

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE MAY 7, 2013

SENATE BILL

No. 782

Introduced by Senator DeSaulnier

February 22, 2013

~~An act to add and repeal 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 and repeal Part 14.7 (commencing with Section 34001) to Division 2 of the Revenue and Taxation Code, relating to sexual assaults. An act to add and repeal Article 13.51 (commencing with Section 18846) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 782, as amended, DeSaulnier. ~~Sexual assault treatment and prevention: sexually oriented business tax. Income taxes: voluntary contributions: California Sexual Violence Victim Services Fund.~~

The Personal Income Tax Law authorizes an individual to contribute amounts in excess of his or her tax liability for the support of specified funds.

This bill would additionally allow an individual to designate on his or her tax return that a specified amount in excess of his or her tax liability be transferred to the California Sexual Violence Victim Services Fund, which would be created by this bill. The bill would prohibit a voluntary contribution designation for the California Sexual Violence Victim Services Fund from being added on the tax return until another voluntary contribution designation is removed.

The bill would require moneys in the California Sexual Violence Victim Services Fund, upon appropriation by the Legislature, to be

allocated to the Franchise Tax Board and the Controller for reimbursement of costs, as provided, and the balance to the EpiCenter of the Safe and Active Communities Branch of the State Department of Public Health for allocation to the California Coalition Against Sexual Assault (CALCASA), for the award of grants to support CALCASA rape crisis center programs for victims of rape and sexual assault.

The bill would provide that these provisions would remain in effect only until January 1 of the 5th taxable year following the first appearance of the California Sexual Violence Victim Services Fund on the tax return, but would further provide for an earlier repeal if the Franchise Tax Board determines that the amount of contributions estimated to be received during a calendar year will not equal or exceed the minimum contribution amount, as defined, for that calendar year, in which case these provisions would be repealed on December 1 of that year.

~~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, until January 1, 2024, 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. This bill would prohibit the Office of Emergency Services from allocating any funds until an appellate court has determined that the tax on persons operating a sexually oriented business is not unconstitutional.~~

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

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

1 *SECTION 1. Article 13.51 (commencing with Section 18846)*
2 *is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue*
3 *and Taxation Code, to read:*

4
5 *Article 13.51. California Sexual Violence Victim Services Fund*

6
7 *18846. (a) An individual may designate on the tax return that*
8 *a contribution in excess of the tax liability, if any, be made to the*
9 *California Sexual Violence Victim Services Fund established by*
10 *Section 18846.1. That designation is to be used as a voluntary*
11 *contribution on the tax return.*

12 *(b) The contributions shall be in full dollar amounts and may*
13 *be made individually by each signatory on a joint return.*

14 *(c) A designation under subdivision (a) shall be made for a*
15 *taxable year on the original return for that taxable year, and once*
16 *made shall be irrevocable. If payments and credits reported on*
17 *the return, together with any other credits associated with the*
18 *individual's account, do not exceed the individual's liability, the*
19 *return shall be treated as though no designation has been made.*
20 *If a designee is not specified, the contribution shall be transferred*
21 *to the General Fund after reimbursement of the direct actual costs*
22 *of the Franchise Tax Board for the collection and administration*
23 *of funds under this article.*

24 *(d) If an individual designates a contribution to more than one*
25 *account or fund listed on the tax return, and the amount available*
26 *is insufficient to satisfy the total amount designated, the*

1 contribution shall be allocated among the designees on a pro rata
2 basis.

3 (e) The Franchise Tax Board shall revise the form of the return
4 to include a space labeled “California Sexual Violence Victim
5 Services Fund” to allow for the designation permitted under
6 subdivision (a). The form shall also include in the instructions
7 information that the contribution may be in the amount of one
8 dollar (\$1) or more and that the contribution shall be used to
9 further the services that California’s rape crisis centers provide
10 for victims of rape or sexual assault.

11 (f) Notwithstanding any other law, a voluntary contribution
12 designation for the California Sexual Violence Victim Services
13 Fund shall not be added on the tax return until another voluntary
14 contribution designation is removed.

