

Introduced by Senator DeSaulnierFebruary 22, 2013

An act to add Chapter 20 (commencing with Section 26300) to Division 20 of the Health and Safety Code, to amend Section 13836 of the Penal Code, and to add Part 14.7 (commencing with Section 34001) to Division 2 of the Revenue and Taxation Code, relating to sexual assaults.

LEGISLATIVE COUNSEL'S DIGEST

SB 782, as introduced, DeSaulnier. Sexual assault treatment and prevention: sexually oriented business tax.

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 impose a tax on persons operating a sexually oriented business, as defined, at the rate of \$10 per visit by a customer to the business inclusive of admission and reentry . 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. The bill would create the Sexual Assault Treatment and Prevention Fund, and would require that all revenues, less refunds and the costs of the administration of the tax, derived from the tax be transferred to the fund. This bill would provide that moneys in the fund, upon appropriation by the Legislature, be used by the Office of Emergency Services for specified purposes related to the treatment and prevention of sexual assault.

Because this bill would expand application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

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 become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this bill.

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.

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) It is the intent of the Legislature that an award of a grant to
- 4 an organization pursuant to this act shall not result in a reduction
- 5 in moneys appropriated by the Legislature to that organization.
- 6 The taxes imposed by this measure are intended to ameliorate the
- 7 negative secondary effects associated with the combination of
- 8 sexually oriented businesses and alcohol so as to promote the
- 9 health, safety, and welfare of the citizens of California.
- 10 (b) Sexually oriented businesses that serve alcohol or that are
- 11 located near liquor-serving businesses pose larger and qualitatively
- 12 different ambient public safety hazards. Governments rely on this
- 13 consistent finding of the empirical secondary effect literature as a
- 14 rationale for limiting nudity in liquor-serving businesses.
- 15 (c) Accordingly, the consumption of alcohol on the premises
- 16 of a sexually oriented business contributes to the need for
- 17 community-based services to respond to victims of all forms of
- 18 sexual exploitation, including sexual harassment, trafficking, and
- 19 sexual assault.

1 (d) Rape crisis centers and other victim service providers play
2 a unique role in responding to assault, sexual abuse, trafficking,
3 and domestic violence. They also work to prevent crimes such as
4 these through the creation of public awareness and prevention that
5 empowers and restores persons who have been sexually violated.

6 (e) This act is not intended to directly or indirectly impose
7 limitations or restrictions on live nude dancing, nor is it the intent
8 of this act to restrict or deny access by adults to live nude dancing
9 performances that may be protected by the First Amendment to
10 the United States Constitution or by the California Constitution.

11 (f) This act shall be known and may be cited as the Sexual
12 Assault Victims Equity (SAVE) Act.

13 SEC. 2. Chapter 20 (commencing with Section 26300) is added
14 to Division 20 of the Health and Safety Code, to read:

15
16 CHAPTER 20. SEXUAL ASSAULT TREATMENT AND PREVENTION
17

18 26300. (a) The Office of Emergency Services shall use funds
19 transferred from the Sexual Assault Treatment and Prevention
20 Fund. Funding allocations shall be determined by the Office of
21 Emergency Services, in collaboration with the State Advisory
22 Committee on Sexual Assault Victim Services, as stipulated in
23 Section 13836 of the Penal Code, no later than June 20, 2014.
24 Except as provided in subdivision (d), funds transferred from the
25 Sexual Assault Treatment and Prevention Fund shall be used only
26 for the following purposes:

27 (1) To award grants for intervention services related to sexual
28 assault survivors and rape prevention programs provided by rape
29 crisis centers, as stipulated in Section 13837 of the Penal Code.

