



## Legislative Update

June 21, 2011

The past month was a busy one for the 14 tobacco-related bills active in the 2011 legislative session of the California Legislature. Most of the bills were required to pass their house of origin, either in the Assembly or in the Senate depending on where the bill was introduced, no later than June 3. Some highlights of this legislative activity include:

- Six tobacco-related bills met the house of origin deadline and were passed by the full Assembly or full Senate:
  - AB 217: Modifying Exemption for Smoking in Long-Term Health Care Facilities
  - AB 795: Strengthening Enforcement of Tobacco Policies at State Colleges and Universities
  - AB 1301: Increasing Penalties for Selling Tobacco Products to Minors
  - SB 332: Authorizing Landlords to Prohibit Smoking in Rental Units
  - SB 575: Expanding Smokefree Indoor Workplaces
  - SB 796: Creating Penalties for Delivering Prohibited Items in State Hospitals
- Six tobacco-related bills did not meet committee or house of origin deadlines and will not see further legislative action in 2011.
- Three of the bills that did not meet the deadline will become two-year bills and be considered in the second year of the 2011-2012 legislative session:
  - AB 1030: Allowing for Suspension of Distributor's License for Tax Violations
  - AB 1218: Prohibiting Tax Deductions for Tobacco Advertising Expenses
  - SB 331: Restricting Sales of Tobacco Products Near Schools
- Two tobacco-related bills have not passed their house of origin, but are not subject to this deadline because the bills are tax and revenue measures.
- Two new bills have been amended into tobacco-related bills:
  - SB 653: Authorizing Local Taxes Including Tobacco Taxes
  - SB 796: Creating Penalties for Delivering Prohibited Items in State Hospitals

The next step for the six bills that passed their house of origin is to go through the committee process in the other house. Full details about the above highlights and an updated summary, status and next steps for every bill is provided in this legislative update. For more frequent updates about the status of these bills and to see how members have voted visit the Center's Bill Tracker at [www.Center4TobaccoPolicy.org/bills](http://www.Center4TobaccoPolicy.org/bills).

### **BILLS THAT HAVE PASSED THEIR HOUSE OF ORIGIN**

#### **AB 217: Modifying Exemption for Smoking in Long-Term Health Care Facilities (Carter – D, Rialto)**

Assembly Bill 217 would modify the exemption in the statewide smokefree workplace law (Labor Code 6404.5) for long-term health care facilities. Under current law, patient smoking areas are allowed inside a long-term health care facility. This bill would modify that exemption to only allow patient smoking areas at long-term health care facilities that meet certain conditions. The patient smoking areas must not be located in a patient's room, must be outdoors in a courtyard, patio or other outdoor area that can be monitored by staff and must be in an area where smoke does not enter the facility or patient rooms. The bill specifically does not preempt a long-term care facility from making the entire grounds (inside and outside) smokefree.

**Status** – AB 217 was passed by the full Assembly on May 16 by a vote of 50-26.

**Next Steps** – The bill has been referred to the Senate Health Committee and Senate Labor and Industrial Relations Committee.

**AB 795: Strengthening Enforcement of Tobacco Policies at State Colleges and Universities (Block – D, San Diego)**

Assembly Bill 795 provides for enforcement of smokefree laws on campuses of the three state college/university systems in California (University of California (UC), California State University (CSU) and California Community Colleges). This bill would add enforcement language to existing state law that prohibits smoking with 20 feet of entrances and exits to public buildings and for any additional tobacco use and smoking regulations adopted by the campus. If a campus adopts the enforcement and fine measures, it shall, and for UC campuses may, post signs stating where smoking or tobacco use is prohibited and permitted on campus and shall, and for UC campuses may, inform employees and students of tobacco-use policy on their campus.

**Status** – AB 795 was passed by the full Assembly on May 23 by a vote of 54-23.

**Next Steps** – The bill has been referred to the Senate Education Committee and scheduled for a hearing on June 22.

**AB 1301: Increasing Penalties for Selling Tobacco Products to Minors (Hill – D, South San Francisco)**

Assembly Bill 1301 would make changes to the Cigarette and Tobacco Products Licensing Act to increase penalties for violations of the Stop Tobacco Access to Kids Enforcement (STAKE) Act and Penal Code Section 308 (which both prohibit sale and distribution of tobacco products to minors). Under current law, the penalties for violations range from a warning letter for the first violation to revocation of the state tobacco retailer license only after the eighth violation within two years. This legislation would increase the penalties for violations to: first violation – warning letter to retailer; second violation within three years – \$500 fine unless that retailer shows proof that an identification verification scanner has been purchased and installed; third violation within three years – license suspended for 45 days; fourth violation within three years – license suspended for 180 days; fifth violation within three years – license revoked. In addition, under current law, the Board of Equalization (BOE) can only take action against retailers for violations of the sales to minors laws if the state youth purchase survey is higher than 13 percent. This legislation would remove that requirement.

