

Legislative Update

May 10, 2011

Over the past month there has been a lot of legislative activity on the 13 tobacco-related bills in the 2011 legislative session. Several bills have been amended and many bills were passed by committees and moved forward in the legislative process to meet the deadline to pass policy committees no later than May 6. Some highlights of this legislative activity include:

- One bill (SB 332: Authorizing Landlords to Prohibit Smoking in Rental Units) has been passed by the full Senate and sent to the Assembly for consideration.
- Two bills (AB 217: Modifying Exemption for Smoking in Long-Term Health Care Facilities and SB 575: Expanding Smokefree Indoor Workplaces) have made it through the committee process and are awaiting floor votes in their respective house.
- Three other bills (AB 795: Strengthening Tobacco Policies at State Colleges and Universities, AB 1030: Allowing for Suspension of Distributor's License for Tax Violations and AB 1301: Increasing Penalties for Selling Tobacco Products to Minors) have been passed by policy committees and referred to fiscal committees for consideration.
- One bill (AB 1218: Prohibiting Tax Deductions for Tobacco Advertising Expenses) has been amended into a tobacco-related bill.
- One bill (SB 136: Requiring Health Insurance Policies to Cover Tobacco Cessation Services) has been amended into an unrelated bill and is no longer a tobacco-related bill.

Full details about the above highlights and an updated summary and status update for every bill is provided in this legislative update. For more frequent updates about the status of these bills, as well as vote details and lists of supporters and opponents visit the Center's Bill Tracker at www.Center4TobaccoPolicy.org/bills.

ASSEMBLY BILLS

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 amended several times to change the conditions for allowing a designated smoking area in a long-term health care facility. The bill was passed by the Assembly Labor and Employment Committee on March 30 by a vote of 5-1 and the Assembly Appropriations Committee on May 4 by a vote of 12-5. AB 217 has been sent to the Assembly floor and is awaiting a vote by the full Assembly.

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 has not yet been referred to a committee.

AB 795: Strengthening 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. The bill specifically authorizes campuses of the University of California (UC), the California State University (CSU) and the California Community College systems to adopt enforcement standards and impose fines (not to exceed \$100) for the current 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 CSU or community college campus adopts the enforcement and fine measures, it must post signs stating where smoking or tobacco use is prohibited and permitted on campus and must inform employees and students of tobacco-use policy on their campus. If a UC campus adopts these measures, it may post signs stating where smoking or tobacco use is prohibited and permitted on campus and may inform employees and students of tobacco-use policy on their campus.

Status – AB 795 was amended several times to clarify the requirements for enforcing tobacco use policies on college campuses. The legislation was passed by the Assembly Governmental Organization Committee on May 4 by a vote of 13-3 and passed by the Committee on Higher Education on May 5 by a vote of 6-2. AB 795 has been referred to the Assembly Appropriations Committee.

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 has not yet been referred to a committee.

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 on April 13 by a vote of 16-0 and referred to the Assembly Revenue and Taxation Committee.

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 amended into a tobacco-related bill on April 7 and has been referred to the Assembly Revenue and Taxation Committee. The author’s office has indicated that AB 1218 is becoming a two-year bill, meaning that the author will move forward with the legislation in the second year of the 2011-2012 legislative session.

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 amended several times to change the bill from a “spot bill” to a bill that increases penalties for selling tobacco products to minors. AB 1301 was passed by the Assembly Governmental Organization Committee on May 4 by a vote of 14-2 and has been referred to the Assembly Appropriations Committee.

SENATE BILLS

SB 136: Requiring Health Insurance Policies to Cover Tobacco Cessation Services (Yee – D, San Francisco)

Status – Senate Bill 136 was amended on April 28 and no longer contains any provisions related to coverage of cessation services. In the last version of the bill when it was a tobacco-related bill, SB 136 would have required health plans and health insurance policies to include coverage of all smoking cessation treatments, including both counseling and all medications approved by the Food and Drug Administration (FDA).

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.). Eight-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 and Senate Governance and Finance committees.

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 to 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 amended to make the revised penalty schedule apply to all retailers, not just those located within 600 feet of a school. SB 331 did not receive a policy committee vote prior to the deadline and is becoming a two-year bill, meaning that the author will move forward with the legislation in the second year of the 2011-2012 legislative session.

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 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 – SB 332 was amended several times to update the landlord requirements and include non-preemption language. The bill was passed by the Senate Judiciary Committee on April 26 by a vote of 4-1. SB 332 was passed by the full Senate on May 9 by a vote of 33-2 and has been sent to the Assembly for consideration.

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 (CaWORKS) program.

Status – SB 417 failed to pass the Senate Human Services Committee on April 12 by a vote of 3-4. The bill has been granted reconsideration but no new hearing has been scheduled yet.

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, retail tobacco shops and private smokers' lounges, 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. Finally, this bill would 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. This bill would prohibit smoking in residences licensed as family day care homes during all hours.

In addition to the guestrooms of hotels and motels and private residences not licensed as family day care homes, the only exemptions to the statewide smokefree workplace law that would still be allowed are for 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 amended to modify the exemptions for smoking in private residences that are family day care homes. The bill was passed by the Senate Labor and Industrial Relations Committee on April 13 by a vote of 5-2. On May 2, the Senate Appropriations Committee sent the bill to the Senate floor without a hearing because the bill does not appropriate money or cause a reduction in state revenues. SB 575 has been sent to the Senate floor and is awaiting a vote by the full Senate.

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If you have questions about this analysis, please contact Justin Garrett, at (jgarrett@alac.org) or Kimberly Weich Reusche (kwreusche@alac.org) at (916) 554-5864 (LUNG). To view this update and past legislative updates, please visit 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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