30 (2) To award grants to, and contracts with, a statewide
31 organization organized and operated as described in Section
32 501(c)(3) of the Internal Revenue Code that has the primary
33 purpose of ending sexual violence in this state, for programs for
34 the intervention and prevention of sexual violence, outreach
35 programs, training, and technical assistance to and support of
36 California rape crisis centers, as stipulated in Section 13837 of
37 Penal Code, and other organizations funded by the Sexual Assault
38 Treatment and Prevention Fund to prevent and intervene in sexual
39 violence in underserved communities. Funds awarded pursuant to
40 this paragraph shall be administered by the Office of Emergency

1 Services and approved by the State Advisory Committee on Sexual
2 Assault Victim Services, as authorized in Section 13836 of the
3 Penal Code.

4 (3) Civil legal services to sexual assault survivors.

5 (4) Coordination of sexual assault response teams that provide
6 multidisciplinary response services to sexual assault survivors.

7 (5) Culturally and linguistically appropriate intervention services
8 to sexual assault survivors from underrepresented or underserved
9 communities.

10 (6) To award grants to reimburse the payment of adult and
11 adolescent sexual assault forensic exams.

12 (7) To award grants to nonprofit, community-based
13 organizations to support intervention and treatment services for
14 victims of sexual exploitation of human trafficking. Eligible
15 programs for these grants include, but are not limited to,
16 community-based organizations that provide services for victims
17 of sexual and domestic violence and work to end and prevent
18 sexual and domestic violence.

19 (8) To award grants to nonprofit, community-based
20 organizations to support the intervention and treatment services
21 for victims of sexual assault as part of dating or domestic violence,
22 including, but not limited to, sexual assault services programs, as
23 defined in Section 13837 of the Penal Code, or domestic violence
24 victim service organizations, as defined in Section 1037.1 of the
25 Evidence Code. Funds awarded pursuant to this paragraph shall
26 be administered by the Office of Emergency Services and approved
27 by the State Advisory Committee on Sexual Assault Victim
28 Services, as stipulated in Section 13836 of the Penal Code.

29 (b) Grants awarded pursuant to paragraphs 3 to 8, inclusive,
30 shall be awarded as a result of a competitive request for proposal
31 process.

32 (c) No more than 10 percent annually of the funds deposited in
33 the Sexual Assault Treatment and Prevention Fund may be used
34 for the administration by the Office of Emergency Services of
35 these grant programs.

36 (d) (1) Notwithstanding subdivision (a), two hundred thousand
37 dollars (\$200,000) shall be appropriated biennially by the
38 Legislature to the Office of Emergency Services from the Sexual
39 Assault Treatment and Prevention Fund to fund a report created

1 by the Office of Emergency Services to the Governor and the
2 Legislature reporting the following:

3 (A) The deficiencies with respect to research, prevention,
4 response, victim services, adjudication, and incarceration, related
5 to sexual assaults at state and local levels.

6 (B) The effectiveness of appropriations made to fund this chapter
7 and other legislation related to sexual assault intervention enacted
8 by the Legislature.

9 (C) Recommendations for appropriate performance measures
10 that enable the Governor and the Legislature to assess and respond
11 to the status of sexual assault prevention in this state.

12 (2) Notwithstanding Section 10231.5 of the Government Code,
13 a report, pursuant to paragraph (1), shall be submitted on July 1,
14 2015, and biennially thereafter.

15 (3) A report to be submitted pursuant to this subdivision shall
16 be submitted in compliance with Section 9795 of the Government
17 Code.

18 SEC. 3. Section 13836 of the Penal Code is amended to read:

19 13836. ~~The agency office shall establish an advisory committee~~
20 *the State Advisory Committee on Sexual Assault Victim Services*
21 which shall develop a course of training for district attorneys in
22 the investigation and prosecution of sexual assault cases, child
23 sexual exploitation cases, and child sexual abuse cases and shall
24 approve grants awarded pursuant to Section 13837 and Chapter
25 20 (commencing with Section 26300) of Division 20 of the Health
26 and Safety Code. The courses shall include training in the unique
27 emotional trauma experienced by victims of these crimes.

28 It is the intent of the Legislature in the enactment of this chapter
29 to encourage the establishment of sex crime prosecution units,
30 which shall include, but not be limited to, child sexual exploitation
31 and child sexual abuse cases, in district attorneys' offices
32 throughout the state.

