

AMENDED IN SENATE MAY 8, 2013
AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 622

Introduced by Senator Monning
(Coauthor: Senator DeSaulnier)

February 22, 2013

An act to add *and repeal* Part 14.5 (commencing with Section 32600) of Division 2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 622, as amended, Monning. Taxation: sweetened beverage tax: Children's Health Promotion Fund.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would, on and after July 1, 2014, *and until July 1, 2024*, impose a tax on every distributor, as defined, for the privilege of distributing in this state bottled sweetened beverages, at a rate of \$0.01 per fluid ounce and for the privilege of distributing concentrates in this state, either as concentrate or as sweetened beverages derived from that concentrate, at the rate of \$0.01 per fluid ounce of sweetened beverage to be produced from concentrate. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. This bill would exempt from the tax, among other things, the distribution in this state of bottled sweetened beverages or concentrate made by a distributor to another distributor registered with the board and supported by an

exemption certificate that consists of a statement signed under penalty of perjury.

By expanding the definition of the existing crime of perjury and by expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill imposes a state-mandated local program.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refunds and administrative costs, in the Children's Health Promotion Fund, which this bill would create. This bill would require all moneys in the fund, upon appropriation by the Legislature, to be allocated to the State Department of Public Health and Superintendent of Public Instruction, as specified, for the purposes of statewide childhood obesity prevention activities and programs *and to provide funds to either the University of California or the California State University to conduct a specified report*. This bill would also authorize the State Public Health Officer and the Superintendent of Public Instruction to make rules and regulations, and provide procedural measures, to bring into effect those purposes.

This bill would make legislative findings and declarations relating to the consumption of sweetened beverages, childhood obesity, and dental disease.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax 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.

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.

Vote: $\frac{2}{3}$. Appropriation: 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 finds and declares all of the
- 2 following:
- 3 (a) The prevalence of obesity in the United States has increased
- 4 dramatically over the past 30 years. From the 1960s to the late
- 5 1970s, the prevalence was relatively constant, with about 15

1 percent of the population classified as obese. After the 1970s, these
2 rates began to climb. In California, obesity rates have increased
3 even more, rising from 8.9 percent in 1984 to 23.8 percent in 2011.
4 Although no group has escaped the epidemic, low income and
5 communities of color are disproportionately affected.

6 (b) The rate of children who are overweight has also increased
7 dramatically in recent decades. After being relatively constant
8 from the 1960s to the 1970s, the prevalence of overweight children
9 has more than quadrupled among children between 6 and 11 years
10 of age and nearly tripled among those between 12 and 19 years of
11 age. In California in 2010, 38 percent of children in grades 5, 7,
12 and 9 were overweight or obese. Thirty-one of California's 58
13 counties experienced an increase in childhood overweight from
14 2005 to 2010.

15 (c) The obesity epidemic is of particular concern because obesity
16 increases the risk of diabetes, heart disease, certain types of cancer,
17 arthritis, asthma, and breathing problems. Depending on their level
18 of obesity, from 60 percent to over 80 percent of obese adults have
19 type 2 diabetes, high blood cholesterol, high blood pressure, or
20 other related conditions. It has been reported that up to 60 percent
21 of obese children 5 to 10 years of age have early signs of heart
22 disease.

23 (d) Type 2 diabetes, previously only seen among adults, is now
24 increasing among children. If the current obesity trends are not
25 reversed, it is predicted that one in three children and nearly
26 one-half of Latino and African American children born in the year
27 2000 will develop type 2 diabetes in their lifetime. Research shows
28 that overweight children have a much greater chance of being
29 obese as adults, with all the health risks that entails.

30 (e) Overweight and obesity account for \$147 billion in health
31 care costs nationally, or 9 percent of all medical spending – with
32 half these costs paid publicly through the Medicare and Medicaid
33 programs. Medical costs associated with obesity are estimated at
34 \$147 billion; the medical costs for people who are obese are
35 dramatically higher than those of normal weight.

36 (f) In 2006, overweight and obesity-related costs in California
37 were estimated at almost \$21 billion.

