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AB-1742 California Cigarette Fire Safety and Firefighter Protection Act: Tobacco Master Settlement Agreement. (2021-2022)

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Date Published: 09/23/2022 10:00 AM

Assembly Bill No. 1742

CHAPTER 454

An act to amend Sections 14951, 14952, 14953, 14954, and 14959 of the Health and Safety Code, to amend Sections 30165.1 and 30165.2 of the Revenue and Taxation Code, and to amend Section 3 of Chapter 633 of the Statutes of 2005, relating to cigarettes, and making an appropriation therefor.

[Approved by Governor September 22, 2022. Filed with Secretary of State September 22, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1742, Robert Rivas. California Cigarette Fire Safety and Firefighter Protection Act: Tobacco Master Settlement Agreement.

(1) Existing law, the California Cigarette Fire Safety and Firefighter Protection Act, administered by the State Fire Marshal, prohibits a person from selling, offering, or possessing for sale in this state cigarettes not in compliance with certain requirements, including the requirement that the cigarettes are tested by the manufacturer in accordance with prescribed testing methods. In certain circumstances, the act provides an exception from the above for distributors, wholesalers, or retailers to sell their cigarette inventory that existed on January 1, 2007.

This bill would delete the authorization to sell that cigarette inventory that existed on January 1, 2007. The bill would generally delete the State Fire Marshal's authority to administer the act and instead require the Attorney General to administer the act, as provided.

The act requires each manufacturer to submit a written certification to the State Fire Marshal attesting that each cigarette listed in the certification has been tested as provided. The act requires, before a certified cigarette can be sold in the state, a manufacturer to submit its proposed marking to the State Fire Marshal for approval. Existing law requires proposed markings to be deemed approved if the State Fire Marshal fails to act within 10 business days.

This bill would instead require each manufacturer to submit a written certification to the Attorney General in the form, manner, and detail required by the Attorney General. The bill would authorize the Attorney General to publish on its internet website this information. The bill would require the Attorney General to approve a proposed marking upon a certain finding and would deem a proposed marking approved if the Attorney General fails to act within 30 business days. The bill would authorize the Attorney General to adopt rules and regulations to implement these provisions, including initial emergency regulations.

The act establishes several civil penalties for violations of the act and requires some of the penalty moneys to be deposited into the Cigarette Fire Safety and Firefighter Protection Fund. Existing uncodified law requires the moneys in the fund, upon appropriation, to be made available to the State Fire Marshal to administer and implement the act.

This bill would authorize the moneys in the fund to be appropriated to the Attorney General to administer and implement the act.

(2) States' attorneys general and various tobacco product manufacturers settled various lawsuits by entering into a Master Settlement Agreement (MSA), which imposes financial obligations on participating manufacturers and provides for the allocation of money to the states and certain territories for recovery of those governments' tobacco-related health care costs. Existing law requires that a tobacco product manufacturer selling cigarettes to consumers in California either become a participating manufacturer in the MSA or, as a nonparticipating manufacturer, place funds into a qualified escrow fund, as specified.

The Cigarette and Tobacco Products Tax Law requires every tobacco product manufacturer whose cigarettes are sold in this state to make an annual certification to the Attorney General that the manufacturer is a participating manufacturer that has made all payments due under the MSA or has placed funds into the qualified escrow fund. That law also requires the certification to include specified information, including a complete list of all of the manufacturer's brand families and, in the case where the nonparticipating manufacturer is not the fabricator or maker of the cigarettes, that the escrow agreement or other forms are signed by the company that fabricates or makes the cigarettes. That law makes a false certification a misdemeanor. That law requires the Attorney General to post on its internet website a directory (Directory) of tobacco product manufacturers that have submitted compliant certifications, as specified, and requires the Directory to include the brand families listed in those certifications, except as provided.

