

Legislative Update (June 8, 2006)

The second year of the 2005-2006 legislative session began in January, and a few tobacco related bills have been introduced. The deadline for introducing new bills was February 24, but keep in mind that bills can be amended (in part or completely) up to the end of the session. Brief summaries of four bills relevant to the tobacco control community are provided below.

SB 1208 (Ortiz – D, Sacramento) Tobacco products, Face-to Face Sales.

Existing law allows for internet and mail order sales of tobacco products if the purchaser has paid applicable state sales taxes and complies with the requirements of the federal Jenkins Act. This bill would prohibit shipping or transporting tobacco products to private individuals in California, and would establish criminal and civil penalties for violation of this prohibition. This bill also clarifies the definition of “bidis,” a restricted tobacco product.

SB 1208 would prohibit internet sales of tobacco products to California consumers. According to the California Department of Justice, an undercover sting operation of internet retailers found a widespread failure to collect taxes and a willingness to sell tobacco products to minors. It is estimated that illegal internet sales cost California \$30 million per year in unpaid taxes. This bill is patterned after a similar New York law, section 1399-11 of New York's Public Health Law.

SB 1208 passed the Senate Health and Revenue & Taxation Committees in April and was heard in the Senate Appropriations Committee on May 22. There was prolonged testimony on the bill, with representatives from the Attorney General’s office, health groups and retail tobacconists in support. The Cigar Association of America and the California Trucking Association testified in opposition. Because of strong opposition from Committee Chair Kevin Murray, the bill was ultimately amended to exclude cigars and pipe tobacco. The bill passed by a 7-4 vote. SB 1208 passed the Senate by a vote of 24-11. The bill will now be considered in the Assembly.

The amended bill does exclude cigars & pipe tobacco from the internet provisions but sets other restrictions to ensure that those products are not purchased by minors. Before shipping these tobacco products, a seller must first verify that the purchaser is at least 18 years old. This can be done through government records or by requiring the purchaser to submit an attestation and a copy of a government document that verifies age. In addition, payment must be made by personal check or credit card and the products must be shipped to the purchaser’s verified billing address. No shipments may be delivered to post office boxes. The seller must also verify the order by calling the purchaser prior to shipment.

SB 1429 (Morrow – R, Oceanside) Punitive damages, Product Liability.

SB 1429 would have prohibited punitive damage awards in product liability cases if the product was either approved by, or in material compliance with, state or federal statutes or regulations. Punitive damages would be allowed if a defendant intentionally withheld or misrepresented information and that action was related to the injury suffered.

SB 1429 could have potentially given tobacco manufacturers a small level of immunity by preventing punitive damage awards where a product is regulated or meets certain state and federal requirements. The bill was referred to the Senate Judiciary Committee, but the hearing was postponed

and never rescheduled. The bill was never heard in committee and failed to meet the May 12 deadline for non-fiscal bills to pass out of policy committees.

AB 1749 (Horton – D, Inglewood) Cigarettes and tobacco products

AB 1749 is a bill from 2005 which made small changes to the California Cigarette and Tobacco Products Licensing Act (AB 71). On June 1, the bill was amended to make more substantive changes to AB 71 by increasing licensing fees, requiring licenses to sell other tobacco products besides cigarettes, increasing fines for violating the laws, banning blunt wraps, and repealing the sunset provision present in AB 71.

Specifically, AB 1749 would require tobacco manufacturers and importers (excluding chewing tobacco) to pay a one-time license fee of \$2,000. Chewing tobacco manufacturers and importers would pay a one-time fee of \$10,000. Retailers, distributors, importers and manufacturers would all be prohibited from purchasing or selling any tobacco products without a valid license. The bill imposes fines for possessing, selling or buying counterfeit cigarettes and fraudulent cigarette tax stamps. This bill would increase the fine for the sale of unstamped or unmetered cigarettes to \$25,000. This bill would also increase the fine imposed for falsely or fraudulently making a cigarette tax stamp or meter impression to \$25,000 and would increase the fine imposed on a transporter of cigarettes to \$25,000. AB 1749 also deletes the January 1, 2010 repeal date present in the original AB 71 legislation.

AB 1749 has been referred to the Senate Rules Committee for re-assignment in light of these major amendments. If it passes in the Senate, the bill will go back to the Assembly for additional hearings.

AB 2067 (Oropeza – D, Long Beach) Smoking, definition of enclosed spaces in buildings.

Existing law prohibits smoking in public buildings and in all enclosed places of employment, per the California Smoke Free Workplace Act of 1994. Existing law specifically excludes covered parking lots from these prohibitions. This bill would prohibit smoking in “common areas” of covered parking lots, including common areas such as lobbies, lounges, waiting areas, elevators, stairwells, and restrooms.

In addition, the bill amends the definition of “enclosed places of employment” to include the above listed common areas. These changes would be relatively minor, but this bill would also be the first time that the Smoke Free Workplace Act has been proposed to be amended. AB 2067 passed out of the Assembly Labor & Employment Committee on March 29 by a vote of 6-2. The bill was re-referred to the Assembly Committee on Government Organization and passed by a vote of 11-2 on April 19. The bill was then referred to the Assembly Appropriations Committee where it passed by a vote of 13-5.

AB 2067 passed the Assembly on May 25 by a vote of 55-24. The bill is now in the Senate Rules Committee for assignment.

The Center will continue to provide updates throughout the legislative process to help keep you informed of what is happening in Sacramento and how proposed legislation may affect local tobacco control efforts.

The Center for Tobacco Policy & Organizing promotes community organizing strategies to empower local coalitions to achieve tobacco policy change, and serves as a state tobacco control policy analysis and information resource. Please contact Meredith Nixon at (916)442-4299 or mnixon@alac.org if you would like more information about the Center or tobacco control policy issues.