of the act is a misdemeanor.

This bill would, among other things, prohibit the transfer of title or possession of cigarettes or tobacco products without consideration, exchange, or barter if the cigarettes or tobacco products had been

purchased for resale under a license issued pursuant to the act and the transfer occurs during the suspension or after revocation of the license. It would also prohibit specified displays of cigarettes or tobacco products. It would require prescribed notices to be posted when a license has been suspended or revoked by the board, and would make violation of these notice posting requirements subject to a civil penalty. By adding a new crime, this bill would impose a state-mandated local program.

This bill would incorporate additional changes in Section 22979 of the Business and Professions Code proposed by AB 2496, that would become operative only if AB 2496 and this bill are both chaptered and become operative on or before January 1, 2011, and this bill is chaptered last.

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

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

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 22971 of the Business and Professions
- 2 Code is amended to read:
- 3 22971. For purposes of this division, the following terms shall
- 4 have the following meanings:
- 5 (a) "Board" means the State Board of Equalization.
- 6 (b) "Brand family" has the same meaning as that term is defined
- 7 in paragraph (2) of subdivision (a) of Section 30165.1 of the
- 8 Revenue and Taxation Code.
- 9 (c) "Cigarette" means a cigarette as defined in Section 30003
- 10 of the Revenue and Taxation Code.
- 11 (d) (1) "Control" or "controlling" means possession, direct or
- 12 indirect, of the power:
- 13 (A) To vote 25 percent or more of any class of the voting
- 14 securities issued by a person.
- 15 (B) To direct or cause the direction of the management and
- 16 policies of a person, whether through the ownership of voting
- 17 securities, by contract, other than a commercial contract for goods
- 18 or nonmanagement services, or as otherwise provided; however,

1 no individual shall be deemed to control a person solely on account
2 of being a director, officer, or employee of that person.

3 (2) For purposes of subparagraph (B) of paragraph (1), a person
4 who, directly or indirectly, owns, controls, holds, with the power
5 to vote, or holds proxies representing 10 percent or more of the
6 then outstanding voting securities issued by another person, is
7 presumed to control that other person.

8 (3) For purposes of this division, the board may determine
9 whether a person in fact controls another person.

10 (e) "Display for sale" means the placement of cigarettes or
11 tobacco products in a vending machine or in retail stock for the
12 purpose of selling or gifting the cigarettes or tobacco products.
13 For purposes of this definition, the clear and easily visible display
14 of cigarettes or tobacco products shall create a rebuttable
15 presumption that either were displayed for sale.

16 (f) "Distributor" means a distributor as defined in Section 30011
17 of the Revenue and Taxation Code.

18 (g) "Gifting" means any transfer of title or possession without
19 consideration, exchange, or barter, in any manner or by any means,
20 of cigarettes or tobacco products that have been purchased for
21 resale under a license issued pursuant to this division if the transfer
22 occurs while the license is suspended or after the effective date of
23 its revocation.

24 (h) "Importer" means an importer as defined in Section 30019
25 of the Revenue and Taxation Code.

26 (i) "Law enforcement agency" means a sheriff, a police
27 department, or a city, county, or city and county agency or
28 department designated by the governing body of that agency to
29 enforce this chapter or to enforce local smoking and tobacco
30 ordinances and regulations.

31 (j) "License" means a license issued by the board pursuant to
32 this division.

33 (k) "Licensee" means any person holding a license issued by
34 the board pursuant to this division.

35 (l) "Manufacturer" means a manufacturer of cigarettes or
36 tobacco products sold in this state.

37 (m) "Notice" or "notification" means, unless as otherwise
38 provided, the written notice or notification provided to a licensee
39 by the board by either actual delivery to the licensee or by

1 first-class mail addressed to the licensee at the address on the
2 license.

3 (n) “Package of cigarettes” means a package as defined in
4 Section 30015 of the Revenue and Taxation Code.

