



Legislative Update

May 5, 2009

Over the past couple of weeks, there was a lot of legislative activity on tobacco-related bills, which was driven by the May 1 deadline for bills to be passed by policy committees. Almost every tobacco-related bill has had committee votes and one bill (SB 53) has already been passed by the full Senate. Many of the bills have been amended and there are now a total of thirteen tobacco-related bills for the 2009 legislative session of the California Legislature. Since the bill introduction deadline (February 27, 2009), one proposed constitutional amendment has been introduced (ACA 22) that would increase the tobacco tax and one bill (SB 364) has been amended into a tobacco related bill that would prohibit people in leadership positions at cancer hospitals from being in a leadership position for a tobacco company or company that profits from tobacco product sales. The next major legislative deadline is for bills to be passed by the fiscal committee by May 29.

The Center's Bill Tracker is a good way to stay up-to-date on all the tobacco-related bill activity (www.Center4TobaccoPolicy.org/bills), which is updated several times a week to highlight hearings that are scheduled, votes that have occurred and organizations that support or oppose tobacco-related bills.

The legislative update below contains updated bill summaries, status updates on committee votes and next steps for the thirteen tobacco-related bills. Five bills (AB 574, AB 625, SB 601, SB 602, and SB 603) have been amended significantly since they were introduced and this legislative update contains summaries of the most recent version of the bill. Complete vote details with information about how members voted are available on the Center's [Bill Tracker](#).

ASSEMBLY BILLS

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 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 hospital campus. 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 Assembly Health Committee on April 21 by a vote of 13-4.

Next Step – AB 574 is scheduled for a hearing before the Assembly Appropriations Committee on May 6.

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 Business and Professions Committee on April 21 by a vote of 8-3.

Next Step – AB 625 is scheduled for a hearing before the Assembly Appropriations Committee on May 6.

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 passed by the Assembly Revenue and Taxation Committee by a vote of 6-2 on April 20 and was passed by the Assembly Governmental Organization Committee by a vote of 12-2 on April 30.

Next Step – AB 689 has been referred to the Assembly Appropriations Committee.

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.

SENATE BILLS

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 \$250. 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.

Status – SB 4 was passed by the Natural Resources and Water Committee by a vote of 7-3 on March 24. On May 4, the Senate Appropriations Committee sent the bill to the Senate floor without a hearing because the bill does not appropriate money or cause a reduction in state revenues.

Next Step – SB 4 is now ready to be voted on by the full Senate.

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 has been sent to the Assembly for consideration and referred to the Assembly Judiciary Committee.

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 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.

Status – SB 364 was passed by the Senate Health Committee by a vote of 7-4 on April 29.

Next Step – SB 364 has been referred to the Senate Appropriations Committee.

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.). Each year, in order to offset inflation and further reduce smoking prevalence, this tax will be adjusted by the state Board of Equalization based on the percentage increase in the California Consumer Price Index. Eight-five percent of the new revenues would be deposited into the state's General Fund. The other fifteen percent of revenues would be allocated into the newly created Tobacco Tax and Health Protection Fund. The revenues in this account would be divided as follows: (1) 65% to the Department of Public Health, Tobacco Control Program to fund tobacco control programs including local health departments, competitive grants and media; (2) 15% to the Department of Education for programs to prevent or reduce tobacco use; (3) 10% to the University of California for tobacco related research; and (4) 10% to the University of California for the establishment and administration of a Lung Cancer Early Detection and Treatment Research Program. 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: The hearing on SB 600 before the Senate Health Committee was postponed.

Next Step – Senate leadership has made a decision to not take any action on tax and revenue bills until after the May 19 special election meaning SB 600 will not see any more legislative activity until that time.

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 it is shown that public convenience or necessity would be served by the issuance of this license. This can be done in two ways: (1) the local governing body of the area where the applicant is located can determine the public necessity of the issuance of a license within 90 days upon notification of the license; or (2) the applicant can demonstrate to BOE that the issuance of this license is necessary for public convenience. 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 BOE would be authorized to adopt regulations that specify other locations as a traditional tobacco retailer. SB 601 would also require the BOE, Department of Public Health and Department of Alcoholic Beverage Control to share all information required to implement this act. The bill specifically allows a local jurisdiction to adopt an ordinance that is more restrictive.

Status: SB 601 passed the Senate Revenue and Taxation Committee on April 22 by a vote of 5-3.

Next Step – SB 601 is scheduled for a hearing before the Senate Appropriations Committee on May 11.

SB 602: Restricting State Tobacco Retailer Licenses and Revising the STAKE Act (Padilla – D, San Fernando Valley)

Senate Bill 602 restricts the issuance of state tobacco retailer licenses and would make changes to the Stop Tobacco Access to Kids Enforcement (STAKE) Act. 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 in an area of overconcentration if it is shown that public convenience or necessity would be served by the issuance of this license. This can be done in two ways: (1) the local governing body of the area where the applicant is located can determine the public necessity of the issuance of a license within 90 days upon notification of the license; or (2) the applicant can demonstrate to BOE that the issuance of this license is necessary for public convenience. In addition, under current law, the Board of Equalization (BOE) can only take action against retailers for violations of the STAKE Act for sales to minors 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 for violations of the STAKE Act. The fine amounts for the first and second violations would be changed, but are not yet specified in the bill. Instead of fines and suspensions for the third through seventh violations with the eighth violation resulting in revocation of the license, this bill would require the license to be revoked after the third violation. Retailers would be prohibited from petitioning for a compromise for the third violation if that violation occurred within 36 months of the first 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 (which prohibits sale and distribution of tobacco products to minors) and require BOE to take appropriate enforcement action upon that notification.

Status: SB 602 was passed by the Senate Health Committee on April 15 by a vote of 7-3 and passed the Senate Revenue and Taxation Committee on April 22 by a vote of 5-3.

Next Step – SB 602 is scheduled for a hearing before the Senate Appropriations Committee on May 11.

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. For retailers with more than one location, any additional licenses issued after the initial license would only be valid until the end of the 12-month period for the initial license and then have to be renewed. When these licenses are renewed they would then be valid for a full 12 months. SB 603 would also limit the number of tobacco retailer licenses to one license per 2,500 county persons over 18 years of age. The Board of Equalization would be prohibited from issuing new tobacco retailer

licenses in any county in which the number of current licenses is greater than one per 2,500 persons over 18 years old. However, the bill would allow a license to be issued by the BOE in an area where the number of licenses exceeds the restrictions in this bill if it is shown that public convenience or necessity would be served by the issuance of this license. This can be done in two ways: (1) the local governing body of the area where the applicant is located can determine the public necessity of the issuance of a license within 90 days upon notification of the license; or (2) the applicant can demonstrate to BOE that the issuance of this license is necessary for public convenience. License renewals and transfers of existing licenses would not be subject to restrictions of one license per 2,500 county persons over 18 years of age.

Status: SB 603 passed the Senate Revenue and Taxation Committee on April 22 by a vote of 5-3.

Next Step – SB 603 is scheduled for a hearing before the Senate Appropriations Committee on May 11.

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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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