15 (g) A deduction shall be allowed under Article 6 (commencing
16 with Section 17201) of Chapter 3 of Part 10 for any contribution
17 made pursuant to subdivision (a).

18 18846.1. There is hereby established in the State Treasury the
19 California Sexual Violence Victim Services Fund to receive
20 contributions made pursuant to Section 18846. The Franchise Tax
21 Board shall notify the Controller of both the amount of money paid
22 by taxpayers in excess of their tax liability and the amount of refund
23 money that taxpayers have designated pursuant to Section 18846
24 to be transferred to the California Sexual Violence Victim Services
25 Fund. The Controller shall transfer from the Personal Income Tax
26 Fund to the California Sexual Violence Victim Services Fund an
27 amount not in excess of the sum of the amounts designated by
28 individuals pursuant to Section 18846 for payment into that fund.

29 18846.2. All moneys transferred to the California Sexual
30 Violence Victim Services Fund, upon appropriation by the
31 Legislature, shall be allocated as follows:

32 (a) To the Franchise Tax Board and the Controller for
33 reimbursement of all costs incurred by the Franchise Tax Board
34 and the Controller in connection with their duties under this article.

35 (b) To the EpiCenter of the Safe and Active Communities Branch
36 of the State Department of Public Health for allocation to the
37 California Coalition Against Sexual Assault (CALCASA) for the
38 award of grants to support CALCASA rape crisis center programs
39 for victims of rape and sexual assault. The EpiCenter of the Safe

1 *and Active Communities Branch of the State Department of Public*
2 *Health shall not use these funds for its administrative costs.*

3 *18846.3. (a) Except as otherwise provided in subdivision (b),*
4 *this article shall remain in effect only until January 1 of the fifth*
5 *taxable year following the first appearance of the California Sexual*
6 *Violence Victim Services Fund on the personal income tax return,*
7 *and is repealed as of December 1 of that year.*

8 *(b) (1) By September 1 of the second calendar year and each*
9 *subsequent calendar year that the California Sexual Violence*
10 *Victim Services Fund appears on the tax return, the Franchise Tax*
11 *Board shall do all of the following:*

12 *(A) Determine the minimum contribution amount required to*
13 *be received during the next calendar year for the fund to appear*
14 *on the tax return for the taxable year that includes that next*
15 *calendar year.*

16 *(B) Provide written notification to the EpiCenter of the Safe*
17 *and Active Communities Branch of the State Department of Public*
18 *Health of the amount determined in subparagraph (A).*

19 *(C) Determine whether the amount of contributions estimated*
20 *to be received during the calendar year will equal or exceed the*
21 *minimum contribution amount determined by the Franchise Tax*
22 *Board for the calendar year pursuant to subparagraph (A). The*
23 *Franchise Tax Board shall estimate the amount of contributions*
24 *to be received by using the actual amounts received and an*
25 *estimate of the contributions that will be received by the end of*
26 *that calendar year.*

27 *(2) If the Franchise Tax Board determines that the amount of*
28 *the contributions estimated to be received during a calendar year*
29 *will not at least equal the minimum contribution amount for the*
30 *calendar year, this article shall be inoperative with respect to*
31 *taxable years beginning on or after January 1 of that calendar*
32 *year and shall be repealed on December 1 of that year.*

33 *(3) For purposes of this section, the minimum contribution*
34 *amount for a calendar year means two hundred fifty thousand*
35 *dollars (\$250,000) for the second calendar year after the first*
36 *appearance of the California Sexual Violence Victim Services*
37 *Fund on the personal income tax return or the minimum*
38 *contribution amount as adjusted pursuant to subdivision (c).*

39 *(c) For each calendar year, beginning with the third calendar*
40 *year after the first appearance of the California Sexual Violence*

1 *Victim Services Fund on the personal income tax return, the*
2 *Franchise Tax Board shall adjust, on or before September 1 of*
3 *that calendar year, the minimum contribution amount specified in*
4 *subdivision (b) as follows:*

5 (1) *The minimum contribution amount for the calendar year*
6 *shall be an amount equal to the product of the minimum*
7 *contribution amount for the prior calendar year multiplied by the*
8 *inflation factor adjustment as specified in subparagraph (A) of*
9 *paragraph (2) of subdivision (h) of Section 17041, rounded off to*
10 *the nearest dollar.*

