
THIRD READING

Bill No: AB 935
Author: Connolly (D), et al.
Amended: 9/8/23 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 10-0, 6/21/23
AYES: Eggman, Glazer, Gonzalez, Hurtado, Limón, Menjivar, Roth, Rubio,
Wahab, Wiener
NO VOTE RECORDED: Nguyen, Grove

SENATE GOVERNANCE & FIN. COMMITTEE: 6-2, 7/5/23
AYES: Caballero, Blakespear, Durazo, Glazer, Skinner, Wiener
NOES: Seyarto, Dahle

SENATE APPROPRIATIONS COMMITTEE: 5-2, 9/1/23
AYES: Portantino, Ashby, Bradford, Wahab, Wiener
NOES: Jones, Seyarto

ASSEMBLY FLOOR: 61-14, 5/30/23 - See last page for vote

SUBJECT: Tobacco sales: flavored tobacco ban

SOURCE: Union of American Physicians and Dentists/AFSCME – Local 206

DIGEST: This bill aligns violations of the prohibition on sales of flavored tobacco and civil penalties with penalties for the Stop Tobacco Access to Kids Enforcement Act. This bill requires civil penalties to be deposited in the Cigarette and Tobacco Products Compliance Fund for specified enforcement activities.

Senate Floor Amendments of 9/8/23 help to clarify that any entity with the authority to enforce the prohibition on the sale of flavored tobacco can assess a civil penalty and take other action for any instance in which a person sells flavored tobacco, and not just in the case where a person sells flavored tobacco to an individual under the age of 21.

ANALYSIS:

Existing law:

- 1) Requires the California Department of Public Health (CDPH) to establish and develop a program to reduce the availability of tobacco products to persons under 21 years of age through authorized enforcement activities pursuant to the Stop Tobacco Access to Kids Enforcement Act (STAKE Act). [BCP §22950, et seq.]
- 2) Permits an enforcing agency to assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under 21, except for military personnel 18 years of age or older, any tobacco product, instrument, or paraphernalia that is designed for the smoking or ingestion of tobacco products ranging from \$400 to \$6,000 for a first, second, third, fourth, or fifth violation within a five-year period. [BPC §22958]
- 3) Requires the State Board of Equalization (BOE) to provide tobacco product licensee with at least ten days' written notice of a pending suspension or revocation and an opportunity to appeal, as specified. Prohibits BOE from accepting or considering an appeal of suspension or revocation if the appeal is founded upon the grounds of whether the retailer, or any agent or employee, violated the STAKE Act. [BPC §22974.8]
- 4) Prohibits 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," as defined, or a "tobacco product flavor enhancer," as defined. [HSC §104559.5]
- 5) Deems a tobacco retailer, or agent or employee of a tobacco retailer, who violates the prohibition on flavored tobacco guilty of an infraction punished by a fine of \$250 for each violation. [HSC §104559.5]
- 6) Defines "flavored tobacco product" as any tobacco product that contains a constituent that imparts a characterizing flavor. Defines "tobacco product flavor enhancer" as a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product. [HSC §104559.5]

This bill:

- 1) Aligns the civil penalties for violations of the sale prohibition on flavored tobacco with violations of the STAKE Act, rather than the existing infraction and fine of \$250 for each violation, pursuant to 5) in existing law above.
- 2) Codifies existing regulations that outline various points of sale against which an enforcing entity can take action, including vending machines, vehicles, booths, stands, and concessions.
- 3) Requires the civil penalty assessed by the California Department of Tax and Fee Administration (CDTFA) for violations of the prohibition of flavored tobacco as they relate to the STAKE Act to be deposited into the Cigarette and Tobacco Products Compliance Fund to be made available to CDTFA, upon appropriation by the Legislature, for specified enforcement activities.
- 4) Adds the violation of the sale prohibition of flavored tobacco to existing law for which BOE is prohibited from accepting or considering an appeal of suspension or revocation of a license, pursuant 3) above of existing law.

Comments

- 1) *Author's statement.* 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. The existing ban on flavored tobacco can help to achieve this goal, but only if the law is properly enforced. This bill will make explicit enforcement by CDPH and the Attorney General in addition to local agencies, to ensure compliance and protection of public health.
- 2) *Background.* Cigarette smoking causes more than 480,000 deaths each year in the U.S., or nearly one-in-five deaths. Smoking causes more deaths each year than the following causes combined: HIV, illegal drug use, alcohol use, motor vehicle injuries, and firearm-related incidents. More than ten 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% of all lung cancer deaths. More women die from lung cancer each year than from breast cancer. Smoking causes about 80% 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.

