Introduced by Assembly Members Bonta and Thurmond

August 26, 2015

An act to add Section 22971.05 to the Business and Professions Code, and to amend Sections 30014, 30104, 30108, 30166, and 30181 of, and to add Article 2.5 (commencing with Section 30130.51) to Chapter 2 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to public health, and making an appropriation therefor.

LEGISLATIVE COUNSEL’S DIGEST


The Cigarette and Tobacco Products Licensing Act of 2003 requires the State Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products. Under existing law, a violation of this act is a misdemeanor.

This bill would expand the definition of tobacco products for purposes of that act to include electronic cigarettes, as defined, thereby subjecting manufacturers, importers, distributors, wholesalers, and retailers of electronic cigarettes to the same licensing requirements imposed pursuant to that act on manufacturers, importers, distributors, wholesalers, and retailers of tobacco products. By broadening the act to apply to manufacturers, importers, distributors, wholesalers, and retailers of electronic cigarettes, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.
The Cigarette and Tobacco Products Tax Law, the violation of which is a crime, imposes a tax on distributors of cigarettes at the rate of $0.87 per package of 20 cigarettes and a tax on distributors of tobacco products, based on wholesale cost, at a rate determined annually that is equivalent to the combined rate of all taxes imposed on cigarettes, and at a rate equivalent to $0.50 per package of 20 cigarettes. Revenues from taxes imposed under this law are deposited in specified accounts. These taxes are inclusive of the 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).

This bill would, 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 $0.10 for each cigarette distributed, which would be $2 per pack; would require a dealer and a wholesaler to file a return with the State Board of Equalization showing the number of cigarettes in its possession or under its control on that date, and impose a related floor stock tax; and would require a licensed cigarette distributor to file a return with the board and pay a cigarette indicia adjustment tax at the rate equal to the difference between the existing tax rate and the tax rate imposed by this bill for cigarette tax stamps in its possession or under its control on that date. Because the bill would impose an additional tax on cigarettes under the Cigarette and Tobacco Products Tax Law, it would thereby increase the tax upon the distribution of tobacco products pursuant to Proposition 99, the revenues from which are required to be deposited in the Cigarette and Tobacco Products Surtax Fund.

This bill would additionally, 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 a tax on the distribution of electronic cigarettes, as defined, based on the wholesale cost, at a rate determined annually that is equivalent to the cigarette tax rate, which would be $2.87 per package of 20 cigarettes.

This bill would expand the definition of “tobacco products” for purposes of the Cigarette and Tobacco Products Tax Law to include electronic cigarettes, thereby subjecting distributors, wholesalers, and transporters of electronic cigarettes to, among other things, the same licensing, bonding, and registration requirements imposed on distributors, wholesalers, and transporters of tobacco products.

This bill would provide that the revenues collected from the taxes imposed on cigarettes and electronic cigarettes by this bill, less refunds,
would not be considered General Fund revenues and would be deposited in the California Health Care, Research, and Prevention Tobacco Tax Act of 2015 Fund created by this bill. The bill would require moneys in the California Health Care, Research, and Prevention Tobacco Tax Act of 2015 Fund to be continuously appropriated without regard to fiscal year to the Controller, to be used to fund health care and prevention programs.

Because this bill would impose new requirements under the Cigarette and Tobacco Products Tax 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 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 $2⁄3 of the membership of each house of the Legislature.

State-mandated local program: yes.

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Tobacco use is the single most preventable cause of death and disease in California, claiming the lives of more than 40,000 people every year. Each year thousands of Californians require medical and dental treatment as a result of tobacco use.