**Status** – AB 1301 was passed by the full Assembly on May 31 by a vote of 61-15.

**Next Steps** – The bill has been referred to the Senate Governance and Finance Committee and scheduled for a hearing on June 29.

**SB 332: Authorizing Landlords to Prohibit Smoking in Rental Units (Padilla – D, San Fernando Valley)**

Senate Bill 332 would authorize landlords to prohibit smoking on any part of the property they manage, including within units. For properties that adopt a smoking restriction, all leases or rental agreements entered into after January 1, 2012 would be required to include a provision specifying where smoking is prohibited and adequate notice shall be provided for changes to leases or rental agreements entered into before January 1, 2012. Any changes to the smoking policy for the property would require landlords to adequately notify tenants in accordance with federal, state and local notice requirements. The bill also specifically does not preempt any local ordinance that is in effect prior to January 1, 2012.

**Status** – The bill was passed by the full Senate on May 9 by a vote of 33-2. On June 14, SB 332 was passed by the Assembly Judiciary Committee by a vote of 8-2.

**Next Steps** – The bill has been referred to the Assembly Governmental Organization Committee.

**SB 575: Expanding Smokefree Indoor Workplaces (DeSaulnier – D, Concord)**

Senate Bill 575 would eliminate most of the exemptions in the existing statewide smokefree workplace law (Labor Code 6404.5). This legislation would eliminate the exemptions and prohibit smoking in hotel and motel lobbies, meeting and banquet rooms of hotels and motels, warehouse facilities, patient smoking areas in long-term health facilities, employee break rooms and employers with five or fewer employees. The bill prohibits smoking at and defines an owner-operated business as any business having no employees, independent contractors or volunteers. SB 575 would also delete the exemptions, along with the ventilation standards language, for gaming clubs and bars and taverns even though those exemptions are not in effect.

The exemption for guestrooms at a hotel or motel would be reduced from allowing smoking in a maximum of 65 percent of rooms to a maximum of 20 percent of rooms. This bill would also modify the exemption that allows smoking at private residences, except those licensed as family day care homes during the hours of operation and in those areas where children are present, to prohibit smoking in all parts of the residence during hours of operation. The only exemptions to the statewide smokefree workplace law that would still be allowed are for retail tobacco shops and private smokers' lounges, cabs of motor trucks if no nonsmoking employees are

present, theatrical production sites if smoking is an integral part of the production and medical research or treatment sites if smoking is integral to the research.

**Status** – SB 575 was passed by the full Senate on June 2 by a vote of 25-14. SB 575 was amended to modify the exemption for smoking in private residences that are family day care homes and to eliminate a provision that would have modified the exemption for smoking in retail tobacco shops and private smokers' lounges.

**Next Steps** – The bill has been referred to the Assembly Labor and Employment Committee and scheduled for a hearing on June 22.

**SB 796: Creating Penalties for Delivering Prohibited Items in State Hospitals (Blakeslee – R, San Luis Obispo)**

Senate Bill 796 would make the delivery of prohibited items to patients in state hospitals a misdemeanor punishable by a maximum fine of \$1,000 for each prohibited item. If the state hospital has a ban on tobacco products, then tobacco products would be considered a prohibited item. The bill would require the prohibited items to be confiscated from visitors, but returned the same day unless the item is being held for evidence.

**Status** – SB 796 was passed by the full Senate on May 31 by a vote of 38-0.

**Next Steps** – The bill has been referred to the Assembly Public Safety Committee and scheduled for a hearing on June 21.

**BILLS THAT DID NOT PASS THEIR HOUSE OF ORIGIN**

**AB 718: Making Minor Technical Changes to State Licensing Law (Hall – D, Los Angeles)**

Assembly Bill 718 makes very minor language edits to the state tobacco retailer licensing law related to the display of the state license. It is possible that this bill is a "spot bill" meaning that it was introduced containing only non-substantive changes to existing law. This is done in order to meet the deadline to introduce legislation allowing the author to amend the bill once language and/or policy has been decided upon.