This bill would require the certification to also include a complete list of the tobacco product manufacturer's brand styles, as defined, and would make conforming changes. The bill would specify that listings on the Directory expire on April 29 each year. This bill would require, beginning with the 2023 calendar year, a tobacco product manufacturer to renew its listing on the Directory by providing the annual certification and remitting an annual fee of \$1,000 payable to the office of the Attorney General. This bill would require any fees received to be deposited into the California Tobacco Directory Fund, which the bill would create in the State Treasury. This bill would continuously appropriate amounts deposited in the California Tobacco Directory Fund to the office of the Attorney General for the purpose of administering the Directory. The bill would allow the Attorney General to retain a listing for a tobacco product manufacturer on the Directory while the renewal for the certification is pending, provided that if the Attorney General decides not to retain a listing of any manufacturer or brand family while the renewal of the certification is pending, the bill would require the Attorney General to comply with specified delisting provisions.

This bill would eliminate the requirement, in the case where the nonparticipating manufacturer is not the fabricator or maker of the cigarettes, that the escrow agreement or other forms are signed by the company that fabricates or makes the cigarettes. This bill would require a nonparticipating manufacturer to certify that it fabricates all of the brand families of the cigarettes that it seeks to certify.

This bill would require the Attorney General to list the brand styles of cigarettes that are compliant with the annual certification and the qualified escrow requirements. This bill would also prohibit the Attorney General from including or retaining in the Directory any brand style that has not met specified requirements, including if the brand style has not been tested and marked in compliance with the California Cigarette Fire Safety and Firefighter Protection Act.

Existing law provides that newly qualified and elevated-risk nonparticipating manufacturers are required to file a surety bond with the Attorney General, as specified. Existing law also prohibits inclusion in the Directory of specified nonparticipating manufacturers and their brand families until a surety bond is filed, as specified.

This bill would expand the criteria for when a nonparticipating manufacturer may be deemed to pose an elevated risk, including when, as of January 1, 2023, a nonparticipating manufacturer's cigarettes are sold in or into California by distributors that have not reported their last 12 months of California sales electronically, as prescribed.

By expanding the scope of information required to be on the certification and expanding the scope of the surety bond requirement, the false certification of which is a crime, this bill imposes a state-mandated local program.

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

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

The Cigarette and Tobacco Products Tax Law requires that the tax on the distribution of cigarettes imposed by that law be paid through the use of stamps or meter impressions, and requires that these stamps or meter impressions be affixed to each package of cigarettes distributed. That law prohibits (1) any tax stamp or meter impression to be affixed to a package of cigarettes unless the tobacco product manufacturer and brand family are included on the Directory, (2) the sale, offer, or possession for sale in this state, shipment or distribution into or within this state, or importation for personal consumption in this state, of cigarettes of a tobacco product manufacturer or brand family not included in the Directory, and (3) the possession, transportation, and other specified activities of the cigarettes that the person knows or should have known are intended to be distributed in violation of the other 2 prohibitions. That law requires distributors to submit to the California Department of Tax and Fee Administration or the

Attorney General specified information to facilitate compliance with that prohibition and the certification requirements. That law imposes civil penalties for violations of that prohibition and information reporting requirements.

This bill would require the department to disclose to the Attorney General any information it receives under the Cigarette and Tobacco Products Tax Law for specified purposes and would authorize the department and the Attorney General to share information provided by distributors with specified entities for specified purposes.

This bill would additionally authorize the Attorney General to bring a civil action for civil penalties and injunctive relief against specified persons for specific violations of those prohibitions or information reporting requirements and against any nonparticipating manufacturer that does not submit a timely, complete, and accurate certification as required by the Cigarette and Tobacco Products Tax Law regarding its sales of cigarettes in this state, as provided. This bill would require any civil penalties imposed to be deposited into the General Fund.

Existing law requires each tobacco product manufacturer that elects to place funds into a qualified escrow to annually certify to the Attorney General that it is in compliance with specified requirements. Existing law authorizes the Attorney General to bring a civil action against any tobacco product manufacturer that fails to place into escrow the funds required and authorizes the imposition of civil penalties paid to the General Fund.

