

CONCURRENCE IN SENATE AMENDMENTS

AB 935 (Connolly)

As Amended September 8, 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.

Senate Amendments

- 1) Clarify that the provisions of this bill are enforceable in a manner similar to the STAKE Act, and include enforcement by the Department of Public Health (DPH), the Attorney General, or a local law enforcement agency;
- 2) Include the sale of products sold in a vehicle, mobile unit, booth, stand, or concession that conducts in-person sales of tobacco products directly to the public;
- 3) Require DPH, upon the assessment of a civil penalty for the third, fourth, or fifth violation, to notify the California Department of Tax and Fee Administration (CDTFA), who must then assess a civil penalty of two hundred fifty dollars and suspend or revoke the seller's license;
- 4) Require civil penalties to be deposited into the Cigarette and Tobacco Products Compliance Fund and be made available to CDTFA for purposes of enforcement;
- 5) Give DPH primary responsibility for enforcement of these provisions and authorizes DPH to conduct onsite sting inspections at tobacco retailers; and,
- 6) Authorize DPH to adopt regulations and emergency regulations to implement these provisions.

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) *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 federal Food and Drug Administration 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. 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.

Arguments in Opposition

The California Fuels and Convenience Alliance (CFCA) is opposed to this bill and states that California's ban on flavored tobacco products has created a patchwork of different enforcement standards across the state. CFCA members who sell one product legally in one jurisdiction are simultaneously punished for selling the exact same product in a different jurisdiction. CFCA contends that when their members are penalized or have their licenses suspended, the notices do not even identify which product caused the penalty. CFCA states that compounding the issue is the lack of clear guidance from the State on what is (and is not) a flavored tobacco product, and the only guidance CFCA members have received is an FAQ released by DPH in March of 2023, which notes that products with a "distinguishable taste or aroma" may be prohibited. Charging store owners with the responsibility of determining what constitutes a "distinguishable" flavor is an impossible task. CFCA concludes that without clear guidance about which products are prohibited, retailers are left wondering how to comply.

FISCAL COMMENTS

According to the Senate Appropriations Committee, DPH 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.

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

ASSEMBLY FLOOR: 61-14-5

YES: 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

NO: Alanis, Chen, Megan Dahle, Dixon, Essayli, Flora, Vince Fong, Gallagher, Lackey, Mathis, Jim Patterson, Joe Patterson, Sanchez, Ta

ABS, ABST OR NV: Davies, Hoover, Quirk-Silva, Waldron, Wallis

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