

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 330

Introduced by Senator Padilla

February 15, 2011

An act to amend Sections 30104, 30108, and 30181 of, and to add Article 4 (commencing with Section 30135) to Chapter 2 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, to take effect immediately, tax levy; add Section 22964 to the Business and Professions Code, relating to cigarette and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 330, as amended, Padilla. Cigarette and tobacco products taxes: ~~Tobacco Tax and Health Protection Fund.~~ products: retailers: Tobacco License Query System.

Existing law, the Stop Tobacco Access to Kids Enforcement Act, or STAKE Act, establishes various requirements for retailers relating to tobacco sales to minors, and allows enforcing agencies to assess civil penalties against a retailer for violations of the act. Existing law also establishes criminal penalties against a retailer that sells, gives, or furnishes tobacco products to a minor under certain circumstances. Existing law, the Cigarette and Tobacco Licensing Act of 2003, requires a retailer to obtain a license from the State Board of Equalization to engage in the sale of tobacco products in California, and requires the board to take action against a retailer for specified violations of existing law.

This bill would require the State Department of Public Health to develop and maintain the Tobacco License Query System that consists of a public, electronic database containing information regarding

retailer violations of the STAKE Act and other specified laws intended to prevent illegal sales of tobacco to minors. This bill would require the department to make the Tobacco License Query System available to the public on the department's Internet Web site by July 1, 2013, and to update the system on a quarterly basis.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The Cigarette and Tobacco Products Tax Law, the violation of which is a crime, imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99) and the California Families and Children Act of 1998 (Proposition 10). A provision of that law imposes a tax upon the distribution of tobacco products at a tax rate which is equivalent to the combined rate of all taxes imposed on cigarettes, which is deposited in specified accounts.~~

~~This bill would, commencing on or after the first day of the first calendar quarter commencing more than 90 days on or after the effective date of the bill, impose an additional tax on the distribution of cigarettes at the rate of (\$0.075) or 75 mills for each cigarette distributed which would be reset by the State Board of Equalization each fiscal year to reflect any increase in the California Consumer Price Index, and would require a dealer or wholesaler to file a return with the board showing the number of cigarettes in his or her possession or under his or her control on that date, as specified. Because the bill would impose an additional tax on cigarettes under the Cigarette and Tobacco Products Tax Law, it would increase the tax upon the distribution of tobacco products under that law. The bill would provide that the revenues collected from the additional tax would be allocated, upon appropriation by the Legislature, for certain purposes. The bill would require funds to be transferred from the fund to the California Children and Families First Trust Fund, which is a continuously appropriated fund, the Hospital Services Account, the Physician Services Account, the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund, the Public Resources Account, and the Breast Cancer Fund, as necessary to offset~~

revenue decreases to those accounts directly resulting from imposition of additional taxes by these provisions. Because this bill would require funds to be transferred to a continuously appropriated fund, it would make an appropriation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$ -majority. Appropriation: yes-no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature hereby finds and declares all of*
- 2 *the following:*
- 3 (a) *According to the American Cancer Society, over 80 percent*
- 4 *of adults who are regular smokers started smoking at or before*
- 5 *18 years of age.*
- 6 (b) *A 2009 survey from the Centers for Disease Control and*
- 7 *Prevention found that nearly one-half of high school students had*
- 8 *tried cigarette smoking, and more than one in four high school*
- 9 *students were current tobacco users.*
- 10 (c) *Each day in the United States, approximately 3,600 youths*
- 11 *between 12 and 17 years of age initiate cigarette smoking, and an*
- 12 *estimated 1,100 youths become daily cigarette smokers.*
- 13 (d) *Smoking is the single most preventable cause of death and*
- 14 *disease in California. Almost one in six deaths in California is*
- 15 *attributable to smoking: more than 35,000 deaths every year.*
- 16 (e) *In 1992, Congress passed the Synar Amendment to decrease*
- 17 *access to tobacco for minors. The Synar Amendment requires*
- 18 *states to adopt and enforce laws prohibiting any manufacturer,*
- 19 *retailer, or distributor from selling or distributing tobacco products*
- 20 *to minors.*

1 (f) In 1994, California adopted the Stop Tobacco Access to Kids
2 Enforcement (STAKE) Act to meet the requirements of the Synar
3 Amendment and to decrease underage tobacco usage. The State
4 Department of Public Health has primary responsibility for
5 enforcing the STAKE Act.

6 (g) State and local law enforcement agencies, including, but
7 not limited to, the Attorney General, the city attorney, the district
8 attorney, and county counsel, are also authorized to enforce the
9 STAKE Act.

10 (h) The Cigarette and Tobacco Products Licensing Act of 2003
11 was passed to further reduce illegal sales of tobacco within the
12 state. It requires a retailer to obtain a license from the State Board
13 of Equalization to engage in the sale of cigarette and tobacco
14 products in California.

15 (i) In 2009, the President signed the Family Smoking Prevention
16 and Tobacco Control Act, which gave the United States Food and
17 Drug Administration (FDA) the authority to regulate the
18 manufacturing, marketing, and sale of tobacco products. Since its
19 passage, the FDA has completed 27,500 undercover checks, many
20 that involved sending minors to stores to buy cigarettes. The
21 undercover operations resulted in 1,200 warning letters issued to
22 retailers.

23 SEC. 2. Section 22964 is added to the Business and Professions
24 Code, to read:

25 22964. The department shall establish and maintain the
26 Tobacco License Query System. The Tobacco License Query
27 System shall consist of an electronic database of all violations
28 attributed to a retailer of any federal, state, or local law intended
29 to prevent the illegal sale of tobacco to minors.

30 (a) The Tobacco License Query System shall include, but not
31 be limited to, the following information:

32 (1) All penalties assessed against retailers pursuant to Sections
33 22958, 22962, and 22963 by any enforcing agency.

34 (2) All penalties assessed against retailers pursuant to Section
35 308 of the Penal Code by a city attorney, a county counsel, or a
36 district attorney.

37 (3) All penalties assessed against retailers pursuant to Section
38 22974.8 by the State Board of Equalization.

39 (b) An enforcing agency shall submit to the department
40 information regarding all penalties assessed against retailers

1 pursuant to this division, Section 308 of the Penal Code, the
2 California Cigarette and Tobacco Products Licensing Act of 2003
3 (Div. 8.6 (commencing with Section 22970)), and any other law
4 intended to prevent the illegal sale of tobacco to minors. The
5 department shall create and provide a form for enforcing agencies
6 to use to submit the information required by this section.

7 (c) The department is encouraged to coordinate with the United
8 States Food and Drug Administration to include in the Tobacco
9 License Query System, when possible, information regarding all
10 penalties assessed against retailers pursuant to the federal Family
11 Smoking Prevention and Tobacco Control Act (Public Law
12 111-31), as it is applied in California.

13 (d) The department shall make the Tobacco License Query
14 System easily accessible to the public and to all enforcing agencies
15 on the department's Internet Web site by July 1, 2013, and update
16 the Tobacco License Query System on a quarterly basis thereafter.

17 SEC. 3. If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.

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24 **All matter omitted in this version of the bill**
25 **appears in the bill as introduced in the**
26 **Senate, February 15, 2011. (JR11)**
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