This bill would additionally authorize the Attorney General to bring a civil action for civil penalties and injunctive relief against any nonparticipating manufacturer that does not submit a timely, complete, and accurate certification related to those qualified escrow funds regarding its sales of cigarettes in this state, as provided. This bill would require any civil penalties imposed to be deposited into the General Fund.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 14951 of the Health and Safety Code is amended to read:

14951. A person shall not sell, offer, or possess for sale in this state cigarettes not in compliance with all of the following requirements:

- (a) The cigarettes are tested by the manufacturer in accordance with the test method prescribed in subdivision (a) of Section 14952.
- (b) The cigarettes meet the performance standard specified in subdivision (b) of Section 14952.
- (c) The cigarettes meet the marking requirement of Section 14954.
- (d) A written certification is filed by the manufacturer with the Attorney General in accordance with Section 14953.

SEC. 2. Section 14952 of the Health and Safety Code is amended to read:

14952. (a) (1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) Standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes." However, a subsequent ASTM Standard Test Method may be adopted upon finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns that the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the testing requirements in paragraphs (2) to (5), inclusive, and the performance standard specified in subdivision (b).

(2) Testing shall be conducted on 10 layers of filter paper.

(3) Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(4) The performance standard required by subdivision (b) shall only be applied to a complete test trial.

(5) Laboratories conducting testing in accordance with this subdivision shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19 pursuant to subdivision (b).

(b) When tested in accordance with subdivision (a), no more than 25 percent of the cigarettes tested in a test trial shall exhibit full-length burns.

(c) Each cigarette listed in a certification submitted pursuant to Section 14953 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in subdivision (b) shall have at least two nominally

identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for a nonfiltered cigarette.

(d) A manufacturer or manufacturers of a cigarette that cannot be tested in accordance with the test method prescribed in subdivision (a) may employ a test method and performance standard for that cigarette that is equivalent to the performance standard prescribed in subdivision (b). The manufacturer or manufacturers may employ that test method and performance standard to certify that cigarette pursuant to Section 14953. All other applicable requirements of this part shall apply to the manufacturer or manufacturers of that cigarette.

(e) This section does not require additional testing if cigarettes are tested consistent with this section for any other purpose.

(f) In order to ensure compliance with the performance standard specified in subdivision (b), data from testing conducted by manufacturers to comply with this performance standard shall be kept on file by these manufacturers for a period of three years after the initial date of certification and for a period of three years after each recertification required by subdivision (c) of Section 14953 and shall be sent to the Attorney General upon the Attorney General's request.

(g) This section shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes that are effective on June 28, 2004.

SEC. 3. Section 14953 of the Health and Safety Code is amended to read:

14953. (a) Each manufacturer shall submit a written certification to the Attorney General attesting that each cigarette listed in the certification has been tested in accordance with subdivision (a) of Section 14952 and meets the performance standard set forth in subdivision (b) of that section.

(b) Each certification shall be submitted in the form, manner, and detail required by the Attorney General and include, at a minimum, with respect to each cigarette listed in the certification, all of the following information:

- (1) Brand.
- (2) Style (for example, light, ultralight).
- (3) Length in millimeters.
- (4) Circumference in millimeters.
- (5) Flavor (for example, menthol, chocolate) if applicable.
- (6) Filter or nonfilter.
- (7) Package description (for example, soft pack, box).
- (8) Marking approved in accordance with Section 14954.

(c) Each cigarette certified under this section shall be recertified every three years.

(d) The Attorney General may publish on its internet website the information submitted pursuant to this section.

(e) The Attorney General may adopt rules and regulations to implement this section. The Attorney General may adopt initial emergency regulations to implement this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and these regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(f) A manufacturer certifying cigarettes in accordance with this section shall provide a copy of the certifications to all distributors and wholesalers to which the manufacturer sells cigarettes and shall also provide sufficient copies of an illustration of the cigarette packaging marking utilized by the manufacturer pursuant to Section 14954 for each retailer to which the distributors and wholesalers sell cigarettes. Distributors and wholesalers shall provide a copy of these cigarette packaging markings received from manufacturers to all retailers to whom they sell cigarettes.

SEC. 4. Section 14954 of the Health and Safety Code is amended to read:

14954. (a) Cigarettes that are certified by a manufacturer in accordance with Section 14953 shall be marked on the packaging and case to indicate compliance with the requirements of this part. The marking shall be in 8-point type or larger and consist of any of the following:

(1) Modification of the universal product code to include a visible mark printed at or around the area of that code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the universal product code.