**Status** – AB 718 was not referred to a committee.

**Next Steps** – The bill did not meet committee or house of origin deadlines and will not see further legislative action in 2011.

**AB 842: Making Minor Technical Changes to Stop Tobacco Access to Kids Enforcement Act (Hall – D, Los Angeles)**

Assembly Bill 842 makes very minor language edits to the Stop Tobacco Access to Kids Enforcement (STAKE) Act related to the name of the State Department of Public Health. It is possible that this bill is a "spot bill" meaning that it was introduced containing only non-substantive changes to existing law. This is done in order to meet the deadline to introduce legislation allowing the author to amend the bill once language and/or policy has been decided upon.

**Status** – AB 842 was not referred to a committee.

**Next Steps** – The bill did not meet committee or house of origin deadlines and will not see further legislative action in 2011.

**AB 1030: Allowing for Suspension of Distributor's License for Tax Violations (Acadhjian – R, San Luis Obispo)**

Assembly Bill 1030 would allow for a distributor's state cigarette and tobacco products license to be suspended for any unpaid tax liabilities in violation of the cigarette and tobacco products tax law. In addition, all of their assets related to the sale of tobacco products would be seized. The legislation would require the Board of Equalization (BOE) to hold a hearing to confirm or dismiss a tax violation and if the violation is confirmed, then all of the assets seized may be sold by the BOE. The revenues from the sale of assets would first be deposited into the fund in which the tax was owed and any additional revenues would be deposited into the General Fund.

**Status** – AB 1030 was passed by the Assembly Governmental Organization Committee and referred to the Assembly Revenue and Taxation Committee.

**Next Steps** – The bill did not meet committee or house of origin deadlines and will not see further legislative action in 2011. The author has indicated that he will move forward with the legislation as a two-year bill in the second year of the 2011-2012 legislative session.

**AB 1218: Prohibiting Tax Deductions for Tobacco Advertising Expenses (Pan – D, Sacramento)**

Assembly Bill 1218 would prohibit tax deductions for tobacco advertising expenses under both the personal income tax law and corporation tax law. For both tax laws, these expenses would include advertising done by cigarette or tobacco product manufacturers, distributors or retailers and would include all advertising in

publications, displays, store signs and any other means used to sell or promote cigarettes or tobacco products. This prohibition on tax deductions would not apply to any advertising aimed at reducing smoking or the use of tobacco products. Because this legislation would increase taxes, it requires a 2/3 vote to pass the Assembly and the Senate.

**Status** – AB 1218 was referred to the Assembly Revenue and Taxation Committee.

**Next Steps** – The bill did not meet committee or house of origin deadlines and will not see further legislative action in 2011. The author has indicated that he will move forward with the legislation as a two-year bill in the second year of the 2011-2012 legislative session.

### **SB 331: Restricting Sales of Tobacco Products Near Schools (Padilla – D, San Fernando Valley)**

Senate Bill 331 would make changes to the Cigarette and Tobacco Products Licensing Act. The bill would prohibit a state tobacco retailer license from being issued to any tobacco retailer that is located within 600 feet of a public or private elementary or secondary school. This prohibition would not apply to licenses that are being renewed or transferred.

This bill would also increase penalties for all retailers for violations of the Stop Tobacco Access to Kids Enforcement (STAKE) Act and Penal Code Section 308 (which both prohibit sale and distribution of tobacco products to minors). This legislation would increase the penalties to: first violation – warning letter, training from the Department of Public Health on tobacco control laws and fine of \$750; second violation within 12 months – license suspended for 25 days and fine of \$1,500; third violation within 12 months – license revoked. In addition, under current law, the Board of Equalization (BOE) can only take action against retailers for violations of the sales to minors laws if the state youth purchase survey is higher than 13 percent. This legislation would remove that requirement. The bill specifically allows a local jurisdiction to adopt an ordinance that is more restrictive.

**Status** – SB 331 was referred to the Senate Governance and Finance Committee.

**Next Steps** – The bill did not meet committee or house of origin deadlines and will not see further legislative action in 2011. The author has indicated that he will move forward with the legislation as a two-year bill in the second year of the 2011-2012 legislative session.

