



## Legislative Update

June 18, 2009

The deadline for bills in the California Legislature to be passed by their house of origin, either in the Assembly or in the Senate depending on where the bill was introduced, was June 5. Seven tobacco-related bills were passed by their house of origin prior to the June 5 deadline. These include bills to prohibit smoking at state parks and beaches (SB 4), prohibit smoking on hospital campuses (AB 574), increase penalties for STAKE Act violations (SB 602) and restrict the issuance of new state tobacco retailer licenses (SB 603). There are five tobacco-related bills that are not subject to the same legislative deadlines because they are tax and revenue measures, proposed constitutional amendments or resolutions and did not have to be passed by their house of origin prior to June 5. These bills include legislation to increase the state's tobacco tax by \$1.50/pack and dedicate a portion to tobacco control and prevention efforts (SB 600) and a resolution that would declare that the California Legislature supports banning sales of electronic cigarettes until they are proven safe (SJR 8). Only two tobacco-related bills that were subject to the deadlines, SB 57 and SB 601, were not passed by their house of origin and will no longer be considered this legislative session.

The status and next steps for all 14 of the tobacco-related bills introduced for the 2009 legislative session is below. Several of the bills have been amended significantly since the Center's May Legislative Update. SB 600 was amended to revise the percent funding allocations for the tobacco control and lung cancer provisions in the bill. SB 4 was amended so that the smoking prohibitions can now only be enforced after signs are posted at parks and beaches that notify the public of the prohibitions. However, the bill also states that new signs can only be posted when existing signs are scheduled to be replaced. SB 602 was amended to increase the penalties for STAKE Act violations and SB 603 was amended to include language restricting a state tobacco retailer license from being issued within 600 feet of a school and a license from being issued in an area of overconcentration. Full summaries of the bills, including the latest amendments, are included in this legislative update.

To see how Assembly Members and Senators have voted on these bills to date, visit the Center's Bill Tracker ([www.Center4TobaccoPolicy.org/bills](http://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 THEIR HOUSE OF ORIGIN**

#### **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. The bill would allow for a patient to smoke on a hospital campus if a physician provides a written order permitting tobacco use by the patient because denial of the use of tobacco to the patient would substantially impair their treatment.

**Status** – AB 574 was passed by the full Assembly on May 18 by a vote of 46-25. The Senate Health Committee passed the bill by a vote of 6-3 on June 17.

**Next Step** – AB 574 has been referred to the Senate Appropriations Committee.

**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. This includes devices that resemble cartoon characters, guns or other weapons, watches, musical instruments, vehicles, toy animals, cell phones, batteries, common household items, or foods or beverages, or devices that play musical notes or have flashing lights or other entertaining features. Novelty lighters do not include a device made before January 1, 1980, a device incapable of being fueled, a device primarily used to light fireplaces or grills, or a device printed or decorated with logos, labels, decals, artwork or heat shrinkable sleeves. 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 the full Assembly on May 18 by a vote of 47-27.

**Next Step** – AB 625 is scheduled for a hearing before the Senate Governmental Organization Committee on June 23.

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

Senate Bill 4 would prohibit smoking at state parks and state beaches. 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.

**Status** – SB 4 was passed by the full Senate on May 14 by a vote of 21-14.

**Next Step** – SB 4 has been scheduled for a hearing before the Assembly Governmental Organization Committee on June 23.

**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 Senate by a vote of 36-0 on April 16.

**Next Step** – SB 53 is scheduled for a hearing before the Assembly Judiciary Committee on June 23.

**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 either of the following positions: (1) an officer, director or board member of a company that manufactures or sells tobacco; and (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.

**Status** – SB 364 was passed by the full Senate on May 21 by a vote of 21-15.

**Next Step** – SB 364 has been scheduled for a hearing before the Assembly Health Committee on June 30.

**SB 602: Strengthening Penalties for Violations of Tobacco Sales to Minors Laws (Padilla – D, San Fernando Valley)**

Senate Bill 602 would make changes to the Cigarette and Tobacco Products Licensing Act, to increase the penalties authorized by that Act for violations of the Stop Tobacco Access to Kids Enforcement (STAKE) Act or

Penal Code Section 308 (which both prohibit sale and distribution of tobacco products to minors). 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 delete that language and allow BOE to take enforcement action regardless of the state youth purchase survey numbers. SB 602 would also modify the penalties under the Licensing Act for convictions of violations of the STAKE Act or Penal Code Section 308. The penalty for the first violation would be changed to receipt of a warning letter, a requirement that the retailer receive training on tobacco control laws from the Department of Public Health and a fine of \$750. A second violation would be punishable by a fine of \$1,500 and a 25-day suspension of the retailer's state tobacco license. For a third violation, the retailer's license would be revoked. Under current law, a retailer's license is revoked after the eighth violation. This bill would also require the Department of Public Health or any other enforcement agency to inform BOE of any conviction of a violation of the STAKE Act or Penal Code Section 308 and require BOE to take appropriate enforcement action upon that notification.

