



Legislative Update

July 22, 2009

July 10 was the deadline for bills in the California Legislature to be passed by the appropriate policy committees in the house other than the one they started in (Assembly for Senate bills; Senate for Assembly bills). Six bills (AB 574, AB 625, SB 4, SB 53, SB 364 and SB 400) have met this deadline and are continuing to move forward in the legislative process. In addition to these bills getting passed by policy committees, there have been several major actions that have occurred on these and other tobacco-related bills. Below is a summary of the major legislative actions that have occurred in the past month:

- **Smokefree state parks bill amended** – SB 4 was amended so that the prohibition on smoking at state parks would no longer be a requirement. Rather, each park district superintendent would be given the authority to prohibit smoking in the parks under their jurisdiction. The smoking prohibition would still apply to all state beaches.
- **State licensing bill pulled from consideration** - Senator Alex Padilla (D-San Fernando Valley) pulled his legislation SB 603 from its scheduled hearing before the Assembly Governmental Organization Committee and the bill will not move forward in the legislative process. SB 603 was proposed to be amended and these amendments would have included language that preempted local governments from enacting policies to restrict sales of tobacco products at traditional tobacco retailers and from restricting tobacco sales within a certain distance of schools.
- **Tobacco tax bill held by Senate committee** – SB 600 has been placed on the Senate Revenue and Taxation Committee's suspense file. SB 600 will be held on the suspense file until the committee has a hearing to determine which bills make it off of the suspense file and move forward in the legislative process. There are many factors involved in determining which bills make it off of the suspense file including the support of leadership and how high a priority the bill is for the member.
- **New tobacco-related bill on e-cigarettes** – SB 400 was amended into a tobacco-related bill and now proposes to include electronic cigarettes in the definition of a tobacco product for state youth access laws.
- **Another state licensing bill amended into a food safety bill** – SB 602, which would have increased penalties for violations of the state youth access laws, is no longer a tobacco-related bill as the bill was amended into a bill about food safety.
- **Bill on MSA amendments will be sent to the Governor** – SB 53 has been passed by the full Assembly and will be sent to the Governor who can sign or veto the bill.
- **E-cigarette resolution passed by the Senate** – The full Senate has passed SJR 8, which would encourage the FDA to prohibit all sales of e-cigarettes until they have been proven safe.

The Legislature is scheduled to be on summer recess starting this week, but legislators will likely need to remain in Sacramento until they have adopted a budget for the 2009-2010 fiscal year. However, legislative activity on the tobacco-related bills will likely not resume until mid-August when the Legislature returns to session from the scheduled recess. The 2009 legislative session is scheduled to end on September 11 and all bills will need to have been passed by both houses and sent to the Governor for his signature by that date.

The full status update for each bill is included below, along with a complete summary and outline of the next step for the bill. To see how Assembly Members and Senators have voted on these bills to date, visit the Center's Bill Tracker (www.Center4TobaccoPolicy.org/bills), which has complete details on all the floor and committee votes. This online feature is updated several times a week to highlight bill hearings that are scheduled, votes that have occurred and organizations that support or oppose the bills.

BILLS THAT HAVE PASSED BOTH HOUSES

SB 53: Authorizing the Attorney General to Negotiate Amendments to the Master Settlement Agreement (DeSaulnier – D, Concord)

Senate Bill 53 would authorize the Attorney General to negotiate amendments to the Master Settlement Agreement (MSA). Under current law, the Attorney General is unable to agree to any amendments with the other 46 settling states and negotiate changes to the MSA even if these changes would result in increased MSA payments. At the state level, MSA payments were sold to a special purpose trust and bonds were issued by that trust. The amendments negotiated by the Attorney General could not materially adversely alter, limit or impair the rights and remedies of these bondholders, the security of their bonds or the rights of the participating jurisdictions (the counties and cities that receive MSA funds) to receive MSA payments. This legislation is an urgency bill, meaning that it would take effect immediately upon being signed into law.

Status – SB 53 was passed by the full Assembly by a vote of 74-0 on July 9.

Next Step – SB 53 will be sent to the Governor, who can sign it into law, veto it or allow it to become law without his signature.

BILLS THAT HAVE MET ALL THE LEGISLATIVE DEADLINES

AB 574: Prohibiting Smoking at Hospitals (Hill – D, San Mateo)

Assembly Bill 574 would prohibit smoking in all areas of a general acute care hospital and throughout the entire campus of that hospital. This would include buildings, parking areas, plazas, vehicles, underground passages and sidewalks. Public sidewalks that are adjacent to but not owned by the hospital and hospital property that is not part of the medical campus and not used for healthcare related purposes would not be subject to these smoking prohibitions. The hospital would be required to post signs at building entrances and other conspicuous locations stating that smoking is prohibited on the hospital campus. Hospitals would be required to inform new employees of the policy at orientation and notify current employees at least 60 days prior to implementation. Hospitals may refer or provide patients, staff and visitors with smoking cessation services. This bill specifically does not preempt local jurisdictions from passing additional smoking prohibition ordinances that are stronger than this bill. This bill states that violations of this section are not punishable as a misdemeanor or as an infraction.

