

ASSEMBLY THIRD READING

AB 935 (Connolly)

As Amended May 18, 2023

Majority vote

SUMMARY

Makes provisions of current law prohibiting a tobacco retailer, or any of the tobacco retailer's agents or employees, 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, punishable by civil penalties in the same manner as the Stop Tobacco Access to Kids Enforcement (STAKE) Act.

COMMENTS

Cigarette smoking causes more than 480,000 deaths each year in the United States (U.S.), or nearly one in five deaths. Smoking causes more deaths each year than the following causes combined: Human immunodeficiency virus, illegal drug use, alcohol use, motor vehicle injuries, and firearm-related incidents. More than 10 times as many U.S. citizens have died prematurely from cigarette smoking than have died in all the wars fought by the U.S. Smoking causes about 90% (or nine out of 10) of all lung cancer deaths. More women die from lung cancer each year than from breast cancer. Smoking causes about 80% (or eight out of 10) of all deaths from chronic obstructive pulmonary disease. Cigarette smoking increases the risk for death from all causes in men and women. In California, smoking-related health care costs \$13.29 billion per year and smoking-related losses in productivity totals \$10.35 billion per year.

- 1) *Centers for Disease Control and Prevention (CDC) data on tobacco use.* African American youth and young adults have significantly lower prevalence of cigarette smoking than Hispanics and whites, and although the prevalence of cigarette smoking among African American and white adults is the same, African Americans smoke fewer cigarettes per day. On average, African Americans initiate smoking at a later age compared to whites; however, they are more likely to die from smoking-related diseases than whites.

American Indian/Alaska Native youth and adults have the highest prevalence of cigarette smoking among all racial/ethnic groups in the U.S, however, it is important to note that some American Indians use tobacco for ceremonial, religious, or medicinal purposes. Regional variations in cigarette smoking exist among American Indians/Alaska Natives, with lower prevalence in the Southwest and higher prevalence in the Northern Plains and Alaska.

Hispanic/Latin adults generally have lower prevalence of cigarette smoking and other tobacco use than other racial/ethnic groups, with the exception of Asian Americans. However, prevalence varies among sub-groups within the Hispanic population, for example, 50% of Cuban men and more than 35% of Cuban women report smoking 20 or more cigarettes per day, and Mexican men and women are less likely than other Hispanic/Latinx groups to report that they smoke 20 or more cigarettes per day.

Although Asian Americans, Native Hawaiians, and Pacific Islanders are often combined together as one group in survey data due to smaller numbers of the individual groups surveyed, they are actually three distinct groups. Cigarette smoking among Asian American/Pacific Islander adults is lower than other racial ethnic groups, however, prevalence among Asian sub-groups varies and can be higher than that of the general

population. Like many other minority groups, the LGBTQ+ community has been the target of tobacco industry marketing for several decades. As a result, smoking rates are disproportionately higher among LGBTQ+ individuals than the general population. About one in four LGBTQ+ adults smoke cigarettes compared with about one in six heterosexual/straight adults. More than twice as many LGBTQ+ students report having smoked a cigarette before the age of 13 compared to heterosexual students.

- 2) *Recent federal actions.* According to the American Lung Association's "State of Tobacco Control" 2023, several significant steps were taken by the federal government in 2022 to prevent and reduce tobacco use. Of key importance, was the Food and Drug Administration's (FDA's) proposed rules released in April 2022 to eliminate menthol cigarettes and end the sale of flavored cigars. Menthol cigarettes and flavors in cigars make it easier for kids to start smoking and harder for them to quit. These rules, when finalized, will benefit many people who use menthol cigarettes or flavored cigars at disproportionately higher rates, especially Black Americans. Congress also took important action in March 2022 to extend FDA authority over tobacco products to include e-cigarettes and other products containing synthetic, or non-tobacco, nicotine. This legislation was intended to close the so-called "PuffBar loophole" that allowed e-cigarette products claiming to contain synthetic nicotine, such as PuffBar - one of the brands of e-cigarettes most used by kids - to evade FDA's authority. The legislation set out clear deadlines for FDA to take action and remove illegally sold synthetic nicotine products from the market. However, the timelines laid out in the law for enforcement action were missed, allowing an untold number of e-cigarettes containing synthetic nicotine, many in kid-friendly flavors, to remain on the market. It will take significantly more federal enforcement action aimed at manufacturers, distributors, wholesalers and importers to end the youth vaping epidemic.
- 3) *California's flavored tobacco ban.* In 2020 the Legislature passed, and Governor Newsom signed, SB 793 (Hill), Chapter 34, Statutes of 2020. The law prohibits a tobacco retailer, or any of its agents or employees 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. It exempts the sale of Hookah water pipes and flavored shisha tobacco products, pipe tobacco, and premium cigars from the prohibition. Fueled by kid friendly flavors like cotton candy and bubblegum, 3.6 million more middle and high school students started using e-cigarettes in 2018. The disturbing rates of teen e-cigarette use continued to rise in 2019 with the overwhelming majority of youth citing use of popular fruit and menthol or mint flavors and there are now 5.3 million young Americans who use e-cigarettes regularly. SB 793 also included menthol flavor, which was excluded from the original FDA ban, because, as the author of SB 793 noted during his bill presentation, unless action is taken, an estimated 1.6 million African Americans alive today, who are now under the age of 18, will become regular smokers; and about 500,000 of those will die prematurely from a tobacco-related disease.