11 (2) *The inflation factor adjustment used for the calendar year*
12 *shall be based on the figures for the percentage change in the*
13 *California Consumer Price Index for all items received on or*
14 *before August 1 of the calendar year pursuant to paragraph (1)*
15 *of subdivision (h) of Section 17041.*

16 (d) *Notwithstanding the repeal of this article, any contribution*
17 *amounts designated pursuant to this article prior to its repeal shall*
18 *continue to be transferred and disbursed in accordance with this*
19 *article as in effect immediately prior to that repeal.*

20 ~~SECTION 1. The Legislature finds and declares all of the~~
21 ~~following:~~

22 ~~(a) It is the intent of the Legislature that an award of a grant to~~
23 ~~an organization pursuant to this act shall not result in a reduction~~
24 ~~in moneys appropriated by the Legislature to that organization.~~
25 ~~The taxes imposed by this measure are intended to ameliorate the~~
26 ~~negative secondary effects associated with the combination of~~
27 ~~sexually oriented businesses and alcohol so as to promote the~~
28 ~~health, safety, and welfare of the citizens of California.~~

29 ~~(b) Sexually oriented businesses that serve alcohol or that are~~
30 ~~located near liquor-serving businesses pose larger and qualitatively~~
31 ~~different ambient public safety hazards. Governments rely on this~~
32 ~~consistent finding of the empirical secondary effect literature as a~~
33 ~~rationale for limiting nudity in liquor-serving businesses.~~

34 ~~(c) Accordingly, the consumption of alcohol on the premises~~
35 ~~of a sexually oriented business contributes to the need for~~
36 ~~community-based services to respond to victims of all forms of~~
37 ~~sexual exploitation, including sexual harassment, trafficking, and~~
38 ~~sexual assault.~~

39 ~~(d) Rape crisis centers and other victim service providers play~~
40 ~~a unique role in responding to assault, sexual abuse, trafficking,~~

1 and domestic violence. They also work to prevent crimes such as
2 these through the creation of public awareness and prevention that
3 empowers and restores persons who have been sexually violated.

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

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

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

13
14 ~~CHAPTER 20. SEXUAL ASSAULT TREATMENT AND PREVENTION~~
15

16 ~~26300. (a) The Office of Emergency Services shall use funds~~
17 ~~transferred from the Sexual Assault Treatment and Prevention~~
18 ~~Fund. Funding allocations shall be determined by the Office of~~
19 ~~Emergency Services, in collaboration with the State Advisory~~
20 ~~Committee on Sexual Assault Victim Services, as stipulated in~~
21 ~~Section 13836 of the Penal Code. Except as provided in subdivision~~
22 ~~(f), funds transferred from the Sexual Assault Treatment and~~
23 ~~Prevention Fund shall be used only for the following purposes:~~

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

27 ~~(2) To award grants to, and contracts with, a statewide~~
28 ~~organization organized and operated as described in Section~~
29 ~~501(e)(3) of the Internal Revenue Code that has the primary~~
30 ~~purpose of ending sexual violence in this state, for programs for~~
31 ~~the intervention and prevention of sexual violence, outreach~~
32 ~~programs, training, and technical assistance to and support of~~
33 ~~California rape crisis centers, as stipulated in Section 13837 of~~
34 ~~Penal Code, and other organizations funded by the Sexual Assault~~
35 ~~Treatment and Prevention Fund to prevent and intervene in sexual~~
36 ~~violence in underserved communities. Funds awarded pursuant to~~
37 ~~this paragraph shall be administered by the Office of Emergency~~
38 ~~Services and approved by the State Advisory Committee on Sexual~~
39 ~~Assault Victim Services, as authorized in Section 13836 of the~~
40 ~~Penal Code.~~

