

Date of Hearing: May 17, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 935 (Connolly) – As Amended April 13, 2023

Policy Committee:	Health	Vote:	10 - 4
	Governmental Organization		16 - 4

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

Existing law prohibits a retailer from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer. This bill makes the provisions of the flavored tobacco ban punishable by civil penalties in the same manner as the Stop Tobacco Access to Kids Enforcement (STAKE) Act, with the California Department of Public Health (CDPH) and the Attorney General (AG) responsible for primary enforcement.

FISCAL EFFECT:

- 1) CDPH estimates General Fund costs of \$2.4 million in fiscal year (FY) 2024-25 and \$2 million annually thereafter to cover nine positions. These staff will investigate and inspect tobacco retailers to ensure flavored tobacco products are not being held or sold. California currently has approximately 30,000 licensed tobacco retailers. With these proposed resources, CDPH will be able to conduct approximately 2,000 investigations annually throughout California, which would represent 7% of licensed retailers. CDPH anticipates approximately 320 violations to occur from these investigations with an estimate of 64 violations advancing to court proceedings.
- 2) The California Department of Tax and Fee Administrative reports it would incur minor costs (\$10,000 to \$50,000) for computer programming related to issuing determinations for the civil penalty, suspending or revoking a retailer’s cigarette and tobacco products license, and developing notifications. Because the number of third, fourth, and fifth flavored tobacco ban violations cannot be predicted, CDTFA is unable to provide a revenue estimate related to these violations.
- 3) Costs of an unknown amount to the Department of Justice (DOJ).
- 4) Additional lost tax revenue of an unknown amount, to the extent the enforcement required by this bill reduces tobacco sales.

COMMENTS:

- 1) **Purpose.** This bill is sponsored by the Union of American Physicians and Dentists/AFSCME - Local 206 and co-sponsored by Public Health Advocates. According to the author:

Preventing the next generation of Californians from becoming addicted to smoking should be a priority for anyone who cares about the public health of our state and the well-being of our children. SB 793 can help to achieve this goal, but only if the law is properly enforced. AB 935 will make explicit enforcement by CDPH and the AG in addition to local agencies, to ensure compliance and protection of public health.

- 2) **Background.** In 2020, the Legislature passed, and Governor Newsom signed, SB 793 (Hill), Chapter 34, Statutes of 2020. SB 793 prohibits the sale of most flavored tobacco products, including flavored e-cigarettes and menthol cigarettes, as well as tobacco product flavor enhancers, in retail locations, including stores and vending machines. The ban included menthol flavor because, as the author of SB 793 noted, unless action is taken, an estimated 1.6 million African Americans who are now under the age of 18 will become regular smokers, and about 500,000 of them will die prematurely from a tobacco-related disease.

This bill requires CDPH to enforce SB 793 in the manner it enforces the prohibition on selling tobacco to people under the age of 21 years, an enforcement model known as the STAKE Act. Under the STAKE Act, the California Food and Drug Branch within CDPH is required to conduct random, onsite inspections at tobacco retail locations with the assistance of persons under the age of 21 to ensure that retailers and their associates comply with California law. Retailers convicted of a STAKE Act violation are subject to license-related penalties. CDTFA administers the penalty provision of the STAKE Act. State and local enforcement agencies are also authorized to enforce SB 793, with some local law enforcement agencies having received enforcement grants from DOJ as a result of Proposition 56, the California Healthcare, Research and Prevention Tobacco Tax Act of 2016.

- 3) **Related Legislation.** AB 1207 (Irwin) prohibits the sale or manufacture of cannabis or cannabis products that are attractive to children, and the advertisement and marketing of cannabis or cannabis products in a way that is attractive to children. The bill also prohibits cannabis or cannabis products intended for use by inhalation or combustion from containing added flavors. AB 1207 is pending in this committee.

- 4) **Prior Legislation.**

- a) SB 793 (Hill), Chapter 34, Statutes of 2020, prohibited the sale of most flavored tobacco products, including flavored e-cigarettes and menthol cigarettes, as well as tobacco product flavor enhancers in retail locations, including stores and vending machines, in California.
- b) SBX2 7 (Hernandez), Chapter 8, Statutes of 2016, increased the minimum legal age to purchase or consume tobacco from 18 to 21, removed penalty provisions for those under 21 in possession of tobacco, and exempted military personnel from the age increase.

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