(2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette packaging or cellophane wrap.

(3) Printed, stamped, engraved, or embossed text on the cigarette packaging that indicates that the cigarettes meet California standards.

(b) Before a certified cigarette can be sold in the state, a manufacturer shall submit its proposed marking to the Attorney General. The Attorney General shall approve the marking upon a finding that it is compliant with the criteria outlined in subdivision (a). Proposed markings shall be deemed approved if the Attorney General fails to act within 30 business days of receiving a proposed marking. A marking in use and approved for the sale of cigarettes in the State of New York shall be deemed approved.

(c) A manufacturer must use only one marking and must apply this marking uniformly for all packagings, including, but not limited to, packages, cartons, and cases, and brands marketed by that manufacturer.

(d) A manufacturer who modifies its marking shall notify the Attorney General of this change and submit to the Attorney General a copy of the new marking that shall comply with subdivisions (a) and (b).

(e) The Attorney General may adopt rules and regulations to implement this section. The Attorney General may adopt initial emergency regulations to implement this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and these regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

SEC. 5. Section 14959 of the Health and Safety Code is amended to read:

14959. This part shall cease to be applicable if federal fire safety standards for cigarettes that preempt this act are enacted and take effect subsequent to the effective date of this act and the Attorney General so notifies the Secretary of State.

SEC. 6. Section 30165.1 of the Revenue and Taxation Code is amended to read:

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

(1) "Department" means the California Department of Tax and Fee Administration.

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

(3) "Brand style" means any particular combination of trademark and modifiers within a brand family.

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

(5) "Directory" means the California Tobacco Directory developed by the Attorney General and published on its internet website pursuant to subdivision (c).

(6) "Distributor" has the same meaning as in Section 30011.

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

(8) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(9) "Participating manufacturer" has the same meaning as in subsection II(jj) of the MSA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The certifying nonparticipating manufacturer fabricates all of the brand families of the cigarettes it seeks to certify.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The Attorney General shall develop and publish on its internet website the California Tobacco Directory, which shall list only the tobacco product manufacturers, brand families, and brand styles of cigarettes that are compliant with this section and Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations adopted pursuant to those provisions.

(1) The Attorney General may not include or retain in the Directory the name, brand families, or brand styles of any of the following:

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

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

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

(2) A tobacco product manufacturer, brand family, or brand style shall not be included or retained in the Directory if the Attorney General concludes that any of the following is true:

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

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

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

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

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

(i) Chapter 10A (commencing with Section 375) of Title 15 of the United States Code.

(ii) The requirements of Section 30101.7.

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

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

(3) The Attorney General may not include or retain in the Directory any brand style that has not been tested and marked in compliance with the California Cigarette Fire Safety and Firefighter Protection Act (Part 8 (commencing with Section 14950) of Division 12 of the Health and Safety Code).

(4) All listings on the Directory shall expire on April 29 of each year. Beginning with the 2023 calendar year, a tobacco product manufacturer shall renew its listing on the Directory by providing the annual certification in compliance with this section and remitting an annual fee of one thousand dollars (\$1,000) per tobacco product manufacturer payable to the Office of the Attorney General. Any fees received pursuant to this paragraph shall be deposited into the California Tobacco Directory Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all amounts deposited in the California Tobacco Directory Fund are hereby continuously appropriated without regard to fiscal year to the Office of the Attorney General for the purpose of administering the Directory. The Attorney General may retain a listing for a tobacco product manufacturer on the Directory while the renewal for the certification is pending, provided that if the Attorney General decides not to retain a listing of any manufacturer or brand family while the renewal of the certification is pending, the Attorney General shall comply with the delisting provisions in this section, including paragraph (5).

(5) The Attorney General shall update the Directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer, brand family, or brand style to keep the Directory in conformity with the requirements of this section, Section 30165.2, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and the California Cigarette Fire Safety and Firefighter Protection Act (Part 8 (commencing with Section 14950) of Division 12 of the Health and Safety Code). The Attorney General shall promptly provide distributors and wholesalers with written notice of each tobacco product manufacturer, brand family, and brand style that the Attorney General has added to, or excluded or removed from, the Directory.

