

Legislative Update

June 7, 2010

The deadline for bills in the California Legislature to pass their house of origin, either in the Assembly or in the Senate depending on where the bill was introduced, was June 4. Three tobacco-related bills met this deadline. These bills would help reduce evasion of MSA payments and cigarette tax payments (AB 2496), make changes to the state tobacco retailer licensing law (AB 2733) and make it illegal to sell electronic cigarettes to minors (SB 882). SB 220, which would require health insurance plans to cover cessation services, is also still active but was not subject to the house of origin deadline because it passed the full Senate in 2009 when it was not a tobacco-related bill. All of these bills must now move through the committee process in the other house.

Two tobacco-related bills did not meet the house of origin deadline and will not see further legislative action in 2010. These bills would have restricted the sales of blunt wraps (AB 2757) and redirected funds from Proposition 10 tobacco tax programs (SB 1109).

The below Legislative Update contains full summaries of all these bills (including information about amendments), status updates and next steps. To see how members have voted on these bills, visit the Center's Bill Tracker at www.Center4TobaccoPolicy.org/bills for details about all committee and floor votes.

TOBACCO-RELATED BILLS THAT ARE STILL ACTIVE

AB 2496: Reducing Evasion of MSA Payments and Cigarette Tax Payments (Nava – D, Santa Barbara)

Assembly Bill 2496 would make several changes to state law to make it more difficult for cigarette manufacturers to avoid paying the proper Master Settlement Agreement (MSA) payments and tax payments. All cigarette manufacturers that distribute and sell cigarettes in California make payments to the state in accordance with the MSA, which was approved in 1998 by 46 states and several major tobacco manufacturers. These MSA signatories, or "original participating manufacturers" (OPMs), are required to make annual payments to the state. Those that did not sign the MSA, or "nonparticipating manufacturers" (NPMs), are required to make annual payments into an escrow account to cover any future legal costs incurred in the event that the state brings legal action against these manufacturers. AB 2496 would enact requirements to ensure that these payments are made (especially for new, foreign and elevated risk NPMs) and would make it easier to remove manufacturers that do not make these payments from the tobacco directory. The tobacco directory is a list maintained by the Attorney General that lists which manufacturers and brands of cigarettes are legal to sell in California. In addition, the bill would allow NPMs that go out of business to give the money in their escrow account to the state. Finally, this bill would expand the definition of bidis or beedies in state law to include any product that is marketed and sold as bidis or beedies. Under current law, bidis or beedies can only be sold at a business that prohibits minors on its premises. **Amendments:** The bill was amended on both May 13 and May 20 to make technical changes.

Status – AB 2496 was passed by the full Assembly by a vote of 58-16 on June 1.

Next Steps – The bill has been sent to the Senate for consideration and will be referred to the relevant committees.

AB 2733: Making Changes to State Tobacco Retailer Licensing Law (Ruskin – D, Redwood City)

Assembly Bill 2733 would prohibit tobacco retailers from giving away or displaying for sale tobacco products during a period when the retailer's state tobacco retailer license has been suspended or revoked. Under current law, a retailer is prohibited from selling tobacco products during a period of suspension or revocation but there is ambiguity in the law related to the restrictions on giving away products or displaying products during this

period. This bill would prohibit a tobacco retailer from gifting, sampling or giving away tobacco products during the suspension period. In addition, cigarettes and tobacco products could not be displayed for sale in any manner (such as in retail shelves or in a vending machine) during a period of suspension. Violations for giving away tobacco products would be punishable as a misdemeanor, with repeated violations resulting in the seizure of all tobacco products in the retailer's possession. Violations for displaying tobacco products during a period of suspension would be punishable by a civil penalty of \$1,000. Finally, a retailer whose license has been suspended or revoked would be required to display a notice of the violation at each public entrance to the retail location and at each point of sale. **Amendments:** The bill was amended on May 12 to make technical changes. **Status** – AB 2733 was passed by the full Assembly by a vote of 67-0 on May 24. **Next Steps** – The bill has been referred to the Senate Revenue and Taxation Committee.

