

ASSEMBLY BILL

No. 1785

Introduced by Assembly Member Garcia

February 18, 2014

An act to amend Section 30165.1 of the Revenue and Taxation Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

AB 1785, as introduced, Garcia. Cigarette and Tobacco Products Tax Law: Master Settlement Agreement: information sharing.

Existing law regulates the promotion and sale of cigarette and other tobacco products in this state, and requires any tobacco product manufacturer selling cigarettes to consumers within the state that is a participating manufacturer, as defined in the Master Settlement Agreement (MSA), or a non-participating manufacturer that makes required escrow payments to provide annual certifications to the Attorney General for purposes of a directory. Under the MSA, states' attorneys general and various tobacco product manufacturers have entered into an agreement, in settlement of various lawsuits against those manufacturers, for recovery of the states' tobacco-related health care costs, which provides for the allocation of money to the states and certain territories.

Existing law authorizes the State Board of Equalization to disclose to the Attorney General any information received under the Cigarette and Tobacco Products Tax Law for purposes of determining compliance with, and enforcing specified provisions of, that law, laws relating to the Master Settlement Agreement, and any regulations promulgated pursuant thereto.

This bill would authorize the board to disclose to the Attorney General any information received under the Cigarette and Tobacco Products Tax Law for purposes of determining compliance with and enforcing the Master Settlement Agreement.

Existing law requires the board and Attorney General to share with each other specified information, and allows that information to be shared with other federal, state, or local agencies for purposes of enforcement of specified laws.

This bill would authorize this information also to be shared for purposes of determining compliance with, and enforcement of, specified laws and the Master Settlement Agreement. This bill would allow the Attorney General to share that information with any data clearinghouse or other entity performing duties under the Master Settlement Agreement.

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

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

- 1 SECTION 1. Section 30165.1 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 30165.1. (a) The following definitions shall apply for purposes
- 4 of this section:
- 5 (1) "Board" means the State Board of Equalization.
- 6 (2) "Brand family" means all styles of cigarettes sold under the
- 7 same trademark and differentiated from one another by means of
- 8 additional modifiers, including, but not limited to, "menthol,"
- 9 "lights," "kings," and "100s" and includes any brand name, alone
- 10 or in conjunction with any other word, trademark, logo, symbol,
- 11 motto, selling message, recognizable pattern of colors, or any other
- 12 indicia of product identification identical or similar to, or
- 13 identifiable with, a previously known brand of cigarettes.
- 14 (3) "Cigarette" has the same meaning as in subdivision (d) of
- 15 Section 104556 of the Health and Safety Code and includes tobacco
- 16 products defined as a cigarette under that subdivision.
- 17 (4) "Distributor" has the same meaning as in Section 30011.
- 18 (5) "MSA" means the Master Settlement Agreement, as defined
- 19 in subdivision (e) of Section 104556 of the Health and Safety Code.
- 20 (6) "Nonparticipating manufacturer" means any tobacco product
- 21 manufacturer that is not a participating manufacturer.

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

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

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

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

9 (b) Every tobacco product manufacturer whose cigarettes are
10 sold in this state, whether directly or through a distributor, retailer,
11 or similar intermediary or intermediaries, shall execute and deliver
12 on a form and in the manner prescribed by the Attorney General,
13 a certification to the Attorney General no later than the 30th day
14 of April each year that, as of the date of the certification, the
15 tobacco product manufacturer is either a participating manufacturer
16 that has made all payments calculated by the independent auditor
17 to be due under the Master Settlement Agreement, except to the
18 extent the participating manufacturer is disputing any of the
19 payments, or is in full compliance with Article 3 (commencing
20 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
21 the Health and Safety Code, including all installment payments
22 required by that article and this section, and any regulations
23 promulgated pursuant thereto. A tobacco product manufacturer
24 located outside of the United States shall provide to the Attorney
25 General and keep current, the names, and addresses, including
26 electronic mail addresses, of all importers that sell or will be selling
27 their cigarettes in this state and shall cause each importer to provide
28 to the Attorney General a copy of a valid importer permit issued
29 by the United States Treasury, Alcohol and Tobacco Tax and Trade
30 Bureau, and the importer license issued by the board. The importers
31 who sell or will be selling their cigarettes in this state shall obtain
32 and maintain a license as an importer in compliance with Division
33 8.6 (commencing with Section 22970) of the Business and
34 Professions Code. Any person who makes a certification pursuant
35 to this subdivision that asserts the truth of any material matter that
36 he or she knows to be false is guilty of a misdemeanor punishable
37 by imprisonment of up to one year in the county jail, or a fine of
38 not more than one thousand dollars (\$1,000), or both the
39 imprisonment and the fine.

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

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

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

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

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

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

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

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

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

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

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

39 (iii) If the nonparticipating manufacturer is not the fabricator
40 or maker of the cigarettes, that the escrow agreement, certification,

1 reports, and any other forms required by Article 3 (commencing
2 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
3 the Health and Safety Code and implementing regulations are
4 signed by the company that fabricates or makes the cigarettes and
5 in the manner required by the Attorney General.

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

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

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

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

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

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

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

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

39 (E) In the case of a nonparticipating manufacturer located
40 outside the United States, that the manufacturer has provided a

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

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

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

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

35 (B) Nothing in this section shall be construed as limiting or
36 otherwise affecting the state's right to maintain that a brand family
37 constitutes cigarettes of a different tobacco product manufacturer
38 for purposes of calculating payments under the MSA or for
39 purposes of Article 3 (commencing with Section 104555) of

1 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code
2 and any regulations promulgated pursuant thereto.

