

## Federal Legislative Update

August 8, 2007

In the first two days of August, the US House of Representatives and US Senate took major actions on two tobacco-related bills. Both the House and the Senate passed a version of a bill that would raise the federal tax on cigarettes as well as other tobacco products. The Senate also took action on another tobacco-related bill when the Senate Committee on Health, Education, Labor and Pensions (HELP) passed legislation that would provide the US Food and Drug Administration (FDA) with the authority to regulate tobacco products. This federal legislative update provides background information, status updates, bill summaries, next steps and impact on California tobacco control for each of these two issues.

### INCREASING THE FEDERAL EXCISE TAX ON CIGARETTES

**Background Information:** The current federal excise tax on cigarettes is 39 cents/pack. Legislation has passed both houses of Congress that would increase this tax on cigarettes and tobacco products to fund an expansion of the State Children's Health Insurance Program (SCHIP). This program provides funding to states to provide health insurance to children in the United States that are ineligible for Medicaid but meet other eligibility criteria established by each state. SCHIP was originally authorized in 1997, but will expire on September 30, 2007 unless renewed by Congress. Each state enacts their own version of the SCHIP program and is required to contribute matching funds. In California, the program is known as Healthy Families.

**Update on Legislative Activity/Summary of Bills:** The below table summarizes House and Senate actions on legislation to increase the federal excise tax on cigarettes and provides details about the content of the bills.

	House Version	Senate Version
<b>Bill Number</b>	H.R. 3162	H.R. 976 (Senate Amendment 2530)
<b>Date Passed</b>	August 1	August 2
<b>Vote</b>	225-204 Voted Yes – 220 Dem, 5 Rep Voted No – 10 Dem, 194 Rep	68-31 Voted Yes – 48 Dem, 18 Rep, 2 Ind Voted No – 31 Rep
<b>Federal Excise Tax Increase</b>	45 cent increase/pack	61 cent increase/pack
<b>Increased Funding for SCHIP</b>	\$50 billion over five years	\$35 billion over five years
<b>Estimated Additional Children Covered</b>	4.2 million uninsured children	3.2 million uninsured children
<b>Other provisions</b>	Also contains Medicare provisions, such as a provision to decrease federal subsidies for insurance companies that offer private health plans to Medicare beneficiaries	

**Next Steps:** Now that the House and Senate have each passed a version of this bill, a conference committee will be convened to reconcile differences between the two bills. The bills differ on the amount of the tax increase, the amount of funding for SCHIP, and the House version contains provisions

related to Medicare that are not found in the Senate version. Once a conference committee approves an amended bill, the House and Senate would then have to both pass this identical version to send to the President. The President has stated that he supports reauthorization of SCHIP, but has threatened to veto any legislation that would expand the program by more than \$5 billion over five years.

**Impact on California Tobacco Control:** As with any cigarette tax increase, it would be expected that the increased cost of cigarettes would result in making it easier for some smokers to quit and for some youth to never begin to smoke. The California Department of Public Health, Tobacco Control Section estimates that a 61 cent tax increase on a pack of cigarettes would result in a six percent decline in consumption in California and a related six percent decline in Proposition 99 revenues.

## **FDA REGULATION OF TOBACCO PRODUCTS**

**Background Information:** Legislation that would provide the US Food and Drug Administration (FDA) with the authority to regulate tobacco products has passed the Senate during previous sessions of Congress. However, such legislation has never passed the House. Identical legislation (S. 625/H.R. 1108) on FDA regulation of tobacco products has been introduced in both the Senate and House this year by Senators Kennedy (D-MA) and Cornyn (R-TX) and by Representatives Waxman (D-CA) and Davis (R-VA).

**Update on Legislative Activity/Summary of Bills:** The Senate Committee on Health, Education, Labor and Pensions (HELP) passed the Family Smoking Prevention and Tobacco Control Act (S. 625) on August 1 by a vote of 13-8.