5 (o) “Person” means a person as defined in Section 30010 of the
6 Revenue and Taxation Code.

7 (p) “Retailer” means a person who engages in this state in the
8 sale of cigarettes or tobacco products directly to the public from
9 a retail location. Retailer includes a person who operates vending
10 machines from which cigarettes or tobacco products are sold in
11 this state.

12 (q) “Retail location” means both of the following:

13 (1) Any building from which cigarettes or tobacco products are
14 sold at retail.

15 (2) A vending machine.

16 (r) “Sale” or “sold” means a sale as defined in Section 30006
17 of the Revenue and Taxation Code.

18 (s) “Tobacco products” means tobacco products as defined in
19 subdivision (b) of Section 30121 and subdivision (b) of Section
20 30131.1 of the Revenue and Taxation Code.

21 (t) “Unstamped package of cigarettes” means a package of
22 cigarettes that does not bear a tax stamp as required under Part 13
23 (commencing with Section 30001) of Division 2 of the Revenue
24 and Taxation Code, including a package of cigarettes that bears a
25 tax stamp of another state or taxing jurisdiction, a package of
26 cigarettes that bears a counterfeit tax stamp, or a stamped or
27 unstamped package of cigarettes that is marked “Not for sale in
28 the United States.”

29 (u) “Wholesaler” means a wholesaler as defined in Section
30 30016 of the Revenue and Taxation Code.

31 SEC. 2. Section 22971.5 is added to the Business and
32 Professions Code, to read:

33 22971.5. Any notice required by this division shall be served
34 personally or by mail. If by mail, the notice shall be placed in a
35 sealed envelope, with postage paid, addressed to the licensee at
36 the address as it appears in the records of the board. The giving of
37 notice shall be deemed complete at the time of deposit of the notice
38 in the United States Post Office, or a mailbox, subpost office,
39 substation, or mail chute, or other facility regularly maintained or
40 provided by the United States Postal Service, without extension

1 of time for any reason. In lieu of mailing, a notice may be served
2 personally by delivering to the person to be served and service
3 shall be deemed complete at the time of delivery. Personal service
4 to a corporation may be made by delivery of a notice to any person
5 designated in the Code of Civil Procedure to be served for the
6 corporation with summons and complaints in a civil action.

7 SEC. 3. Section 22973.1 of the Business and Professions Code
8 is amended to read:

9 22973.1. (a) The board shall issue a license to a retailer upon
10 receipt of a completed application and payment of the fees
11 prescribed in Section 22973, unless any of the following apply:

12 (1) The retailer, or if the retailer is not an individual, any person
13 controlling the retailer, has previously been issued a license that
14 is suspended or revoked by the board for violation of any of the
15 provisions of this division.

16 (2) The application is for a license or renewal of a license for a
17 retail location that is the same retail location as that of a retailer
18 whose license was revoked or is subject to revocation proceedings
19 for violation of any of the provisions of this division, unless:

20 (A) It has been more than five years since a previous license
21 for the retail location was revoked.

22 (B) The person applying for the license provides the board with
23 documentation demonstrating that the applicant has acquired or is
24 acquiring the premises or business in an arm's length transaction.
25 For purposes of this section, an "arm's length transaction" is
26 defined as a sale in good faith and for valuable consideration that
27 reflects the fair market value in the open market between two
28 informed and willing parties, neither under any compulsion to
29 participate in the transaction. A sale between relatives, related
30 companies or partners, or a sale for the primary purpose of avoiding
31 the effect of the violations of this division that occurred at the retail
32 location, is presumed not to be made at "arm's length."

33 (3) The retailer, or if the retailer is not an individual, any person
34 controlling the retailer, has been convicted of a felony pursuant to
35 Section 30473 or 30480 of the Revenue and Taxation Code.

36 (4) The retailer does not possess all required permits or licenses
37 required under the Revenue and Taxation Code.