33 SEC. 4. Part 14.7 (commencing with Section 34001) is added
34 to Division 2 of the Revenue and Taxation Code, to read:

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36 PART 14.7. SEXUALLY ORIENTED BUSINESS TAX

37

38 34001. For purposes of this part, the following definitions
39 apply:

1 (a) “Nude” means clothed in a manner that leaves uncovered
2 or visible through less than fully opaque clothing, any portion of
3 the genitals or, in the case of a female, any portion of the breasts
4 below the top of the areola of the breasts.

5 (b) “Sexually oriented business” means a nightclub, bar,
6 restaurant, or similar commercial enterprise that does both of the
7 following:

8 (1) Provides for an audience of two or more individuals live
9 nude entertainment or live nude performances where the nudity is
10 a function of everyday business operations and where nudity is a
11 planned and intentional part of the entertainment or performance.

12 (2) Authorizes on-premises consumption of alcoholic beverages,
13 regardless of whether the consumption of alcoholic beverages is
14 under a license or permit issued under the Alcoholic Beverage
15 Control Act.

16 34002. The tax imposed by this part shall be in addition to any
17 other taxes imposed by law.

18 34003. For the privilege of operating a sexually oriented
19 business, a tax is hereby imposed upon all persons who operate a
20 sexually oriented business at the rate of ten dollars (\$10) per visit
21 by a customer to the business inclusive of admission and reentry.

22 34004. A person who operates a sexually oriented business
23 shall record daily in the manner required by the board the number
24 of customers admitted to the business.

25 34005. A person who operates a sexually oriented business
26 may not require the tax imposed by this part to be reimbursed by
27 an employee or independent contractor of the sexually oriented
28 business, but may require the tax to be reimbursed by the customer
29 whose entry the tax is imposed upon, in a manner prescribed by
30 the board.

31 34006. (a) The taxes imposed by the part shall be due and
32 payable to the board on or before the last day of the month
33 following each calendar quarter.

34 (b) (1) On or before the last day of the month following each
35 calendar quarter, a return for the preceding quarterly period shall
36 be filed with the board using electronic media.

37 (2) The board may prescribe those forms and reporting
38 requirements as are necessary to implement the tax, including, but
39 not limited to, information regarding the number of entries to the
40 business and the amount of tax due.

1 34006.5. Every person required to pay the tax imposed under
2 this part shall register with the board. Every application for
3 registration shall be made upon a form prescribed by the board
4 and shall set forth the name under which the applicant transacts
5 or intends to transact business, the location of the applicant's place
6 or places of business, and such other information as the board may
7 require. An application for an account shall be authenticated in a
8 form or pursuant to methods as may be prescribed by the board.

9 34007. The board shall administer and collect the tax imposed
10 by this part pursuant to the Fee Collection Procedures Law (Part
11 30 (commencing with Section 55001)). For purposes of this part,
12 the references in the Fee Collection Procedures Law to "fee" shall
13 include the tax imposed by this part and references to "feepayer"
14 shall include a person required to pay the tax imposed by this part.

15 34008. The board shall enforce the provisions of this part and
16 may prescribe, adopt, and enforce rules and regulations relating
17 to the administration and enforcement of this part. The board may
18 prescribe the extent to which any ruling or regulation shall be
19 applied without retroactive effect.

20 34009. (a) The board shall transmit all payments, less refunds
21 and the board's costs of administration, to the Treasurer to be
22 deposited in the State Treasury to the credit of the Sexual Assault
23 Treatment and Prevention Fund, which is hereby created.

24 (b) Moneys in the Sexual Assault Treatment and Prevention
25 Fund shall, upon appropriation by the Legislature, be used as
26 specified in Section 26300 of the Health and Safety Code.

27 SEC. 5. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

36 SEC. 6. The provisions of this act shall become operative on
37 the first day of the first calendar quarter commencing more than
38 90 days after the effective date of this act.

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