Status – AB 574 was passed by the Senate Appropriations Committee by a vote of 7-5 on June 29.

Next Step – AB 574 has been sent to the Senate floor, where it will receive a vote by the full Senate.

AB 625: Prohibiting Sale or Distribution of Novelty Lighters (Lieu – D, Torrance)

Assembly Bill 625 would prohibit all manufacturers, distributors, importers or retailers from selling, distributing or offering for promotion an operable novelty lighter. A novelty lighter would be defined as any lighter typically used for lighting cigarettes, cigars or pipes that is (1) designed to appear as a toy; (2) has audio or visual effects; or (3) resembles in form or function, objects typically recognized as appealing to persons under the age of 12. Violations would be punishable as an infraction with a fine of up to \$500. Enforcement would be handled by the State Fire Marshal, any police officer or any local code enforcement officer.

Status – AB 625 was passed by Senate Governmental Organization Committee by a vote of 8-1 on June 23.

Next Step – AB 625 has been sent to the Senate floor, where it will receive a vote by the full Senate.

SB 4: Prohibiting Smoking in State Parks and State Beaches (Oropeza – D, Long Beach)

Senate Bill 4 would prohibit smoking at state beaches. For state parks, the authority to prohibit smoking in state parks would be given to each park district superintendent. To prohibit smoking in parks under their jurisdiction, the district superintendent would need to post an order in accordance with state park regulations that prohibits smoking and public notice of the order would need to be provided for 30 days. The smoking prohibitions would not include parking lots at state parks and beaches and violations would be punishable by a fine of \$100. New signs about the smoking prohibition would only be posted when existing signs are going to be replaced for other reasons and the Department of Parks and Recreation or another relevant state agency would be responsible for developing and posting the signs. The smoking prohibitions can only be enforced after signs are posted to notify the public of the smoking prohibitions. However, warnings would be allowed to be issued prior to the signs being posted.

Status – SB 4 was passed by the Assembly Governmental Organization Committee by a vote of 10-7 on July 1 and the Assembly Water, Parks and Wildlife Committee by a vote of 7-4 on July 7.

Next Step – SB 4 has been referred to the Assembly Appropriations Committee where it has not been scheduled for a hearing yet.

SB 364: Prohibiting Cancer Center Leadership from also Holding a Leadership Position for a Tobacco Company (Florez – D, Shafter)

Senate Bill 364 would prohibit any officer, director or board member of a general acute care hospital that is designated as a comprehensive cancer center by the National Cancer Institute and that also accepts state funds from holding any of the following positions: (1) an officer, director or board member of a company that manufactures or sells tobacco; (2) an officer, director or board member of a company that has violated state or federal controlled substances laws or regulations within the past five years; or (3) an officer, director or board member of a biopharmaceutical company that focuses on products for diseases such as diabetes and cancer.

Status – SB 364 was passed by the Assembly Health Committee by a vote of 10-7 on July 7.

Next Step – SB 364 has been referred to the Assembly Appropriations Committee where it has not been scheduled for a hearing yet.

SB 400: Including Electronic Cigarettes in the Definition of a Tobacco Product (Corbett – D, San Leandro)

Senate Bill 400 would change the definition of a tobacco product within both the Stop Tobacco Access to Kids Enforcement (STAKE) Act and the Cigarette and Tobacco Products Licensing Act. The definition of a tobacco product would be amended to include a tobacco substitute, which would be defined to be a battery-powered device that can provide inhaled doses of nicotine by delivering a vaporized solution. All of the provisions of the STAKE Act and the Cigarette and Tobacco Products Licensing Act that apply to tobacco products would then also apply to electronic cigarettes, such as no self-service displays and requiring a license to sell them.

Status – The Assembly Governmental Organization Committee passed SB 400 by a vote of 18-0 on July 8.

Next Step – SB 400 has been referred to the Assembly Appropriations Committee where it has not been scheduled for a hearing yet.

BILLS NOT SUBJECT TO NORMAL LEGISLATIVE DEADLINES

AB 89: Increasing the Tax on Cigarettes (Torlakson – D, Antioch)

Assembly Bill 89 would raise the state tax on cigarettes by \$2.10/pack. The revenue generated from this tax would be appropriated to: (1) education; (2) children's health care; (3) tobacco cessation services; (4) lung cancer research; and (5) general health care. Because this legislation would increase taxes, it requires a 2/3 vote to pass the Assembly and the Senate.