38 (b) (1) Any retailer who is denied a license may petition for a
39 redetermination of the board's denial of the license within 30 days
40 after service upon that retailer of the notice of the denial of the

1 license. If a petition for redetermination is not filed within the
2 30-day period, the determination of denial becomes final at the
3 expiration of the 30-day period.

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

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

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

18 SEC. 4. Section 22977.2 of the Business and Professions Code
19 is amended to read:

20 22977.2. (a) The board shall issue a license to a distributor or
21 a wholesaler upon receipt of a completed application and payment
22 of the fee prescribed in Section 22977.1, unless any of the
23 following apply:

24 (1) The distributor or the wholesaler, or if the distributor or the
25 wholesaler is not an individual, any person controlling the
26 distributor or the wholesaler, has previously been issued a license
27 that is suspended or revoked by the board for violation of any of
28 the provisions of this division.

29 (2) The application is for a license or renewal of a license for a
30 distributor or a wholesaler, whose license is revoked or revocation
31 is pending, unless:

32 (A) It has been more than five years since a distributor's or a
33 wholesaler's previous license was revoked.

34 (B) The person applying for the license provides the board with
35 documentation demonstrating that the applicant has acquired or is
36 acquiring the business in an arm's length transaction. For purposes
37 of this section, an "arm's length transaction" is defined as a sale
38 in good faith and for valuable consideration that reflects the fair
39 market value in the open market between two informed and willing
40 parties, neither under any compulsion to participate in the

1 transaction. A sale of the business between relatives, related
2 companies or partners, or a sale for the primary purpose of avoiding
3 the effect of the violations of state tobacco control laws that were
4 committed by the distributor or wholesaler is presumed not to be
5 made at “arm’s length.”

6 (3) The distributor or the wholesaler, or if the distributor or the
7 wholesaler is not an individual, any person controlling the
8 distributor or the wholesaler has been convicted of a felony
9 pursuant to Section 30473 or 30480 of the Revenue and Taxation
10 Code.

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

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

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

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

33 SEC. 5. Section 22979 of the Business and Professions Code
34 is amended to read:

35 22979. (a) Every manufacturer and every importer shall obtain
36 and maintain a license to engage in the sale of cigarettes. In order
37 to be eligible for obtaining and maintaining a license under this
38 division, a manufacturer or importer shall do all of the following
39 in the manner specified by the board:

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

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

6 (3) Consent to jurisdiction of the California courts for the
7 purpose of enforcement of this division and appoint a registered
8 agent for service of process in this state and identify the registered
9 agent to the board.

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

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

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

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

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

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

38 (c) The board may not grant or permit the maintenance of a
39 license to any manufacturer or an importer of cigarettes that does
40 not affirmatively certify, both at the time the license is granted and

1 annually thereafter, that all packages of cigarettes manufactured
2 or imported by that person and distributed in this state fully comply
3 with subdivision (b) of Section 30163 of the Revenue and Taxation
4 Code, and that the cigarettes contained in those packages are the
5 subject of filed reports that fully comply with all requirements of
6 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.
7 1331 et seq.) for the reporting of ingredients added to cigarettes.
8 For purposes of the federal Cigarette Labeling and Advertising
9 Act requirement, cigars weighing three pounds or less per 1,000
10 are excluded from the definition of cigarette.

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

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

21 (f) (1) Any manufacturer or any importer who is denied a
22 license may petition for a redetermination of the board's denial of
23 the license within 30 days after service upon that manufacturer or
24 that importer of the notice of the denial of the license. If a petition
25 for redetermination is not filed within the 30-day period, the
26 determination of denial becomes final at the expiration of the
27 30-day period.

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

33 (3) If the petition for redetermination is filed within the 30-day
34 period, the board shall reconsider the determination of the denial
35 and, if the manufacturer or the importer has so requested in the
36 petition, shall grant an oral hearing and shall give the manufacturer
37 or the importer at least 10 days' notice of the time and place of the
38 hearing. The board may continue the hearing from time to time as
39 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.