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

(B) A licensed distributor may purchase, stamp, or sell, and a licensed wholesaler may purchase or sell, products affected by the notice of pending administrative action for no more than 40 days following issuance of the notice of pending administrative action. Before the sale of a product affected by the notice of pending administrative action, and no later than seven days after the notice of pending administrative action, a distributor or wholesaler shall notify each of its existing customers of the pending administrative action.

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

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

(E) After 60 days following removal from the Directory, the cigarettes of a tobacco product manufacturer, brand family, or brand style identified in the notice of removal are contraband and are subject to seizure and destruction under subdivision (e) of Section 30436 and subdivision (b) of Section 30449, and may not be purchased or sold in the state. This section does not limit or otherwise change the seizure and destruction process of cigarettes under Sections 14950 to 14959, inclusive, of the Health and Safety Code, including, but not limited to, Section 14956 of the Health and Safety Code.

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

(G) Upon request of the Attorney General, the department shall provide the Attorney General all email addresses for licensed distributors, wholesalers, and retailers in the department's possession.

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

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

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

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

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

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

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

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

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

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

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

(vi) Any state has suspended or revoked the nonparticipating manufacturer's license to engage in any aspect of tobacco business.

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

(viii) During any of the past three years, escrow and equity fee payments were made on less than 80 percent of the nonparticipating manufacturer's nationwide cigarette sales as measured by excise taxes collected by the federal government and, in the case of Puerto Rico, arbitrios de cigarrillos collected by the Puerto Rico taxing authority.

(ix) As of January 1, 2023, the nonparticipating manufacturer's cigarettes are sold in or into the state by distributors that have not reported their last 12 months of in-state sales electronically and in the manner prescribed by both the department and the Attorney General.

(x) For a domestic manufacturer, the nonparticipating manufacturer's cigarettes are sold in the state through one or more distributors that do not purchase directly from the nonparticipating manufacturer. For a foreign manufacturer, the nonparticipating manufacturer's cigarettes are sold in the state through one or more distributors that do not purchase directly from an importer that has accepted joint and several liability pursuant to paragraph (4) of subdivision (f).

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

(D) As used in this paragraph, "newly qualified nonparticipating manufacturer" means a nonparticipating manufacturer that has not previously been listed in the Directory during the last 12 months. These newly qualified nonparticipating manufacturers may be required to post a bond in accordance with this section for the next three years of their listing, or longer if they have been determined to pose an elevated risk for noncompliance.

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

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

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

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

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

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

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

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

(f) (1) A nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families or brand styles listed or retained in the Directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against the nonresident or foreign nonparticipating manufacturer concerning or arising out of the enforcement of this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations adopted pursuant to those provisions, may be served in any manner authorized by law. This service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of the agent to the satisfaction of the Attorney General. A nonparticipating manufacturer located outside of the United States shall, as an additional condition precedent to having its brand families listed or retained in the Directory, cause each of its importers into the United States of any of its brand families to be sold in the state to appoint and continually engage without interruption the services of an agent in the state in accordance with this section. All obligations of a nonparticipating manufacturer imposed by this section with respect to appointment of its agent shall likewise apply to importers with respect to appointment of their agents.

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

(3) (A) A nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as herein required shall be deemed to have appointed the Secretary of State as its agent. The appointment of the Secretary of State as the agent for service of process pursuant to this provision does not satisfy the condition precedent specified in paragraph (1) to having its brand families listed or retained in the Directory.

(B) The Attorney General or their authorized representative may proceed against a nonparticipating manufacturer in the courts of this state pursuant to subparagraph (A) by service of process upon the Secretary of State. The service may be made by delivering by hand to the Secretary of State or their authorized representative one copy of the process for each defendant to be served, together with a declaration stating that service is being made upon the Secretary of State pursuant to subparagraph (A), setting forth the last known address of the nonparticipating manufacturer, and signed by the party to the action seeking service.

(C) Upon receipt of the records described in subparagraph (B), the Secretary of State or their authorized representative shall give notice of the service of process to any nonparticipating manufacturer served by forwarding a copy of the process to the nonparticipating manufacturer at the last known address identified in the declaration.