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

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

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

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

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

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

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

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

38 (B) Any outstanding final judgment, including interest thereon,
39 for violations of Article 3 (commencing with Section 104555) of
40 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,

1 this section, Sections 30101.7 and 30165.2, and any regulations
2 promulgated pursuant thereto, has not been fully satisfied for the
3 brand family and the manufacturer.

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

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

21 (E) If the manufacturer or its importer, as defined in Section
22 30019, engages in delivery sales and the manufacturer fails to
23 provide or fails to cause his or her importer to provide reasonable
24 assurances that the delivery seller has fully complied with all
25 requirements of applicable federal and state law, including, but
26 not limited to, all of the following:

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

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

31 (iii) The requirements of Section 30101.7.

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

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

37 (3) The Attorney General shall update the directory as necessary
38 in order to correct mistakes and to add or remove a tobacco product
39 manufacturer or brand family to keep the directory in conformity
40 with the requirements of this section, Section 30165.2, and Article

1 3 (commencing with Section 104555) of Chapter 1 of Part 3 of
2 Division 103 of the Health and Safety Code. The Attorney General
3 shall promptly provide distributors and wholesalers with written
4 notice of each tobacco product manufacturer and brand family that
5 the Attorney General has added to, or excluded or removed from,
6 the list.

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

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

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

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

38 (E) After 60 days following removal from the directory the
39 cigarettes of a manufacturer or brand family identified in the notice
40 of removal are contraband and are subject to seizure and destruction

1 under subdivision (e) of Section 30436 and subdivision (b) of
2 Section 30449, and may not be purchased or sold in California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (d) (1) The Attorney General may exclude or remove from the
40 list required by subdivision (c) a tobacco product manufacturer or

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

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

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

1 the list posted by the Attorney General pursuant to subdivision
2 (c).

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

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

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

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

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

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

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

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

1 as required by the Attorney General shall be liable for a civil
2 penalty in an amount not to exceed the greater of either of the
3 following:

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

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

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

22 (2) Notwithstanding Section 30455, the board is authorized to
23 disclose to the Attorney General any information received under
24 this part for purposes of determining compliance with and
25 enforcing the provisions of this section, Sections 30101.7 and
26 30165.2, ~~and Article 3 (commencing with Section 104555) of~~
27 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,
28 and any regulations promulgated pursuant thereto, *and the MSA*.
29 The board and Attorney General shall share with each other the
30 information received under this section, and may share that
31 information with other federal, state, or local ~~agencies~~, *agencies*.
32 *The Attorney General may also share that information with any*
33 *data clearinghouse or other entity performing duties related to*
34 *the MSA. That information shall be shared only for the purposes*
35 *of determining compliance with and enforcement of this section,*
36 *Sections 30101.7 and 30165.2, Article 3 (commencing with Section*
37 *104555) of Chapter 1 of Part 3 of Division 103 of the Health and*
38 *Safety Code, and any regulations promulgated pursuant thereto,*
39 *or corresponding laws of other states, and the MSA.*

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (j) If a distributor affixes a stamp or meter impression to a
38 package of cigarettes under subdivision (a) of Section 30163, or
39 pays the tax levied under Sections 30123 and 30131.2 on a tobacco
40 product defined as a cigarette under this section, during the period

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (p) In any action brought by the state to enforce this section,
39 the state shall be entitled to recover the costs of investigation,

1 expert witness fees, costs of the action, and reasonable attorney's
2 fees.

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

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

6 (A) A nonparticipating manufacturer and its importers.

7 (B) Exclusive distributors, retailers, stamping agents, and
8 wholesalers, as defined in Division 8.6 (commencing with Section
9 22970) of the Business and Profession Code, and this part.

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

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

1 (r) In any action regarding a violation of this article or of Article
2 3 (commencing with Section 104555) of Chapter 1 of Part 3 of
3 Division 103 of the Health and Safety Code, or of Section 22963
4 of the Business and Professions Code, or of Section 30101.7, or
5 of Section 17200 of the Business and Professions Code, reports
6 submitted to the board pursuant to Section 30182 or Section
7 22978.1, 22978.4, or 22978.5 of the Business and Professions
8 Code, shall be admissible in evidence and shall be presumed to
9 accurately state the number of cigarettes stamped during the time
10 period by the stamping agent that submitted the report absent a
11 contrary showing by the nonparticipating manufacturer or importer.
12 Nothing in this section shall be construed as limiting or otherwise
13 affecting the right of the state to maintain that reports are incorrect
14 or do not accurately reflect a nonparticipating manufacturer's sales
15 in the state during the time period in question, and the presumption
16 shall not apply in the event the state does so maintain.

17 (s) In any action regarding a violation of this article or of Article
18 3 (commencing with Section 104555) of Chapter 1 of Part 3 of
19 Division 103 of the Health and Safety Code, or of Section 22963
20 of the Business and Professions Code, or of Section 30101.7, or
21 of Section 17200 of the Business and Professions Code, sufficient
22 notice of the action to the alleged violator shall be given by
23 complaint written in the English language. The state shall not be
24 required to bear any expense of translating complaint into another
25 language.

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