

Legislative Update on New Bills for 2011 Session

March 3, 2011

The deadline for introducing new bills for the 2011 legislative session of the California Legislature was Friday, February 18. A total of 12 tobacco-related bills were introduced. These bills cover a variety of tobacco control issues including eliminating exemptions in the statewide smokefree workplace law, requiring health insurance policies to cover cessation services, making changes to state licensing and youth access laws, increasing the state's tobacco tax and promoting smokefree college campuses and smokefree multi-unit housing.

Over the next several months, various committees will hold hearings and vote on these bills as they move forward in the legislative process. The key deadlines for the 2011 legislative session are June 3 (deadline for bills to pass the full house they were introduced in) and September 9 (end of legislative session and deadline for all bills to be passed and sent to the Governor). For frequent updates about the status of these bills, as well as vote details, news coverage and tobacco interests lobbying information, visit the Center's Bill Tracker at www.Center4TobaccoPolicy.org/bills.

Below is the legislative update with summaries and status updates for all the new tobacco-related bills that were introduced for the 2011 legislative session. In addition, this update also contains background information for specific bills, such as details about previous versions of the bills that were introduced and which bills are sponsored by the major voluntary health organizations (American Lung Association in California, American Cancer Society and American Heart Association).

ASSEMBLY BILLS

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

Assembly Bill 217 would eliminate the exemption in the statewide smokefree workplace law (Labor Code 6404.5) for long-term health care facilities. This bill would simply strike the language for the exemption that allows for patient smoking areas inside of long-term health care facilities. This bill also contains language that expands the definition of the gaming club exemption in the statewide smokefree workplace law to include establishments where any card game is played for money, even though this exemption no longer applies.

Status – AB 217 was referred to the Assembly Labor and Employment Committee.

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: Promoting Smokefree College Campuses at State Colleges and Universities (Block – D, San Diego)

Assembly Bill 795 declares that it is the intent of the legislature to enact legislation that would promote smokefree campuses at state colleges and universities. Currently, 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 795 has not yet been referred to a 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 has not yet been referred to a committee.

AB 1301: Making Changes to the Stop Tobacco Access to Kids Enforcement Act (Hill – D, South San Francisco)

Assembly Bill 1301 declares the intent of the legislature to enact legislation that would amend the Stop Tobacco Access to Kids Enforcement (STAKE) Act to reduce sales of tobacco products to minors. Currently, 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 1301 has not yet been referred to a committee.

SENATE BILLS

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

Senate Bill 136 would require health plans and health insurance policies that are issued after January 1, 2012 to include coverage of all smoking cessation treatments rated as an ‘A’ or ‘B’ by the United States Preventative Services Task Force. Two courses of treatment in a one-year period would be required to be covered and this coverage would include both counseling and all medications approved by the Food and Drug Administration (FDA). A course of treatment is defined as at least four sessions of at least ten minutes each for counseling (telephone, group or individual) and the duration of the treatment approved by the FDA for medications. Enrollees would not be required to enter counseling prior to being eligible for cessation medications.

Finally, the bill requires the California Health Benefits Review Program, a unit of the University of California, to prepare a report by December 31, 2014 that determines the savings to the state as a result of these requirements. If it is determined that the state is assuming additional costs because of these requirements, then the bill and the coverage would no longer be in effect.

Background Information – The American Lung Association in California and American Heart Association are sponsors of this legislation and it is nearly identical to Senate Bill 220 introduced by Senator Yee in the 2010 legislative session. SB 220 was passed by the legislature but vetoed by the Governor.

Status – SB 136 was referred to the Senate Health Committee.

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.

Background Information – This legislation is nearly identical to Senate Bill 600 introduced by Senator Padilla in the 2009 legislative session that stalled in 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.

Existing tobacco retailers that are located within 600 feet of a school would be subject to more stringent penalties under the state licensing law for violations of the Stop Tobacco Access to Kids Enforcement (STAKE) Act Penal Code Section 308 (which both prohibit sale and distribution of tobacco products to minors). For the first violation, the retailer would receive a warning letter and training from the Department of Public Health. For the second violation within 12 months, the retailer would be subject to a fine of \$500. For a third violation within 12 months, the retailer's license would be revoked. Tobacco retailers that are located more than 600 feet from a school would still be subject to the existing penalties for violations of the STAKE Act, which include license suspensions for the fourth through seventh violations and a license revocation for the eighth violation.

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 for retailers that are located within 600 feet of a school. The bill specifically allows a local jurisdiction to adopt an ordinance that is more restrictive.

Background Information – This legislation contains provisions from several bills that were introduced in the 2009 legislative session by Senator Padilla. Senate Bills 601, 602 and 603 all made different degrees of progress in the legislature but none of the bills were ultimately passed by both the Senate and the Assembly.

Status – SB 331 was scheduled for a hearing before the Senate Governance and Finance committee on April 13.

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. The bill also states that changes to the smoking policy for the property would constitute a change of terms of tenancy and require adequate notice to tenants.

Background Information – This legislation is similar to legislation that Senator Padilla introduced in the 2008 legislative session as SB 1598. That bill passed the Senate but ultimately stalled in the Assembly.

Status – SB 332 was referred to the Senate Judiciary committee.

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 was referred to the Senate Human Services committee.

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

Senate Bill 575 would eliminate most of the loopholes in the existing statewide smokefree workplace law (Labor Code 6404.5). This legislation would eliminate the loopholes 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.

In addition to the guestrooms of hotels and motels, 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, medical research or treatment sites if smoking is integral to the research and private residences except those licensed as family day care homes during the hours of operation.

Background Information – The American Lung Association in California, American Cancer Society and American Heart Association are sponsors of this legislation. Senator DeSaulnier also introduced legislation to close loopholes in the smokefree workplace law in 2007 as AB 1467. That bill was passed by the legislature but vetoed by the Governor. This bill is more comprehensive than the 2007 legislation.

Status – SB 575 has not yet been referred to a committee.

Center for Tobacco Policy & Organizing, March 3, 2011

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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