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

(A) Five times the retail value of the cigarettes that were not reported as required by the Attorney General.

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

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

(2) (A) Notwithstanding Section 30455, the department shall disclose to the Attorney General any information received under this part for purposes of determining compliance with and enforcing the provisions of this section, Sections 30101.7 and 30165.2, and Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations adopted pursuant to those provisions. The department and Attorney General may share the information received under this section with any of the following:

(i) Other federal, state, or local agencies for purposes of enforcing this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, or corresponding laws of other states or the United States.

(ii) A court arbitrator, or data clearinghouse or similar entity for purposes of resolving disputes arising under, and making calculations and determinations required by, the MSA or related settlement agreements and with counsel for the parties or expert witnesses in any such proceeding, provided that the recipients agree to maintain the confidentiality of confidential information.

(B) The department and Attorney General shall not publicly disclose confidential information except as necessary to carry out their functions and duties.

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

(4) In addition to the information required to be submitted pursuant to this section or Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations adopted pursuant to those provisions, the Attorney General may require a retailer, wholesaler, distributor, importer, or tobacco product manufacturer to

submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer or importer has complied, is in compliance, and, if applicable pursuant to subparagraph (C) of paragraph (2) of subdivision (c), has provided reasonable assurance that it will comply or continue to comply with this section, Section 30165.2, Part 8 (commencing with Section 14950) of Division 12 of the Health and Safety Code, and Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations adopted pursuant to those provisions.

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

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

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

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

(i) Five times the retail value of the cigarettes.

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

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

(i) At the time of the violation, the cigarettes or tobacco products claimed to be the subject of the alleged violation belonged to a brand family and brand style that was included on the Directory.

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

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

(3) In addition to any other civil or criminal penalty provided by law, the Attorney General may bring a civil action on behalf of the state for civil penalties and injunctive relief against a retailer, distributor, wholesaler, manufacturer, importer, or other person that violates subdivision (e), or paragraph (1) or (4) of subdivision (g). The court, upon a finding of a violation, shall impose a civil penalty to be paid to the General Fund. The amount of the civil penalty may not exceed the greater of either of the following:

(A) Five times the retail value of the cigarettes.

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

(4) In addition to any other civil or criminal penalty provided by law, the Attorney General may bring a civil action on behalf of the state for civil penalties and injunctive relief against any nonparticipating manufacturer that does not submit timely, complete, and accurate certifications to the Attorney General under this section and subdivision (c) of Section 104557 of the Health and Safety Code regarding its sales of cigarettes in this state, whether directly or through a distributor, retailers, or similar intermediary or intermediaries, and tobacco escrow account compliance for its ongoing and previous sales in this state. The court, upon a finding of a violation, may do both of the following:

(A) Impose a civil penalty to be paid to the General Fund not to exceed one thousand dollars (\$1,000) for each day the nonparticipating manufacturer fails to timely, completely, and accurately certify to the Attorney General.

(B) Issue an injunction prohibiting the nonparticipating manufacturer's cigarettes from being sold in or into the state until the failure to certify has been fully cured.

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) The Attorney General or the Attorney General's authorized representative shall have the authority to:

(1) Conduct audits and investigations of the following:

(A) A nonparticipating manufacturer and its importers.

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

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

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

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

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

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

SEC. 7. Section 30165.2 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 8. Section 3 of Chapter 633 of the Statutes of 2005 is amended to read:

SEC. 3. The Cigarette Fire Safety and Firefighter Protection Fund is hereby created in the State Treasury. Upon appropriation by the Legislature, moneys deposited into the fund shall be made available to both of the following:

(a) The California Department of Tax and Fee Administration to offset minor administrative costs for inspecting, seizing, and disposing of cigarettes.

(b) The Attorney General to offset minor administrative costs to implement Part 8 (commencing with Section 14950) of Division 12 of the Health and Safety Code and to the State Fire Marshal to offset administrative costs to meet the fire safety reporting requirements established pursuant to Section 13110.5 of the Health and Safety Code.

SEC. 9. 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.