38 (g) There is overwhelming evidence of the link between obesity
39 and the consumption of sweetened beverages, such as soft drinks,
40 energy drinks, sweet teas, and sports drinks. California adults who

1 drink a soda or more per day are 27 percent more likely to be
2 overweight or obese, regardless of income or ethnicity.

3 (h) According to nutritional experts, sweetened beverages, such
4 as soft drinks, energy drinks, sweet teas, and sport drinks, offer
5 little or no nutritional value, but massive quantities of added sugars.
6 A 20-ounce bottle of soda contains the equivalent of approximately
7 16 teaspoons of sugar. Yet, the American Heart Association
8 recommends that Americans consume no more than five to nine
9 teaspoons of sugar per day.

10 (i) Research shows that almost one-half of the extra calories
11 Americans have been consuming since the 1970s could come from
12 soda, with the average American drinking nearly 50 gallons of
13 sweetened beverages a year, the equivalent of 39 pounds of extra
14 sugar every year.

15 (j) Though sugar sweetened beverage consumption is declining
16 slightly as people learn about their harmful health effects,
17 Americans are still consuming twice as much of these products as
18 they did in the 1970's. Children and adolescents consume 173
19 calories per day of sugary drinks; adults consume 178 calories per
20 day of sugary drinks. Children and adolescents consume 10 to 15
21 percent of their daily caloric intake from sweetened beverages.

22 (k) Research shows that 41 percent of California children 2 to
23 11 years of age and 62 percent of California teens 12 to 17 years
24 of age drink soda daily, and for every additional serving of
25 sweetened beverage that a child consumes a day, the likelihood of
26 the child becoming obese increases by 60 percent.

27 (l) Sugary drinks are a unique contributor to excess caloric
28 consumption. A large body of research shows that calories from
29 sugary drinks do not satisfy hunger the way calories from solid
30 food or fat or protein-containing beverages such as those containing
31 milk and plant-based proteins. As a result, sugary beverages tend
32 to add to the calories people consume rather than replace them.

33 (m) Dental caries (tooth decay) are the most common chronic
34 childhood disease, experienced by more than two-thirds of
35 California's children. Children who frequently or excessively
36 consume beverages high in sugar are at increased risk for dental
37 caries. Untreated dental caries can lead to pain, infection, tooth
38 loss, and in severe cases, even death. It can slow normal growth
39 and development by restricting nutritional intake. Children who

1 are missing teeth may have chewing problems that limit their food
2 choices and result in nutritionally inadequate diets.

3 (n) It is the intent of the Legislature, by adopting the Sweetened
4 Beverage Tax Law and creating the Children’s Health Promotion
5 Fund, to diminish the human and economic costs of obesity and
6 dental disease in California. This act is intended to discourage
7 excessive consumption of sweetened beverages by increasing the
8 price of these products and by creating a dedicated revenue source
9 for health programs designed to prevent and treat childhood obesity
10 and dental disease and reduce the burden of attendant health
11 conditions.

12 SEC. 2. Part 14.5 (commencing with Section 32600) is added
13 to Division 2 of the Revenue and Taxation Code, to read:

14

15 PART 14.5. SWEETENED BEVERAGE TAX LAW

16

17 32600. This part shall be known and may be cited as the
18 Sweetened Beverage Tax Law.

19 32601. For purposes of this part:

20 (a) “Beverage container” means any closed or sealed container
21 regardless of size or shape, including, without limitation, those
22 made of glass, metal, paper, plastic, or any other material or
23 combination of materials.

24 (b) “Bottled sweetened beverage” means a sweetened beverage
25 contained in a beverage container.

26 (c) “Beverage dispensing machine” means a device that mixes
27 concentrate with any one or more other ingredients and dispenses
28 the resulting mixture into an open container as a ready-to-drink
29 beverage.

30 (d) “Caloric sweetener” means any caloric substance suitable
31 for human consumption that humans perceive as sweet and
32 includes, without limitation, sucrose, fructose, including high
33 fructose corn sweetener, glucose, other sugars, and fruit juice
34 concentrates. “Caloric” means a substance that adds calories to
35 the diet of a person who consumes that substance.