SB 220: Requiring Health Insurance Policies to Cover Tobacco Cessation Services (Yee – D, San Francisco)

SB 220 would require health care service plan contracts and individual or group health insurance policies that provide outpatient prescription drug benefits to include coverage of tobacco cessation services for all plans issued or renewed after July 1, 2011. Cessation coverage would be required to include two courses of treatment in a 12-month period including personal counseling (telephone, individual or group) and all FDA-approved medication for tobacco cessation (including prescription and over-the-counter). Course of treatment is defined to include at least four sessions of at least ten minutes each for counseling 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. The bill would require that no copayment or deductible be applied to any of these benefits and require that cessation services coverage be disclosed in the disclosure forms to enrollees at least once per year. Health care service plans and health insurers could contract with any qualified provider (profit or non-profit) to provide the cessation services. **Amendments:** The bill was amended on May 26 to require no copayment for cessation services and to make clarifications to the counseling requirements.

Status – SB 220 has been referred to the Assembly Health Committee.

Next Steps – The bill needs to go through the committee process in the Assembly. Should SB 220 get passed by the full Assembly, it would need to then go back to the Senate since the bill has been amended since it was passed by the full Senate when it was not tobacco-related.

SB 882: Making Sales of Electronic Cigarettes to Minors Illegal (Corbett – D, San Leandro)

SB 882 would make it unlawful to sell or provide an electronic cigarette (e-cigarette) to anyone under 18 years old. Violations would be punishable by a fine of \$200 for the first violation, \$500 for the second violation and \$1,000 for each subsequent violation. The bill does not designate a specific enforcement agency. This bill is an urgency measure and would go into effect immediately if signed into law. **Amendments:** The bill was amended on May 11 to remove the language about business licenses and to update the language about making it illegal to sell e-cigarettes to minors.

Status – SB 882 was passed by the full Senate by a vote of 28-0 on May 28.

Next Steps – The bill has been referred to the Assembly Governmental Organization Committee.

TOBACCO-RELATED BILLS THAT DID NOT MEET LEGISLATIVE DEADLINES

AB 2757: Restricting the Sale of Blunt Wraps (Bradford – D, Inglewood)

Assembly Bill 2757 would make it a misdemeanor to sell, offer for sale, distribute, or import by prohibiting the sale of blunt wraps in business establishments that allow persons under 18 years of age on its premises. Under existing law, it is illegal to sell, give, or furnish to a person under 18 years of age any tobacco product or paraphernalia, including blunt wraps (defined as cigar papers or wrappers containing less than 50% tobacco). AB 2757 would amend Section 308.1 of the Penal Code, and any person who violates this section would be guilty of a misdemeanor or subject to a civil action brought by the Attorney General, a city attorney, county counsel, or district attorney for an injunction and a civil penalty of up to two thousand dollars (\$2,000) per violation. AB 2757 is modeled after previous legislation authored by Senator Deborah Ortiz (SB 322, Chapter 375 of 2001) that similarly restricted the sale of a tobacco product known as "bidis."

Status – AB 2757 was held in the Assembly Appropriations Committee and was not sent to the Assembly floor for consideration by the full Assembly.

Next Steps – The bill did not meet the deadline for getting passed by the house of origin and will not see further legislative action.

SB 1109: Redirecting Funds from the Proposition 10 Tobacco Products Tax (Cox – R, Fair Oaks)

Senate Bill 1109 would eliminate the current allocations of Proposition 10 tobacco tax revenue and instead allocate this money for the Healthy Families and Medi-Cal programs. Under current law, Proposition 10 tobacco tax revenue is allocated to the California Children and Families Trust Fund for early childhood development and smoking prevention programs. This bill would eliminate those allocations and abolish the California Children and Families Commission and the county commissions. SB 1109 would allocate these funds to the state general fund to be appropriated for the Healthy Families and Medi-Cal programs. This legislation would not impact the funds that are currently transferred from the Proposition 10 tobacco tax to the Proposition 99 accounts to make up for lost revenue from the new tax, what is known as the Proposition 99 backfill. Because this legislation would amend an initiative that was passed by the voters, it would need to be approved by a 2/3 vote in both houses and also be approved by California voters in a statewide election.

Status – SB 1109 failed to pass the Senate Health Committee by a vote of 2-6 on April 14.

Next Steps – The bill did not meet the deadline for getting passed by a policy committee and will not see further legislative action.

Center for Tobacco Policy & Organizing, June 7, 2010

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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