- 3) *California's flavored tobacco ban.* In 2020, the Legislature passed, and Governor Newsom signed, SB 793 (Hill et al, 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 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 U.S Food and Drug Administration (FDA) ban. Advocates for the inclusion of menthol cigarettes in the flavored tobacco ban regularly cited that unless action was taken an estimated 1.6 million African Americans alive today, who are now under the age of 18, would become regular smokers, and about 500,000 of those would 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 2022, the Supreme Court refused to block the law, clearing the way for the ban to take effect the following week. SB 793 states that a tobacco retailer, or agent or employee of a tobacco retailer, who violates the flavored tobacco ban is guilty of an infraction to be punished by a fine of \$250 for each violation. However, this law does not specify where the enforcement authority of this statute lies, implying that local jurisdictions have authority to enforce this law.
- 4) *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/Latinx 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 adults. More than twice as many LGBTQ+ students report having smoked a cigarette before the age of 13 compared to heterosexual students.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- CDPH estimates General Fund costs of \$2.4 million in 2024-25 and \$2 million in 2025-26 and ongoing thereafter for state operations. This includes costs for staffing to conduct investigations and inspections of tobacco retailers to ensure compliance.
- CDTFA estimates costs ranging from \$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 (Cigarette and Tobacco Products Compliance Fund). The CDTFA indicates unknown revenue estimates from civil penalties.

SUPPORT: (Verified 9/1/23)

Union of American Physicians and Dentists/AFSCME – Local 206 (source)
Action on Smoking and Health

African American Tobacco Control Leadership Council
American Academy of Pediatrics, California
American Cancer Society Cancer Action Network
American Federation of State, County, & Municipal Employees
American Heart Association
American Lung Association
Breathe California
California Academy of Family Physicians
California Dental Association
CaliforniaHealth+ Advocates
California Medical Association
Campaign for Tobacco Free Kids
CleanEarth4Kids.org
County of Marin, Board of Supervisors
Equity and Wellness Institute
Health Officers Association of California
International Youth Tobacco Control
National Stewardship Action Council
North East Medical Services
Parents Against E-Cigarettes
Public Health Advocates
San Francisco Marin Medical Society
Tobacco Education and Research Oversight Committee
Tobacco-Free Kids Action Fund
Tobacco-Free Sonoma County Community Coalition

OPPOSITION: (Verified 9/1/23)

California Fuels and Convenience Alliance

ARGUMENTS IN SUPPORT: The sponsor of this bill and other supporters argue 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. Supporters state that while current law prohibits tobacco retailers from selling most flavored tobacco products, including flavored e-cigarettes, menthol cigarettes, and tobacco-product flavor enhancers, flavored tobacco products continue to be sold in many stores across the state allowing

underage users to access these dangerous products. Supporters argue this bill closes the enforcement loophole to protect the next generation of Californians from becoming addicted to smoking.

ARGUMENTS IN OPPOSITION: The California Fuels and Convenience Alliance (CFCA) argues that this bill adds another level of penalties on their members with no clarity or disclosure of what products are considered banned. CFCA states that California’s ban on flavored tobacco products has created a patchwork of different enforcement standards across the state and its members who sell one product legally in one jurisdiction are simultaneously punished for selling the exact same product in a different jurisdiction. When their members are penalized or have their licenses suspended, the notices do not even identify which product caused the penalty. CFCA argues that compounding the issue is the lack of clear guidance from the state on what is (and is not) a flavored tobacco product. Charging store owners with the responsibility of determining what constitutes a “distinguishable” flavor is an impossible task. Without clear guidance about which products are prohibited, their retailers are left wondering how to comply.

ASSEMBLY FLOOR: 61-14, 5/30/23

AYES: Addis, Aguiar-Curry, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Grayson, Haney, Hart, Holden, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Schiavo, Soria, Ting, Valencia, Villapudua, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

NOES: Alanis, Chen, Megan Dahle, Dixon, Essayli, Flora, Vince Fong, Gallagher, Lackey, Mathis, Jim Patterson, Joe Patterson, Sanchez, Ta

NO VOTE RECORDED: Davies, Hoover, Quirk-Silva, Waldron, Wallis

Prepared by: Reyes Diaz / HEALTH / (916) 651-4111

9/11/23 12:01:53

**** END ****