(b) Health care treatment of all types of cancer, cardiovascular and lung disease, oral disease, and tobacco-related diseases and conditions continues to impose a significant financial burden upon California’s overstressed health care system. Tobacco use costs Californians more than $13.29 billion in health care expenses every year, of which $3.5 billion is paid for by taxpayers through existing health care programs and services that provide health care, treatment, and services for Californians. The cost of lost productivity due to tobacco use adds an additional estimated $10.35
billion to the annual economic consequences of smoking and
tobacco use in California.
(c) An increase in the tobacco tax is an appropriate way to
decrease tobacco use and mitigate the costs of health care treatment
and improve existing programs providing quality health care and
access to health care services for families and children. It will save
lives and save state and local governments money in the future.
(d) Most electronic cigarettes contain nicotine, which is derived
from tobacco and is a highly addictive drug. Electronic cigarettes
are currently not subject to any tobacco taxation, making them
cheaper and potentially more attractive, especially to young people.
(e) There are more than 470 electronic cigarette brands for sale
today offered in over 7,700 flavors including candy-flavors that
appeal to youth, such as Captain Crunch, gummy bear, cotton
candy, Atomic Fireball, and fruit loops. The fastest growing age
range for electronic cigarettes is middle school and high school
students and according to the Centers for Disease Control,
electronic cigarette use among this group tripled from 2013 to
2014.
(f) Increasing the cost of cigarettes and tobacco products is
widely recognized as the most effective way to reduce smoking
across California, especially by young people. The 2000 U.S.
Surgeon General’s Report, Reducing Tobacco Use, found that
raising tobacco-product prices decreases the prevalence of tobacco
use, particularly among kids and young adults, and that tobacco
tax increases produce “substantial long-term improvements in
health.” From its review of existing research, the report concluded
that raising tobacco taxes is one of the most effective tobacco
prevention and control strategies. Reducing smoking will save
lives and saves state and local governments money in the future.
(g) Because increasing the tobacco tax will reduce smoking and
use of other tobacco products, it is important to protect existing
tobacco tax-funded programs from a decline in tax revenues.
(h) It is important that funding be dedicated to health care and
prevention programs.
(i) California currently taxes cigarettes at only $0.87 per pack,
and ranks 35th in tobacco tax rates, reflecting one of the lowest
tobacco tax rates in the United States. The national average is
$1.60 per pack. Thirty-five states have cigarette tax rates of $1.00
per pack or higher, and California is well below other western

SEC. 2. Section 22971.05 is added to the Business and Professions Code, to read:
22971.05. For purposes of this division, beginning on and after the first day of the first calendar quarter commencing more than 90 days after the effective date of this section, "tobacco products" also includes electronic cigarettes, as that term is defined in subdivision (b) of Section 30130.51 of the Revenue and Taxation Code.

SEC. 3. Section 30014 of the Revenue and Taxation Code is amended to read:
30014. (a) "Transporter" means any person transporting into or within this state any of the following:
(1) Cigarettes not contained in packages to which are affixed California cigarette tax stamps or meter impressions.
(2) Tobacco products upon which the tobacco products surtax imposed by Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 has not been paid.
(3) Electronic cigarettes upon which the electronic cigarette tax imposed by Section 30130.52 has not been paid.

(b) "Transporter" shall not include any of the following:
(1) A licensed distributor.
(2) A common carrier.
(3) A person transporting cigarettes and tobacco products under federal internal revenue bond or customs control that are non-tax-paid under Chapter 52 of the Internal Revenue Act of 1954 as amended.

SEC. 4. Section 30104 of the Revenue and Taxation Code is amended to read:
30104. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by a distributor to a common carrier engaged in interstate or foreign passenger service or to a person authorized to sell cigarettes or tobacco products on the facilities of the carrier. Whenever cigarettes or tobacco products are sold by distributors to common carriers engaged in interstate or foreign passenger service for use or sale on facilities of the carriers, or to persons authorized to sell cigarettes or tobacco products on those facilities, the tax imposed by Sections 30101,
30123, and 30131.2 under this part shall not be levied with respect to the sales of the cigarettes or tobacco products by the distributors, but a tax is hereby levied upon the carriers or upon the persons authorized to sell cigarettes or tobacco products on the facilities of the carriers, as the case may be, for the privilege of making sales in California at the same rate as set forth in Sections 30101, 30123, and 30131.2 under this part. Those common carriers and authorized persons shall pay the tax imposed by this section and file reports with the board, as provided in Section 30186.

SEC. 5. Section 30108 of the Revenue and Taxation Code is amended to read:

30108. (a) Every distributor engaged in business in this state and selling or accepting orders for cigarettes or tobacco products with respect to the sale of which the tax imposed by Sections 30101, 30123, and 30131.2 under this part is inapplicable shall, at the time of making the sale or accepting the order or, if the purchaser is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the purchaser becomes so obligated, collect the tax from the purchaser, if the purchaser is other than a licensed distributor, and shall give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) Every person engaged in business in this state and making gifts of untaxed cigarettes or tobacco products as samples with respect to which the tax imposed by Sections 30101, 30123, and 30131.2 under this part is inapplicable shall, at the time of making the gift or, if the donee is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the donee becomes so obligated, collect the tax from the donee, if the donee is other than a licensed distributor, and shall give the donee a receipt therefor in the manner and form prescribed by the board. This section shall not apply to those distributions of cigarettes or tobacco products which are exempt from tax under Section 30105.5.