Status – AB 89 has been referred to the Assembly Governmental Organization Committee and Revenue and Taxation Committee.

Next Step – Two hearings were scheduled but canceled at the author's request and there are no hearings scheduled at this time.

AB 689: Changing the Definition of a Tobacco Product (Calderon – D, Montebello)

Assembly Bill 689 would change the definition of a tobacco product in the Revenue and Taxation Code. Under current law, a tobacco product is defined as all products made of or containing at least 50 percent tobacco, except for cigarettes. AB 689 would change that definition to include all products that contain any amount of tobacco. Because it would modify the Tobacco Tax and Health Protection Act of 1988 (Proposition 99), it requires a 4/5 vote to pass and must be consistent with the purposes of Proposition 99.

Status – AB 689 was placed on the Assembly inactive file by Assembly Member Calderon.

Next Step – AB 689 will remain on the inactive file unless the author requests for it to come off the file and then legislative action could resume.

ACA 22: Increasing the Tax on Cigarettes (Torlakson – D, Antioch)

This proposed constitutional amendment would raise the state tax on cigarettes by \$1.48/pack. The revenue generated from this tax would be appropriated to: (1) education; (2) children's health care; (3) tobacco cessation services; (4) lung cancer research; and (5) general health care. A proportional tax increase would be applied to other tobacco products (smokeless tobacco products, cigars, etc.). This bill also states that the Legislature may not enact any additional tax increases on cigarettes between January 1, 2011 and January 1, 2016. Because this is a proposed constitutional amendment it requires a 2/3 vote to get out of both the Senate and the Assembly and must be submitted to the people of California for a direct vote. If a majority of voters pass the proposed constitutional amendment, it would then go into effect.

Status – ACA 22 has been referred to the Assembly Governmental Organization Committee and Revenue and Taxation Committee.

Next Step – ACA 22 is not yet scheduled for any hearings.

SB 600: Increasing the State Tobacco Tax (Padilla – D, San Fernando Valley)

Senate Bill 600 would raise the state tax on cigarettes by \$1.50 per pack, with equivalent increases for other tobacco products (cigars, smokeless tobacco, etc.). The revenues would be deposited into the Tobacco Tax and Health Promotion Fund created by this bill. Eight-five percent 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 the newly created Tobacco Control and Lung Cancer Research Account. The revenues in this 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 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 will be adjusted by the state Board of Equalization (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 600 was placed on the Senate Revenue and Taxation suspense file at a hearing on July 8.

Next Step – SB 600 will be held on the suspense file until the committee has a hearing to determine which bills make it off of the suspense file and move forward in the legislative process.

SJR 8: Requesting the FDA to Prohibit Sales of Electronic Cigarettes until Proven Safe (Corbett – D, San Leandro)

Senate Joint Resolution 8 makes several findings about electronic cigarettes, the dangers of nicotine and the potential impact of electronic cigarettes on young smokers. SJR 8 requests that the Food and Drug Administration (FDA) prohibit all sales of electronic cigarettes until the FDA finds them to be safe. This is a resolution, meaning that sales of electronic cigarettes will not be prohibited if the resolution is adopted. Rather, copies of this resolution would be sent to the President and Vice President, Congressional leadership, California members of Congress and the Commissioner of the FDA showing that the California Legislature supports stopping the sale of electronic cigarettes until they are deemed safe by the FDA.

Status – SJR 8 was passed by the full Senate by a vote of 22-13 on July 16.

Next Step – SJR 8 has been sent to the Assembly for consideration.

BILLS THAT WILL NOT SEE FURTHER LEGISLATIVE ACTION IN THE 2009 SESSION

SB 603: Creating Annual Fee for and Limiting Issuance of State Tobacco Retailer License (Padilla – D, San Fernando Valley)

Senate Bill 603 would require retailers to pay an annual \$100 fee to renew their state license. This legislation would also prohibit a license from being issued for any retailer that is located within 600 feet of a public or private elementary or secondary school and prohibit a new state tobacco retailer license from being issued to any retailer located in an area of overconcentration, which is defined as an area where the ratio of retailer licenses to population in the census tract is greater than the ratio of retailer licenses to population in the county overall. SB 603 would also increase the penalties for convictions of violations of the STAKE Act or Penal Code Section 308.

Status – SB 603 was proposed to be amended with language that would preempt cities and counties from passing certain types of policies related to tobacco retailers. At the hearing, the author pulled SB 603 from consideration.

Next Step – SB 603 will see no further legislative activity in 2009.

Center for Tobacco Policy & Organizing, July 22, 2009

If you have questions about this analysis, please contact Justin Garrett, at (jgarrett@alac.org) or Paul Knepprath (pknepprath@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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