36 (e) “Concentrate” means a syrup, powder, or base product that
37 is used for mixing, compounding, or making sweetened beverages
38 in a beverage dispensing machine. For purposes of this part,
39 “concentrate” does not include any of the following:

40 (1) Any product that is solely used in preparing coffee or tea.

- 1 (2) Any product for consumption by infants and which is
- 2 commonly referred to as “infant formula.”
- 3 (3) Any product for use for weight reduction.
- 4 (4) Milk or milk products.
- 5 (5) Any frozen concentrate or freeze-dried concentrate to which
- 6 only water is added to produce a sweetened beverage containing
- 7 more than 50 percent natural fruit juice or more than 50 percent
- 8 natural vegetable juice or more than 50 percent combined natural
- 9 fruit juice and natural vegetable juice.
- 10 (6) Any product that is sold and is intended to be used for the
- 11 purpose of an individual consumer mixing a sweetened beverage.
- 12 (7) Medical food.
- 13 (8) Any product to which no caloric sweeteners have been
- 14 added.
- 15 (f) “Consumer” means a person who purchases a bottled
- 16 sweetened beverage or concentrate for a purpose other than resale
- 17 in the ordinary course of business.
- 18 (g) “Distribution” includes:
- 19 (1) The sale of bottled sweetened beverages or concentrate to
- 20 a retailer.
- 21 (2) The receipt of untaxed bottled sweetened beverages or
- 22 concentrate in this state from an unregistered out-of-state distributor
- 23 by a retailer.
- 24 (3) The retail sale of untaxed bottled sweetened beverages,
- 25 sweetened beverages, or concentrate in this state.
- 26 (4) The use or consumption of untaxed bottled sweetened
- 27 beverages or concentrate in this state by a distributor or retailer.
- 28 For purposes of this paragraph, “use or consumption” includes the
- 29 exercise of any right or power over bottled sweetened beverages
- 30 or concentrate incident to the ownership thereof, except that it does
- 31 not include the sale of that property or the keeping or retention
- 32 thereof by a distributor or retailer for the purpose of sale.
- 33 (h) “Distributor” means any person who makes a distribution
- 34 of bottled sweetened beverages, sweetened beverages, or
- 35 concentrate in the state, whether or not that person also sells these
- 36 products to consumers.
- 37 (i) “Medical food” means medical food as defined in Section
- 38 109971 of the Health and Safety Code.
- 39 (j) “Milk” means natural liquid milk, regardless of animal source
- 40 or butterfat content, natural milk concentrate, whether or not

1 reconstituted, regardless of animal source, plant source, or butterfat
2 content, or dehydrated natural milk, whether or not reconstituted
3 and regardless of animal source or butterfat content.

4 (k) “Natural fruit juice” means the original liquid resulting from
5 the pressing of fruit, the liquid resulting from the reconstitution of
6 natural fruit juice concentrate, or the liquid resulting from the
7 restoration of water to dehydrated natural fruit juice.

8 (l) “Natural vegetable juice” means the original liquid resulting
9 from the pressing of vegetables, the liquid resulting from the
10 reconstitution of natural vegetable juice concentrate, or the liquid
11 resulting from the restoration of water to dehydrated natural
12 vegetable juice.

13 (m) “Nonalcoholic beverage” means any beverage not subject
14 to tax under Part 14 (commencing with Section 32001).

15 (n) “Person” means an individual, trust, firm, joint stock
16 company, business concern, business trust, receiver, trustee,
17 syndicate, social club, fraternal organization, estate, corporation,
18 including, but not limited to, a government corporation, partnership,
19 limited liability company, and association or any other group or
20 combination acting as a unit. “Person” also includes any city,
21 county, city and county, district, commission, the state, or any
22 department, agency, or political subdivision thereof, any interstate
23 body, and the United States and its agencies and instrumentalities
24 to the extent permitted by law.