**Status** – SB 602 was passed by the full Senate on June 3 by a vote of 23-13.

**Next Step** – SB 602 has been sent to the Assembly for consideration where it has not been referred to a committee yet.

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

Senate Bill 603 would make changes to the California Cigarette and Tobacco Products Licensing Act that was adopted in 2003 and that created the state tobacco retailer license. Under current law, tobacco retailers pay an initial application fee of \$100 and no fee for annual renewal of that license. This legislation would require retailers to pay an annual \$100 fee to renew their state license. Applicants who own more than one location can submit just one application but must pay a separate fee for each location. This legislation would also restrict the issuance of new state tobacco retailer licenses in two ways. First, SB 603 would prohibit a license from being issued for any retailer that is located within 600 feet of a public or private elementary or secondary school. Second, this legislation would 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. However, the bill would allow a license to be issued by the BOE within 600 feet of a school or within an area of overconcentration if, within 90 days, the local governing body of the area where the applicant is located determines that the public convenience or necessity would be served by the issuance of this license. The bill specifically allows a local jurisdiction to adopt an ordinance that is more restrictive.

**Status** – SB 603 was passed by the full Senate on June 3 by a vote of 21-16.

**Next Step** – SB 603 has been sent to the Assembly for consideration where it has not been referred to a committee yet.

### **BILLS NOT SUBJECT TO THE HOUSE OF ORIGIN DEADLINE**

#### **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 the Assembly and the Senate 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 passed by the Senate Health Committee by a vote of 6-3 on June 17.

**Next Step** – SB 600 has been referred to the Senate Revenue and Taxation Committee.

**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 has been sent to the Senate floor for consideration.

**Next Step** – SJR 8 is ready to be voted on by the full Senate.

**BILLS THAT DID NOT PASS THEIR HOUSE OF ORIGIN****SB 57: Making Changes to the Major Risk Medical Insurance Program (Aanestad – R, Grass Valley)**

Senate Bill 57 would make several significant changes to the Major Risk Medical Insurance Program (MRMIP) including changes to the eligibility requirements and increases to the annual benefit limit. There are two tobacco-related provisions in the bill. First, SB 57 would allow the Major Risk Medical Insurance Board, which administers MRMIP, to develop risk categories for tobacco use and morbid obesity. Risk categories determine program contribution amounts and the current risk categories are based on age and geography. The risk category for tobacco use would include objectives for the reduction of tobacco use and allow for rate reductions

if those objectives are met. Second, this legislation would increase the amount of funds for MRMIP from two Prop 99 accounts. In the Hospital Services Account funding would increase from \$18 million to \$23 million and in the Physician Services Account funding would increase from \$11 million to \$16 million. Neither of these accounts fund tobacco control programs.

**Status** – SB 57 failed to pass the Senate Health Committee on April 22 by a vote of 2-5 and failed again on April 29 by a vote of 2-6

**Next Step** – SB 57 will not see further legislative action this session because it failed to pass out of the same committee twice.

**SB 601: Restricting Eligibility for State Tobacco Retailer Licenses (Padilla – D, San Fernando Valley)**

Senate Bill 601 would make changes to the California Cigarette and Tobacco Products Licensing Act that was adopted in 2003 and that created the state tobacco retailer license. This bill would prohibit a license from being issued for any retailer that is located within 600 feet of a public or private elementary or secondary school. However, the bill would allow a license to be issued by the BOE within 600 feet of a school if, within 90 days, the local governing body of the area where the applicant is located determines that public convenience or necessity would be served by the issuance of this license. SB 601 would also only allow a new state tobacco retailer license to be issued to traditional tobacco retailers. The bill defines a traditional tobacco retailer as including, but not limited to, a grocery store, convenience store, pharmacy, liquor store, gas station, smoke shop, wine and cigar store, superstore or a tobacco or cigar store. The Department of Public Health would be authorized to petition the BOE to adopt regulations that specify other locations as a traditional tobacco retailer. The bill specifically allows a local jurisdiction to adopt an ordinance that is more restrictive.

**Status** – SB 601 was held in the Senate Appropriations Committee.

**Next Step** – SB 601 will not see any further legislative action this session because it was not passed by the Appropriations Committee prior to the deadline.

*Center for Tobacco Policy & Organizing, June 18, 2009*

*If you have questions about this analysis, please contact Justin Garrett, at ([jgarrett@alac.org](mailto:jgarrett@alac.org)) or Paul Knepprath ([pknepprath@alac.org](mailto:pknepprath@alac.org)) at (916) 554-5864 (LUNG). To view this update and past legislative updates, please visit [www.Center4TobaccoPolicy.org/bills-updates](http://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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