SEC. 5.5. *Section 22979 of the Business and Professions Code is amended to read:*

22979. (a) ~~Commencing on January 1, 2004, every~~ Every manufacturer and every importer, ~~as defined in subdivision (b) of Section 22971,~~ 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

1 II(mm) of the MSA and Exhibit E thereto, in calculating the
2 manufacturer's annual payments under the MSA.

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

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

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

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

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

33 (f) (1) Any manufacturer or any importer who is denied a
34 license may petition for a redetermination of the board's denial of
35 the license within 30 days after service upon that manufacturer or
36 that importer of the notice of the denial of the license. If a petition
37 for redetermination is not filed within the 30-day period, the
38 determination of denial becomes final at the expiration of the
39 30-day period.

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

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

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

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

31 *(g) In any action brought by the Attorney General or the board*
32 *to enforce this division, Sections 104555 to 104557, inclusive, of*
33 *the Health and Safety Code, Part 13 (commencing with Section*
34 *30001) of Division 2 of the Revenue and Taxation Code, or*
35 *regulations adopted thereto, including, but not limited to, an action*
36 *to suspend or revoke a license issued under this section, if the*
37 *licensee raises a sovereign immunity defense with respect to an*
38 *aspect of that proceeding, the license in question shall be subject*
39 *to revocation. In the event of a revocation under this subdivision,*
40 *the person whose license has been revoked shall not be eligible*

1 *for a license under this section in the future, unless that person*
2 *agrees to waive any sovereign immunity defense that may apply*
3 *to an enforcement action brought by the Attorney General or the*
4 *board to enforce this division, Sections 104555 to 104557,*
5 *inclusive, of the Health and Safety Code, Part 13 (commencing*
6 *with Section 30001) of Division 2 of the Revenue and Taxation*
7 *Code, or regulations adopted thereto. The Attorney General shall*
8 *inform the board in the event a sovereign immunity defense is*
9 *raised by a licenseholder.*

10 SEC. 6. Section 22980.2 of the Business and Professions Code
11 is amended to read:

12 22980.2. (a) A person or entity that engages in the business
13 of selling cigarettes or tobacco products in this state either without
14 a valid license or after a license has been suspended or revoked,
15 and each officer of any corporation that so engages in this business,
16 is guilty of a misdemeanor punishable as provided in Section
17 22981.

18 (b) Each day after notification by the board or by a law
19 enforcement agency that a manufacturer, wholesaler, distributor,
20 importer, retailer, or any other person required to be licensed under
21 this division offers cigarette and tobacco products for sale or
22 exchange without a valid license for the location from which they
23 are offered for sale shall constitute a separate violation.

24 (c) Continued sales or gifting of cigarettes and tobacco products
25 either without a valid license or after a notification of suspension
26 or revocation shall constitute a violation punishable as provided
27 in Section 22981, and shall result in the seizure of all cigarettes
28 and tobacco products in the possession of the person by the board
29 or a law enforcement agency. Any cigarettes and tobacco products
30 seized by the board or by a law enforcement agency shall be
31 deemed forfeited.

32 SEC. 7. Section 22980.3 of the Business and Professions Code
33 is amended to read:

34 22980.3. (a) Licenses issued pursuant to this division shall be
35 subject to suspension or revocation for violations of this division
36 or the Revenue and Taxation Code as provided in this section.

37 (1) In addition to any applicable fines or penalties for a violation,
38 upon first conviction of a violation, a licensee shall receive a
39 written notice from the board detailing the suspension and

1 revocation provisions of this division. At its discretion, the board
2 may also suspend a license for up to 30 days.

3 (2) In addition to any applicable fines or penalties for a violation,
4 upon a second conviction of a violation within four years of a
5 previous violation, the license shall be revoked.

6 (b) The date of the occurrence of a violation shall be used to
7 calculate the duration between subsequent violations. A violation
8 shall be noted in the license record at the board only after judicial
9 conviction or final adjudication of a violation.