25 (o) “Powder” or “base product” means a solid or liquid mixture
26 of ingredients with added caloric sweetener used in making,
27 mixing, or compounding sweetened beverages by mixing the
28 powder or base product with any one or more other ingredients,
29 including, without limitation, water, ice, syrup, simple syrup, fruits,
30 vegetables, fruit juice, vegetable juice, or carbonation or other gas.

31 (p) “Retail sale” means the sale of sweetened beverages to a
32 consumer.

33 (q) “Retailer” means any person who sells in this state sweetened
34 beverages to a consumer, whether or not that person is also a
35 distributor as defined in this section.

36 (r) “Sale” means the transfer of title or possession for
37 consideration in any manner or by any means whatever.

38 (s) “Simple syrup” means a mixture of sugar and water.

39 (t) (1) “Sweetened beverage” means any sweetened
40 nonalcoholic beverage sold for human consumption that has caloric

1 sweeteners and contains more than 25 calories per 12 ounces,
2 including, but not limited to, the following: soda water, ginger ale,
3 root beer, all beverages commonly referred to as cola, lime, lemon,
4 lemon-lime, and other flavored beverages, including any fruit or
5 vegetable beverage containing less than 50 percent natural fruit
6 juice or natural vegetable juice or combined natural fruit juice and
7 natural vegetable juice, and all other drinks and beverages
8 commonly referred to as “soda,” “soda pop,” “soft drinks,” “sports
9 drinks,” “energy drinks,” “juice drinks,” “ice teas,” and “vitamin
10 fortified waters.”

11 (2) “Sweetened beverage” does not include any of the following:

12 (A) Any product sold in liquid form for consumption by infants,
13 which is commonly referred to as “infant formula” or any product
14 whose purpose is infant rehydration.

15 (B) Any product sold in liquid form for use for weight reduction.

16 (C) Water, to which no caloric sweeteners have been added.

17 (D) Milk or milk products.

18 (E) Medical food.

19 (F) Any sweetened beverage containing 50 percent or more of
20 natural fruit juice or natural vegetable juice or combined natural
21 fruit juice and natural vegetable juice.

22 (u) “Syrup” means the liquid mixture of ingredients used in
23 making, mixing, or compounding sweetened beverages using one
24 or more other ingredients including, without limitation, water, ice,
25 a powder, simple syrup, fruits, vegetables, fruit juice, vegetable
26 juice, or carbonation or other gas.

27 32602. There is hereby imposed an excise tax on every
28 distributor for the privilege of distributing bottled sweetened
29 beverages and concentrate in the state, calculated as follows:

30 (a) The tax on bottled sweetened beverages distributed in this
31 state shall be one cent (\$0.01) per fluid ounce.

32 (b) The tax on concentrates distributed in this state either as
33 concentrate or as a sweetened beverage derived from that
34 concentrate, shall be equal to one cent (\$0.01) per fluid ounce of
35 sweetened beverage produced from that concentrate. For purposes
36 of calculating the tax for concentrate, the volume of sweetened
37 beverage to be produced from concentrate shall be the largest
38 volume resulting from use of the concentrate according to any
39 manufacturer’s instructions.

1 32603. Each distributor shall include the following information
2 on each receipt, invoice, or other form of accounting for the
3 distribution of bottled sweetened beverages or concentrate:

- 4 (a) The name and address of the distributor.
- 5 (b) The name and address of the purchaser.
- 6 (c) The date of sale and invoice number.
- 7 (d) The kind, quantity, size, and capacity of packages of bottled
8 sweetened beverages, sweetened beverages, or concentrate sold.
- 9 (e) The amount of excise taxes due to the board from the
10 distributor on the sale of the bottled sweetened beverages or
11 concentrate.
- 12 (f) Any other information as required by the board.