### **SB 417: Prohibiting Electronic Benefits Transfer Cards from Being Used to Purchase Tobacco Products (Dutton – R, Rancho Cucamonga)**

Senate Bill 417 would prohibit electronic benefits transfer cards from being used to purchase alcohol or tobacco products. Electronic benefits transfer cards are issued by the state of California to families for assistance through the federal Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamps, and the California Work Opportunity and Responsibility to Kids (CalWORKS) program.

**Status** – SB 417 failed to pass the Senate Human Services Committee on April 12 by a vote of 3-4.

**Next Steps** – The bill did not meet committee or house of origin deadlines and will not see further legislative action in 2011.

## **BILLS NOT SUBJECT TO THE HOUSE OF ORIGIN DEADLINE**

### **SB 330: Increasing the State Tobacco Tax (Padilla – D, San Fernando Valley)**

Senate Bill 330 would increase the state tax on cigarettes by \$1.50 per pack, with equivalent increases for other tobacco products (cigars, smokeless tobacco, etc.). Eighty-five percent of the revenues would be allocated to the Tobacco Tax General Fund Account, created by this bill in the General Fund. The other fifteen percent of revenues would be allocated into a newly created Tobacco Control and Lung Cancer Research Account. The revenues in this second account would be divided as follows: (1) 45% to the Department of Public Health, Tobacco Control Program to fund tobacco control programs including local health departments, competitive grants and media; (2) 10% to the Department of Education for programs to prevent or reduce tobacco use; (3) 10% to the University of California for tobacco related research; (4) 20% to the University of California for the establishment and administration of a Lung Cancer Early Detection and Treatment Research Program; and (5) 15% to support law enforcement efforts on tobacco-related laws. This final 15% for law enforcement would be divided as follows: (1) 40% to the Board of Equalization (BOE) to enforce laws related to distribution and retail sale of tobacco products; (2) 40% to the Department of Public Health for programs to provide training and enforcement of laws to reduce illegal sales of tobacco to minors; and (3) 20% to the Attorney General for enforcing tobacco-related laws.

Each year, in order to offset inflation and further reduce smoking prevalence, this tax would be adjusted by the BOE based on the percentage increase in the California Consumer Price Index. Finally, this bill would also include backfills (transferring funds to programs to replace revenues lost because of a reduction in tobacco sales due to this new tobacco tax increase) to other existing tobacco tax funded programs such as the non-tobacco control related Prop 99 accounts, the breast cancer fund, and Prop 10. Because this legislation would increase taxes, it requires a 2/3 vote to pass the Assembly and the Senate.

**Status** – SB 330 was referred to the Senate Health Committee and Senate Governance and Finance Committee.

**Next Steps** – The bill is awaiting further action by the Senate committees.

### **SB 653: Authorizing Local Taxes Including Tobacco Taxes (Steinberg – D, Sacramento)**

Senate Bill 653 would authorize the governing board of any county, city, community college district or county office of education (pursuant to constitutional and voter approval requirements) to levy, increase or extend many forms of local taxes. One of the local taxes authorized by this bill is a cigarette and tobacco products tax. SB 653 would require counties, cities, community college districts and county offices of education to reimburse the state for any losses in the state General Fund due to local taxes.

Any local cigarette and tobacco products tax would not be able to exceed five cents per cigarette. For other tobacco products, the rate would not be able to exceed the equivalent of five cents per cigarette based on the wholesale costs at a tax rate determined annually by the Board of Equalization (BOE). Local municipalities would be able to administer a cigarette and tobacco products tax in one of two ways: (1) the city or county administer the tax themselves and notifies the BOE that no duties or responsibilities are given to the BOE for this tax; or (2) contract with the BOE for the collection of this tax. If a municipality enters into a contract with the BOE, then city or county must reimburse the BOE for all costs associated with this administration.

**Status** – SB 653 passed the Senate Governance and Finance Committee and the Senate Appropriations Committee.

**Next Steps** – The bill has been sent to the Senate floor for consideration by the full Senate.

**Center for Tobacco Policy & Organizing, June 21, 2011**

*If you have questions about this analysis, please contact Justin Garrett, at ([jgarrett@alac.org](mailto:jgarrett@alac.org)) or Kimberly Weich Reusche ([kwreusche@alac.org](mailto:kwreusche@alac.org)) at (916) 554-5864 (LUNG). To view this update and past legislative updates, please visit [www.Center4TobaccoPolicy.org/bills-updates](http://www.Center4TobaccoPolicy.org/bills-updates).*

*Sources: Copies of the legislation outlined above and vote information may be obtained at <http://www.leginfo.ca.gov>.*

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