Immediately after the passage of SB 793, the tobacco industry qualified a referendum for the ballot asking the voters to decide whether or not SB 793 should take effect, and enforcement of the ban was halted pending the November 8, 2022 election. The ballot measure, Proposition 31, was approved, thus upholding SB 793. The next day, R.J. Reynolds, the maker of Newport menthol cigarettes and top-selling vaping products filed a federal lawsuit challenging California's ban on flavored tobacco. However, in December of 2022 the

Supreme Court refused to block the law, clearing the way for the ban to take effect the next week.

The law states that a tobacco retailer, or agent or employee of a tobacco retailer, who violates this section is guilty of an infraction and will be punished by a fine of \$250 for each violation of this section. This law does not specify where the enforcement authority of this statute resides, which implies local jurisdictions have authority to enforce this law.

According to the Author

Smoking tobacco is widely recognized as the leading preventable cause of death in the world. These products are lethal, known to cause cancer, and significantly decrease both the longevity and quality of life. 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. The author concludes this bill is a measured solution to address the widespread issue of youth tobacco addiction.

Arguments in Support

The American Academy of Pediatrics, California (AAP-CA) supports this bill and states that According to the CDC, preventing tobacco product use among youth is critical to ending the tobacco epidemic in the United States. Tobacco product use is started and established primarily during adolescence. Nearly nine out of 10 adults who smoke cigarettes daily first try smoking by age 18, and 99% first try smoking by age 26.2. Each day in the U.S., about 1,600 youth smoke their first cigarette and nearly 200 youth start smoking every day. In 2022, about 4 of every 100 middle school students (4.5%) and about one of every six high school students (16.5%) reported current use of a tobacco product. There are many factors associated with youth tobacco product use, including social and physical environments, biological and genetic factors, mental health, and personal views.

AAP-CA notes that while current use of tobacco products among middle and high school students decreased between 2019 and 2020, the CDC highlights the importance of continuing the work to prevent and reduce the use of all forms of tobacco product use among youth. According to a study by Tobacco Free Kids, 441,000 kids now under 18 in California will ultimately die prematurely from smoking. Smoking kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined — and thousands more die from other tobacco-related causes — such as fires caused by smoking (more than 1,000 deaths/year nationwide) and smokeless tobacco use.

Arguments in Opposition

The opposition of this bill is to the previous version which would have implemented a phased tobacco ban by prohibiting a tobacco retailer from selling tobacco products, as defined, to any person born on or after January 1, 2007.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) The Department of Public Health (DPH) estimates General Fund costs of \$2.4 million in fiscal year 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, DPH will be able to conduct approximately 2,000 investigations annually throughout California, which would represent 7% of licensed retailers. DPH 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 Administration (CDTFA) 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.
- 4) Additional lost tax revenue of an unknown amount, to the extent the enforcement required by this bill reduces tobacco sales.

VOTES

ASM HEALTH: 10-4-1

YES: Wood, Aguiar-Curry, Arambula, Boerner Horvath, Wendy Carrillo, Maienschein, McCarty, Rodriguez, Santiago, Weber

NO: Waldron, Flora, Vince Fong, Joe Patterson

ABS, ABST OR NV: Villapudua

ASM GOVERNMENTAL ORGANIZATION: 16-4-2

YES: Santiago, Aguiar-Curry, Berman, Bryan, Cervantes, Garcia, Gipson, Jones-Sawyer, Low, McCarty, McKinnor, Quirk-Silva, Ramos, Robert Rivas, Blanca Rubio, Villapudua

NO: Lackey, Megan Dahle, Mathis, Jim Patterson

ABS, ABST OR NV: Davies, Ta

ASM APPROPRIATIONS: 11-4-1

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Ortega

NO: Megan Dahle, Dixon, Mathis, Sanchez

ABS, ABST OR NV: Robert Rivas

UPDATED

VERSION: May 18, 2023

CONSULTANT: Lara Flynn / HEALTH / (916) 319-2097

FN: 0000874