This legislation would restore the 1996 FDA Tobacco Rule, which prohibits outdoor advertising of tobacco products within 1,000 feet of schools and playgrounds, tobacco industry sponsorship of entertainment and sporting events, distribution of free samples, and allow only black and white text advertising in all publications with significant youth readership as well as at point of sales and outdoors. Tobacco companies would be required to provide a detailed disclosure of ingredients in their products and have to get FDA approval for any changes to existing or new products. In addition, the FDA would have the authority to require a reduction in nicotine levels to any level other than zero and to remove other harmful ingredients from tobacco products. Moreover, all flavored cigarettes other than menthol would be banned.

Moreover, tobacco companies would not be permitted to make health or exposure claims without providing adequate scientific evidence to the FDA about the validity and benefit to the individual user, as well as the population as a whole. Terms such as light, mild, and low could not be used. Changes made during the HELP Committee mark-up would require graphic warning labels to cover 50% of cigarette packs on both the front and back, and to cover 20% of any advertisements.

**Next Steps:** The next step for S. 625 is a vote by the full Senate. Floor time for debate and a vote on this bill have not been scheduled yet. A majority of the Senate, 53 members (39 Dem, 12 Rep, 2 Ind), has cosponsored this legislation so it is likely to pass when it reaches a floor vote.

No action has been taken on the House version of this bill (H.R. 1108), although committee action is likely in the fall. The bill has been referred to the House Committee on Energy and Commerce and there are 196 cosponsors (165 Dem, 31 Rep).

**Impact on California Tobacco Control:** The passage of FDA legislation would for the most part empower California with new tools in the state's tobacco control efforts. States would gain new power to restrict tobacco products advertising and keep current powers to enact a variety of tobacco-related laws, but be prevented from regulating the content of tobacco products.

Under current law, states do not have the power to regulate the time, place and manner of cigarette advertising because the Federal Cigarette Labeling and Advertising Act preempts all state laws on this issue. FDA legislation would remove this preemption and additionally establish the advertising restrictions on tobacco companies mentioned above in the summary section. For California, this means

that strong new restrictions, such as no tobacco industry sponsorship and black and white text advertising at point of sales, would go into effect and California would now have the authority to take these advertising restrictions further.

The California legislature and local governments have passed strong and effective smokefree workplace laws, youth access laws, and other tobacco control laws, which have resulted in decreased smoking prevalence and decreased rates of tobacco-related diseases. The FDA bill would not hinder state and local efforts as the legislation specifically does not preempt states and local jurisdictions from passing laws that (1) regulate or restrict the sale, distribution and possession of tobacco products; (2) relate to tobacco product information that is reported to the state; (3) restrict, for individuals of any age, the exposure to, access to, advertising and promotion of, and use of tobacco products; and (4) relate to fire safety standards for tobacco products. This means that the California legislature and local jurisdictions can continue to pass a variety of tobacco-related laws.

Currently, states are not preempted from regulating the content of tobacco products, although no state has done so. The FDA bill would preempt states from taking action related to tobacco product standards, pre-market approval, labeling and modified risk products. However, it should be noted that the preemption in this bill is consistent with the authority the FDA maintains over other food, drugs and devices and would provide a consistent national standard.

**Center for Tobacco Policy & Organizing, August 8, 2007**

*If you have questions about this analysis, please contact The Center's Policy Coordinator, Justin Garrett, at (916) 442-4299, ext. 233 or [jgarrett@alac.org](mailto:jgarrett@alac.org) or Paul Kneprath, Vice President, Government Relations, American Lung Association of California, at (916) 442-4446, ext. 224 or [pkneprath@alac.org](mailto:pkneprath@alac.org).*

*Sources: Copies of the legislation outlined above may be obtained at [thomas.loc.gov](http://thomas.loc.gov) and vote information may be obtained at [www.house.gov](http://www.house.gov) and [www.senate.gov](http://www.senate.gov).*