- 1 ~~(3) Civil legal services to sexual assault survivors.~~
- 2 ~~(4) Coordination of sexual assault response teams that provide~~
3 ~~multidisciplinary response services to sexual assault survivors.~~
- 4 ~~(5) Culturally and linguistically appropriate intervention services~~
5 ~~to sexual assault survivors from underrepresented or underserved~~
6 ~~communities.~~
- 7 ~~(6) To award grants to reimburse the payment of adult and~~
8 ~~adolescent sexual assault forensic exams.~~
- 9 ~~(7) To award grants to nonprofit organizations to support~~
10 ~~intervention and treatment services for victims of sexual~~
11 ~~exploitation of human trafficking. Eligible programs for these~~
12 ~~grants include, but are not limited to, organizations that provide~~
13 ~~services for victims of sexual and domestic violence and work to~~
14 ~~end and prevent sexual and domestic violence.~~
- 15 ~~(8) To award grants to nonprofit organizations to support the~~
16 ~~intervention and treatment services for victims of sexual assault~~
17 ~~as part of dating or domestic violence, including, but not limited~~
18 ~~to, sexual assault services programs, as defined in Section 13837~~
19 ~~of the Penal Code, or domestic violence victim service~~
20 ~~organizations, as defined in Section 1037.1 of the Evidence Code.~~
21 ~~Funds awarded pursuant to this paragraph shall be administered~~
22 ~~by the Office of Emergency Services and approved by the State~~
23 ~~Advisory Committee on Sexual Assault Victim Services, as~~
24 ~~stipulated in Section 13836 of the Penal Code.~~
- 25 ~~(b) Grants awarded pursuant to paragraphs (3) to (8), inclusive,~~
26 ~~of subdivision (a) shall be awarded as a result of a competitive~~
27 ~~request for proposal process.~~
- 28 ~~(c) No more than 10 percent annually of the funds deposited in~~
29 ~~the Sexual Assault Treatment and Prevention Fund may be used~~
30 ~~for the administration by the Office of Emergency Services of~~
31 ~~these grant programs.~~
- 32 ~~(d) The Office of Emergency Services shall not allocate any~~
33 ~~funds under this section until an appellate court has determined~~
34 ~~that the tax imposed by Part 14.7 (commencing with Section~~
35 ~~34001) of Division 2 of the Revenue and Taxation Code is not~~
36 ~~unconstitutional. The Office of Emergency Services may allocate~~
37 ~~funds immediately after the determination.~~
- 38 ~~(e) Notwithstanding subdivisions (a) and (b), the Office of~~
39 ~~Emergency Services shall not allocate more than 20 percent of~~
40 ~~moneys in the Sexual Assault Treatment and Prevention Fund in~~

1 any calendar year to one group, organization, corporation,
2 partnership, or other entity, whether for profit or nonprofit, or
3 individual.

4 (f) (1) Notwithstanding subdivision (a), two hundred thousand
5 dollars (\$200,000) shall be appropriated biennially by the
6 Legislature to the Office of Emergency Services from the Sexual
7 Assault Treatment and Prevention Fund to fund a report created
8 by the Office of Emergency Services to the Governor and the
9 Legislature reporting the following:

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

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

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

19 (2) Notwithstanding Section 10231.5 of the Government Code,
20 a report, pursuant to paragraph (1), shall be submitted on July 1,
21 2015, and biennially thereafter.

22 (3) A report to be submitted pursuant to this subdivision shall
23 be submitted in compliance with Section 9795 of the Government
24 Code.

25 (g) This chapter shall remain in effect only until January 1,
26 2024, and as of that date is repealed.

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

28 13836. The office shall establish the State Advisory Committee
29 on Sexual Assault Victim Services which shall develop a course
30 of training for district attorneys in the investigation and prosecution
31 of sexual assault cases, child sexual exploitation cases, and child
32 sexual abuse cases and shall approve grants awarded pursuant to
33 Section 13837 and Chapter 20 (commencing with Section 26300)
34 of Division 20 of the Health and Safety Code. The courses shall
35 include training in the unique emotional trauma experienced by
36 victims of these crimes.

37 It is the intent of the Legislature in the enactment of this chapter
38 to encourage the establishment of sex crime prosecution units,
39 which shall include, but not be limited to, child sexual exploitation

1 and child sexual abuse cases, in district attorneys' offices
2 throughout the state.