13 32604. There is exempt from the taxes imposed by this part
14 the distribution of bottled sweetened beverages or concentrate
15 distributed by a distributor to:

- 16 (a) A distributor registered with the board under this part when
17 supported by a properly completed exemption certificate.
- 18 (b) To a person when, pursuant to the contract of sale, the bottled
19 sweetened beverages or concentrates are required to be shipped
20 and are shipped to a point outside of this state by the distributor
21 by means of any of the following:
 - 22 (1) Facilities operated by the distributor.
 - 23 (2) Delivery by the distributor to a carrier, customs broker, or
24 forwarding agent, whether hired by the purchaser or not, for
25 shipment to the out-of-state point.
- 26 (c) To a person where the state is prohibited from taxing that
27 sale, use, or consumption under the Constitution or laws of the
28 United States or under the Constitution of this state.

29 32605. The exemption certificate to be provided by a distributor
30 to another distributor as required by subdivision (a) of Section
31 32604 shall consist of a statement that is signed under penalty of
32 perjury by a person with authority to bind the distributor. The
33 certificate shall be dated and include the distributor's name and
34 account number. A new certificate shall be given if any information
35 in the current certificate changes. The certificate may be included
36 as part of any business records normally used to document a sale
37 or distribution.

38 32606. A distributor who has paid a tax, either directly to the
39 state or to another distributor registered under this part, and makes
40 a subsequent distribution of bottled sweetened beverages or

1 concentrate may claim a credit on its return for the period in which
2 the subsequent sale or distribution occurs.

3 32607. The board shall administer and collect the tax imposed
4 by this part pursuant to the Fee Collection Procedures Law (Part
5 30 (commencing with Section 55001)). For purposes of this part,
6 the references in the Fee Collection Procedures Law to “fee” shall
7 include the tax imposed by this part and references to “feepayer”
8 shall include a person required to pay the tax imposed by this part.

9 32608. (a) The board may prescribe, adopt, and enforce
10 regulations relating to the administration and enforcement of this
11 part, including, but not limited to, collections, reporting, refunds,
12 and appeals.

13 (b) The board may prescribe, adopt, and enforce any emergency
14 regulations as necessary to implement this part. Any emergency
15 regulation prescribed, adopted, or enforced pursuant to this section
16 shall be adopted in accordance with Chapter 3.5 (commencing
17 with Section 11340) of Part 1 of Division 3 of Title 2 of the
18 Government Code, and, for purposes of that chapter, including
19 Section 11349.6 of the Government Code, the adoption of the
20 regulation is an emergency and shall be considered by the Office
21 of Administrative Law as necessary for the immediate preservation
22 of the public peace, health and safety, and general welfare.

23 32609. The taxes imposed by this part are due and payable to
24 the board on or before the last day of the month following each
25 calendar quarter.

26 32610. (a) On or before the last day of the month following
27 each calendar quarter ~~of three months~~, a return for the preceding
28 calendar quarter shall be filed using electronic media with the
29 board.

30 (b) The board may prescribe those forms and reporting
31 requirements as are necessary to implement the tax, including, but
32 not limited to, information regarding the total amount of bottled
33 sweetened beverages and concentrate sold and the amount of tax
34 due.

35 (c) Returns shall be authenticated in a form or pursuant to
36 methods as may be prescribed by the board.

37 32610.5. Every person required to pay the tax imposed under
38 this part shall register with the board. Every application for
39 registration shall be made upon a form prescribed by the board
40 and shall set forth the name under which the applicant transacts

1 or intends to transact business, the location of his or her place or
2 places of business, and such other information as the board may
3 require. An application for an account shall be authenticated in a
4 form or pursuant to methods as may be prescribed by the board.

5 32611. (a) There is hereby created a trust fund in the State
6 Treasury called the Children’s Health Promotion Fund. The
7 Children’s Health Promotion Fund shall consist of all taxes,
8 interest, penalties, and other amounts collected pursuant to this
9 part, less refunds and reimbursement to the board for expenses
10 incurred in the administration and collection of the tax.

