
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2023 - 2024 Regular

Bill No: AB 935
Author: Connolly
Version: 6/26/23
Consultant: Grinnell

Hearing Date: 7/5/23
Tax Levy: No
Fiscal: Yes

TOBACCO SALES: FLAVORED TOBACCO BAN

Provides that violations of the flavored tobacco ban are subject to enforcement and punishment under the Stop Tobacco Access to Kids Enforcement (STAKE) Act.

Background

STAKE Act. The California Department of Public Health (CDPH) administers the Stop Tobacco Access to Kids Enforcement Act (STAKE Act) to reduce the availability of tobacco to those under the age of 21. Under the STAKE Act, an enforcing agency, which includes CDPH, the Attorney General, and local law enforcement agencies, can assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes a tobacco product to another person who is under 21, except for military personnel 18 years of age or older. Fines range from between \$400 to \$6,000 for a first, second, third, fourth, or fifth violation within a five-year period.

Tobacco Products Licensing. In 2003, the Cigarette and Tobacco Products Licensing Act (AB 71, Horton, 2003) required the Board of Equalization (BOE) to license manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products who are engaged in business in California. In 2017, the Legislature enacted AB 102 (Committee on Budget), which transferred duties, powers, and responsibilities related to the administration of taxes and fees from BOE to the California Department of Tax and Fee Administration (CDTFA).

Under the Act, retailers must have and maintain a license to sell cigarettes or tobacco products to purchasers. A retailer that owns or controls more than one retail location where cigarette and tobacco products are sold must obtain a separate license for each retail location. Each retailer must submit a one-time license fee of \$100 with each application, and may submit a single application for those licenses with a license fee of \$100 per location.

CDTFA may suspend a retailer's license under the Licensing Act or the Cigarette and Tobacco Products Tax Law, for a first or subsequent license violation. CDTFA must provide a tobacco product licensee with at least ten days' written notice of a pending suspension or revocation and an opportunity to appeal.

However, CDTFA must either suspend or revoke a tobacco license upon a third, fourth, or fifth violation of the STAKE Act within 60 days of notification by the enforcing agency's final adjudication. Suspension periods are:

- 45 days for a third violation at the same location within a five-year period.

- A 90-day suspension of the license for a fourth violation at the same location within a five-year period.
- Revocation of the license for a fifth violation at the same location within a five-year period.

CDTFA also imposes a \$250 civil penalty when notified of a violation that triggers license suspension or revocation, and deposits penalty proceeds into the Cigarette and Tobacco Products Compliance Fund, which funds compliance costs. Additionally, CDTFA cannot consider an appeal of a suspension or revocation if the appeal is founded upon the grounds of whether the retailer, or any agent or employee, violated the STAKE Act.

Flavored Tobacco Ban. In 2020, the Legislature 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 (SB 793, Hill). Voters upheld the ban in a referendum measure (Proposition 31, 2022). Violations of the ban are currently punishable as infractions, with a fine of \$250 per violation.

Seeking better enforcement of the flavored tobacco ban, the author wants to make the flavored tobacco bans subject to enforcement under the STAKE Act.

Proposed Law

Assembly Bill 935 provides violations of SB 793's flavored tobacco ban are subject to enforcement and punishment under the STAKE Act, instead of punishable by a \$250 per violation fine. The measure requires CDTFA to deposit proceeds from civil penalties it imposes in the Cigarette and Tobacco Products Compliance Fund. The measure also provides CDTFA cannot consider an appeal for a tobacco products licensed, suspended, or revoked due to a violation of the flavored tobacco products ban, similar to violations of the STAKE Act.

State Revenue Impact

No estimate.

Comments

1. **Purpose of the bill.** 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. **STAKE Act enforcement.** SB 793 specified violations of the flavored tobacco ban were infractions, and punishable by a \$250 fine, but it wasn't clear who was responsible for enforcement. By placing the ban under STAKE Act, AB 935 ensures any of CDPH, the Attorney General, or local law enforcement agencies can enforce the ban by issuing civil penalties instead. Additionally, CDTFA could impose additional civil penalties and suspend or revoke tobacco licenses for repeat violators under the bill. As a result, AB 935 should increase compliance with the ban, and enhance enforcement generally by directing civil penalty revenue to compliance efforts.

3. Incoming! The Senate Rules Committee ordered a double referral for AB 935: first, to the Committee on Health, and second to the Committee on Governance and Finance. On June 21, 2023, the Committee on Health approved the measure on a 10-0 vote.

Assembly Actions

Assembly Health Committee	10-4
Assembly Governmental Organization Committee:	16-4
Assembly Appropriations Committee:	11-4
Assembly Floor:	61-14

Support and Opposition (6/30/23)

Support: Union of American Physicians and Dentists (Sponsor)
 American Academy of Pediatrics, California
 American Cancer Society Cancer Action Network
 American Federation of State, County and Municipal Employees (AFSCME)
 American Heart Association
 American Lung Association of California
 California Academy of Family Physicians
 California Dental Association
 California Medical Association
 Campaign for Tobacco-Free Kids
 County of Marin
 Equity and Wellness Institute
 Health Officers Association of California
 International Youth Tobacco Control
 North East Medical Services
 Public Health Advocates
 San Francisco Marin Medical Society

Opposition: Bizfed Central Valley

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