

Legislative Update

March 17, 2010

There are a total of six tobacco-related bills that are active for the second year of the 2009-2010 legislative session. Four of these bills are new bills that were introduced by the February 19 deadline and one bill (SB 220) was an existing unrelated bill that was amended into a tobacco-related bill. The sixth bill is Senator Oropeza's SB 4 from 2009 that was made into a two-year bill. This legislation would restrict smoking at state parks and beaches and was amended on March 11, 2010 into a different version than was active in 2009. The next step in the legislative process for the four new bills is to receive committee hearings and committee votes, which will take place over the next couple of months. SB 4 and SB 220, which were both introduced in 2009, will await further action in the Assembly because both bills passed the full Senate in 2009. Below are summaries, background information and status updates for the six tobacco-related bills.

For more information about these bills, visit the Center's Bill Tracker at www.Center4TobaccoPolicy.org/bills. The Bill Tracker can be used to track bills throughout the 2010 legislative session and will contain status updates, vote information and lists of organizations that support or oppose the bills as they begin to move forward in the legislative process.

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 and 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. This bill 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 its escrow account to the state. The bill would also change the definition of cigarette under state law to include products traditionally sold as little cigars. This would subject manufacturers of little cigars to the same tax and escrow obligations that apply to cigarette manufacturers. 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.

Background Information – This legislation is sponsored by the California Department of Justice and is intended to help provide the state with additional tools to remedy the problem of cigarette manufacturers avoiding the proper MSA payments and tax payments.

Status – AB 2496 was referred to the Assembly Governmental Organization Committee and Judiciary Committee.

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 would be prohibited from being 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 for \$1,000. Finally, a retailer whose license has been suspended or revoked would be required to display a notice at each public entrance to the retail location and at each point of sale.

Background Information – This legislation is sponsored by the Board of Equalization (BOE). Through administration and enforcement of the license, the BOE has come across these issues that the bill would address.

Status – AB 2733 has not yet been referred to a committee.

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

Senate Bill 4 would restrict smoking at state beaches and state parks. For state beaches, smoking would be prohibited at all state beaches. However, the smoking restrictions would not apply to any part of the state beach that is designated as a campsite and the Oceano Dunes State Vehicular Recreation Area would be exempted from the restrictions. 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. Finally, these smoking prohibitions could only be enforced using the existing resources of the Parks Department.

Background Information – Senator Oropeza has introduced legislation to prohibit smoking at state parks and beaches for the past several years. SB 4 has moved further along in the legislative process than any of her previous bills. However, the bill has been amended significantly since it was first introduced as a bill that would prohibit smoking at all state parks and state beaches.

Status – SB 4 was amended on March 11, 2010. Previous versions of this legislation passed the full Senate and several Assembly Committees in 2009. The legislation is currently waiting on the Assembly floor for a vote by the full Assembly. If the full Assembly passes the bill, it would need to be sent back to the Senate for consideration, which must pass the bill again with the new language.

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. This cessation coverage would be required to include two courses of treatment in a 12-month period including personal counseling (telephone or in-person) and FDA-approved medication for tobacco cessation (including prescription and over-the-counter). The bill would require that no copayment or deductible be applied to benefits for over-the-counter medications and would set a limit of \$15 for copayments for each course or prescription. This cessation services coverage must be disclosed in the disclosure forms to enrollees. Health care service plans and health insurers could contract with any qualified provider (profit or non-profit) to provide these services.

Background Information – This legislation is very similar to SB 576 that was introduced by former Senator Deborah Ortiz in 2005. That legislation was passed by the Assembly and the Senate but was vetoed by the Governor. The Governor's veto message is available at http://www.gov.ca.gov/pdf/press/veto/2005/SB_576_veto.pdf.

Status – SB 220 was amended into a tobacco-related bill on March 11, 2010. The previous version of the legislation passed the full Senate and several Assembly committees in 2009. Now that the legislation has been amended, it will await further action by the Assembly and if passed would be sent back to the Senate, which must pass the bill again with the new language.

SB 882: Authorizing Enforcement Against Sales of Electronic Cigarettes to Minors (Corbett – D, San Leandro)

Senate Bill 882 would authorize the Department of Public Health to take enforcement action to halt the sale or distribution to minors of tobacco substitutes that have not been approved by the Food and Drug Administration. The bill would define any article that can deliver inhaled doses of nicotine by delivering a vaporized solution, including but not limited to electronic cigarettes, as a tobacco substitute and add this definition to both the STAKE Act and the state tobacco retailer licensing law. It would also include tobacco substitute within the definition of a tobacco product. This would subject suppliers and sellers of tobacco substitutes to the same laws that govern sales of tobacco products to minors.

Background Information – This legislation is similar to SB 400 that Senator Corbett introduced in 2009. That bill was passed by the Assembly and Senate but vetoed by the Governor. The Governor's veto message is available at http://gov.ca.gov/pdf/press/2009bills/SB400_Corbett_Veto_Message.pdf. The main difference between this new bill and SB 400 are that SB 400 authorized enforcement action against all sales of electronic cigarettes, while SB 882 is focused on sales to minors. Also, SB 882 includes the definition of e-cigarettes within the definition of a tobacco product.

Status – SB 882 was referred to the Senate Health Committee on February 4.

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.

Background Information – This legislation is nearly identical to legislation, SBX8 41, introduced by Senator Cox during the special legislative session to address the fiscal crisis. That legislation was defeated in the Senate Health Committee by a vote of 2-5 on February 24, 2010.

Status – SB 1109 was referred to the Senate Health Committee and has been scheduled for a hearing on April 14.

Center for Tobacco Policy & Organizing, March 17, 2010

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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