11 (b) All moneys in the Children’s Health Promotion Fund shall,
12 upon appropriation by the Legislature, be allocated for the purposes
13 of statewide childhood obesity prevention activities and programs
14 as follows:

15 (1) Twenty percent to the State Department of Public Health to
16 coordinate statewide childhood obesity prevention activities and
17 to fund state-level childhood obesity prevention and children’s
18 dental programs. This funding shall support programs that use
19 educational, environmental, policy, and other public health
20 approaches that achieve the following goals: improve access to
21 and consumption of healthy, safe, and affordable foods and
22 beverages; reduce access to and consumption of calorie-dense,
23 nutrient-poor foods; encourage physical activity; decrease sedentary
24 behavior; and raise awareness about the importance of nutrition
25 and physical activity to childhood obesity prevention.

26 (2) Thirty-five percent for *evidence-based* community-based
27 childhood obesity prevention programs. This funding shall support
28 programs that use educational, environmental, policy, and other
29 public health approaches that achieve the following goals: improve
30 access to and consumption of healthy, safe, and affordable foods
31 and beverages; reduce access to and consumption of calorie-dense,
32 nutrient-poor foods; encourage physical activity; decrease sedentary
33 behavior; and raise awareness about the importance of nutrition
34 and physical activity to childhood obesity prevention. The State
35 Department of Public Health shall be responsible for the
36 distribution of these funds to *local health departments that may*
37 *contract with* community-based organizations ~~and to local health~~
38 ~~departments~~, with priority given to counties that have the highest
39 rates of childhood obesity.

1 (3) Ten percent to evidence-based prevention, early recognition,
2 monitoring, and weight management intervention activities in the
3 medical setting. The State Department of Public Health shall be
4 responsible for identifying activities and allocating these funds.

5 (4) Thirty-five percent to elementary and secondary schools for
6 educational, environmental, policy and other public health
7 approaches that promote nutrition and physical activity. The
8 approaches funded pursuant to this paragraph can include
9 improving or building school recreational facilities that are used
10 for recess and physical education; providing continuing education
11 training for physical education teachers; hiring qualified physical
12 education teachers; implementing Safe Routes to Schools
13 programs; improving the quality and nutrition of school breakfasts,
14 lunches, and snacks; ensuring free, clean drinking water access
15 throughout the schoolday; and incorporating practical nutrition
16 education into the curriculum. The Superintendent of Public
17 Instruction is responsible for the allocation and distribution of
18 these funds.

19 (c) All moneys in the Children’s Health Promotion Fund shall
20 be expended only for the purposes expressed in this chapter, and
21 shall be used only to supplement existing levels of service and not
22 to supplant current federal, state, or local funding for existing levels
23 of service.

24 (d) The State Public Health Officer and the Superintendent of
25 Public Instruction are hereby authorized to make such rules and
26 regulations, and provide such procedural measures, as shall bring
27 into effect the purposes of this section. The rules and regulations
28 may provide for specific programs to be funded consistent with
29 the allocation of funds set forth above.

30 32612. (a) *On or before July 1, 2022, the University of*
31 *California or the California State University, as determined by*
32 *the State Department of Public Health, shall provide a report to*
33 *the Legislature and all relevant standing committees that examines*
34 *the process and outcome performance of the Sweetened Beverage*
35 *Tax Law that includes, but is not limited to, a review of how moneys*
36 *in the Children’s Health Promotion Fund were allocated annually,*
37 *annual and longitudinal data on childhood obesity prevalence and*
38 *incidence rates, data on childhood diabetes and incidence rates,*
39 *and longitudinal information on sweetened beverage consumption*
40 *rates across the state population.*

1 (b) Notwithstanding paragraphs (1) to (4), inclusive, of
2 subdivision (b) of Section 32611, ____ dollars (\$____) shall, upon
3 appropriation by the Legislature from the Children’s Health
4 Promotion Fund, be allocated to the State Department of Public
5 Health for allocation to either the University of California or the
6 California State University, as determined by the State Department
7 of Public Health, for the report required by subdivision (a).

8 (c) A report to the Legislature pursuant to subdivision (a) shall
9 be submitted in compliance with Section 9795 of the Government
10 Code.

11 ~~32612.~~

12 32613. This part shall become operative on July 1, 2014.

13 32614. This part shall remain in effect only until July 1, 2024,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before July 1, 2024, deletes or extends that date.

16 SEC. 3. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.