10 (c) Upon updating a record for a violation triggering a
11 suspension, the board shall serve the licensee with a notice of
12 suspension and shall order the licensee to cease the sale, gifting,
13 or displaying for sale of cigarettes or tobacco products for the
14 period of the suspension. The notice of suspension shall inform
15 the licensee of the effective dates of the suspension.

16 (d) Continued sales or gifting of cigarettes or tobacco products
17 after the effective date of the suspension shall constitute a violation
18 of this division and result in the revocation of a license.

19 (e) Upon completion of a suspension period, a license shall be
20 reinstated by the board upon certification that all outstanding debts
21 of that retailer or wholesaler that are owed to a wholesaler or
22 distributor for the purchase of cigarettes and tobacco products are
23 paid.

24 (f) Upon updating a record for a violation triggering a
25 revocation, the board shall serve the licensee with a notice of
26 revocation and shall order the licensee to cease the sale, gifting,
27 or displaying for sale of cigarettes or tobacco products on and after
28 the effective date of the revocation. The notice of revocation shall
29 inform the licensee of the effective date of the revocation.

30 (g) After a revocation, a previously licensed applicant may apply
31 for a new license after six months. The board may, at its discretion,
32 issue a new license.

33 (h) Upon updating a license record for a violation, suspension,
34 or revocation to a license of a person or entity that owns or controls
35 more than one location, the board shall send notice in writing of
36 the violations, suspensions, or revocations within 15 days of the
37 board's action to the address included in the application and listed
38 on the license for receipt of correspondence or notices from the
39 board.

(i) Upon suspension or revocation of a license pursuant to this section, the board shall notify all licensed distributors and wholesalers by electronic mail within 48 hours of the suspension or revocation of that license. All licensed distributors and wholesalers shall provide the board and shall update, as necessary, an electronic mail address that the board can use for purposes of making the notifications required by this subdivision.

(j) Violations by a licensee at one location may not be accumulated against other locations of that same licensee. Violations accumulated against a prior owner at a licensed location may not be accumulated against a new owner at the same licensed location.

(k) For purposes of this section, a violation includes violations of the Revenue and Taxation Code relating to cigarettes and tobacco products, and violations of this division. Only one violation per discrete action shall be counted toward a suspension or revocation of a license.

SEC. 8. Section 22980.4 is added to the Business and Professions Code, to read:

22980.4. A person who, after receiving a notice of suspension or revocation, continues to display for sale cigarettes or tobacco products shall be subject to a civil penalty of one thousand dollars (\$1,000) for each offense, and shall not be subject to Section 22981.

SEC. 9. Section 22980.5 is added to the Business and Professions Code, to read:

22980.5. (a) A retailer whose license has been suspended or revoked by order of the board shall conspicuously post a notice at both of the following locations:

(1) Each public entrance to the retail location. The notice shall directly face any person who enters the retail location and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

(2) Each cash register and other point of retail sale. The notice shall be posted so as to be readily viewable by a person standing at or approaching the cash register or other point of retail sale. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

(b) The notices described in this section shall be in the size and form prescribed by the board. The notice shall be provided by the

board and may be reproduced in the same size and form in order to comply with subdivision (a).

(c) A retailer whose license was suspended shall post the notice at the retail location that was the subject of the suspension for the duration of the suspension.

(d) A retailer whose license was revoked shall post the notice at the retail location that was the subject of the revocation for a 30-day period from the effective date of the revocation.

(e) Every retailer who fails to post the notices as required by this section, who alters the notice provided by the board, or who removes the notice before the posting period required in subdivision (c) or (d), as appropriate, expires, shall be subject, notwithstanding Section 22981, to a civil penalty of one thousand dollars (\$1,000) for each offense.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 22979 of the Business and Professions Code proposed by both this bill and AB 2496. 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 2496, in which case Section 5 of this bill shall not become operative.

~~SEC. 10.~~

SEC. 11. 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.