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

5

6 PART 14.7. SEXUALLY ORIENTED BUSINESS TAX

7

8 34001. For purposes of this part, the following definitions
9 apply:

10 (a) "Nude" means clothed in a manner that leaves uncovered
11 or visible through less than fully opaque clothing, any portion of
12 the genitals or, in the case of a female, any portion of the breasts
13 below the top of the areola of the breasts.

14 (b) "Sexually oriented business" means a nightclub, bar,
15 restaurant, or similar commercial enterprise that does both of the
16 following:

17 (1) Provides for an audience of two or more individuals live
18 nude entertainment or live nude performances where the nudity is
19 a function of everyday business operations and where nudity is a
20 planned and intentional part of the entertainment or performance.

21 (2) Authorizes on-premises consumption of alcoholic beverages,
22 regardless of whether the consumption of alcoholic beverages is
23 under a license or permit issued under the Alcoholic Beverage
24 Control Act.

25 34002. The tax imposed by this part shall be in addition to any
26 other taxes imposed by law.

27 34003. For the privilege of operating a sexually oriented
28 business, a tax is hereby imposed upon all persons who operate a
29 sexually oriented business at the rate of ten dollars (\$10) per visit
30 by a customer to the business inclusive of admission and reentry.

31 34004. A person who operates a sexually oriented business
32 shall record daily in the manner required by the board the number
33 of customers admitted to the business.

34 34005. A person who operates a sexually oriented business
35 may not require the tax imposed by this part to be reimbursed by
36 an employee or independent contractor of the sexually oriented
37 business, but may require the tax to be reimbursed by the customer
38 whose entry the tax is imposed upon, in a manner prescribed by
39 the board.

1 34006. ~~(a) The taxes imposed by this part shall be due and~~
2 ~~payable to the board on or before the last day of the month~~
3 ~~following each calendar quarter.~~

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

7 ~~(2) The board may prescribe those forms and reporting~~
8 ~~requirements as are necessary to implement the tax, including, but~~
9 ~~not limited to, information regarding the number of entries to the~~
10 ~~business and the amount of tax due.~~

11 ~~34006.5. Every person required to pay the tax imposed under~~
12 ~~this part shall register with the board. Every application for~~
13 ~~registration shall be made upon a form prescribed by the board~~
14 ~~and shall set forth the name under which the applicant transacts~~
15 ~~or intends to transact business, the location of the applicant's place~~
16 ~~or places of business, and such other information as the board may~~
17 ~~require. An application for an account shall be authenticated in a~~
18 ~~form or pursuant to methods as may be prescribed by the board.~~

19 ~~34007. The board shall administer and collect the tax imposed~~
20 ~~by this part pursuant to the Fee Collection Procedures Law (Part~~
21 ~~30 (commencing with Section 55001)). For purposes of this part,~~
22 ~~the references in the Fee Collection Procedures Law to "fee" shall~~
23 ~~include the tax imposed by this part and references to "feepayer"~~
24 ~~shall include a person required to pay the tax imposed by this part.~~

25 ~~34008. The board shall enforce the provisions of this part and~~
26 ~~may prescribe, adopt, and enforce rules and regulations relating~~
27 ~~to the administration and enforcement of this part. The board may~~
28 ~~prescribe the extent to which any ruling or regulation shall be~~
29 ~~applied without retroactive effect.~~

30 ~~34009. (a) The board shall transmit all payments, less refunds~~
31 ~~and the board's costs of administration, to the Treasurer to be~~
32 ~~deposited in the State Treasury to the credit of the Sexual Assault~~
33 ~~Treatment and Prevention Fund, which is hereby created.~~

34 ~~(b) Moneys in the Sexual Assault Treatment and Prevention~~
35 ~~Fund shall, upon appropriation by the Legislature, be transferred~~
36 ~~as specified in Section 26300 of the Health and Safety Code.~~

37 ~~34010. This part shall remain in effect only until January 1,~~
38 ~~2024, and as of that date is repealed.~~

39 ~~SEC. 5. No reimbursement is required by this act pursuant to~~
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.
8 SEC. 6. The provisions of this act shall become operative on
9 the first day of the first calendar quarter commencing more than
10 90 days after the effective date of this act.

O