(c) “Engaged in business in the state” means and includes any of the following:

(1) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or
sample room or place, warehouse or storage place, or other place
of business.

(2) Having any representative, agent, salesperson, canvasser,
or solicitor operating in this state under the authority
of the distributor or its subsidiary for the purpose of selling,
delivering, or the taking of orders for cigarettes or tobacco
products.

(d) The taxes required to be collected by this section constitute
debts owed by the distributor, or other person required to collect
the taxes, to the state.

SEC. 6. Article 2.5 (commencing with Section 30130.51) is
added to Chapter 2 of Part 13 of Division 2 of the Revenue and
Taxation Code, to read:

Article 2.5. The California Health Care, Research, and
Prevention Tobacco Tax Act of 2015

30130.51. For the purposes of this article:
(a) “Cigarette” has the same meaning as in Section 30003 as it
read on January 1, 2015.
(b) “Electronic cigarettes” means any device that is intended to
be used to deliver aerosolized or vaporized nicotine to the person
inhaling from the device, including, but not limited to, an
e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic
cigarettes include any component, part, or accessory of that a
device that is used during the operation of the device, whether sold
separately or as a package with that device, if it is intended to be
used to deliver aerosolized or vaporized nicotine to the person
using the device. Electronic cigarettes also include any liquid or
substance containing nicotine intended to be inhaled during the
use of the device. Electronic cigarettes do not include any battery,
battery charger, carrying case, or other accessory not used in the
operation of the device if sold separately. E-cigarettes shall not
include any product that has been approved by the United States
Food and Drug Administration for sale as a tobacco cessation
product or for other therapeutic purposes where that product is
marketed and sold solely for such an approved purpose.
(c) The references to “tobacco products” in this part, except in
Article 2 (commencing with Section 30121) and Article 3
(commencing with Section 30131) of Chapter 2 (commencing with
Section 30101), and Chapter 9 (commencing with Section 30461), shall include electronic cigarettes, unless the context otherwise requires.

30130.52. (a) In addition to any other taxes imposed upon the distribution of cigarettes, there shall be imposed an additional tax upon every distributor of cigarettes at the rate of one hundred mills ($0.10) for each cigarette distributed on or after the first day of the first calendar quarter commencing more than 90 days after the effective date of this article.

(b) (1) There shall be imposed upon every distributor a tax upon the distribution of electronic cigarettes, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, that is equivalent to the total rate of tax imposed on cigarettes by this part, on or after the first day of the first calendar quarter commencing more than 90 days after the effective date of this article.

(2) The board may adopt any regulations necessary to enforce and administer the tax imposed in paragraph (1), as provided for in subdivision (c) of Section 30130.51, including, but not limited to, regulations that address the following:

(A) The imposition of tax on the distribution of any liquid or substance containing nicotine, any device intended to be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, and any component, part, or accessory of such a device that is intended to be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device.

(B) Describing who is a distributor of electronic cigarettes, which is consistent with the definition of the term “distributor” in Section 30111.

(c) The wholesale cost used to calculate the amount of tax due under subdivision (b) does not include the wholesale cost of electronic cigarettes that were returned by a customer during the same reporting period in which the electronic cigarettes were distributed, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this subdivision, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the
average cost of rehandling and restocking returned merchandise
during the previous accounting cycle.
30130.53. (a) (1) Every dealer and wholesaler, for the
privilege of holding or storing cigarettes for sale, use, or
consumption, shall pay a floor stock tax for each cigarette in its
possession or under its control in this state at 12:01 a.m. on the
first day of the first calendar quarter commencing more than 90
days after the effective date of this article at the rate of one hundred
mills ($0.10) for each cigarette.
(2) Every dealer and wholesaler shall file a return with the State
Board of Equalization on or before the first day of the first calendar
quarter commencing more than 180 days after the effective date
of this act on a form prescribed by the State Board of Equalization,
showing the number of cigarettes in its possession or under its
control in this state at 12:01 a.m. on the first day of the first
calendar quarter commencing more than 90 days after the effective
date of this article. The amount of tax shall be computed and shown
on the return.
(b) (1) Every licensed cigarette distributor, for the privilege of
distributing cigarettes and for holding or storing cigarettes for sale,
use, or consumption, shall pay a cigarette indicia adjustment tax
for each California cigarette tax stamp that is affixed to any
package of cigarettes and for each unaffixed California cigarette
tax stamp in its possession or under its control at 12:01 a.m. on
the first day of the first calendar quarter commencing more than
90 days after the effective date of this article at the following rates:
(A) Two dollars and fifty cents ($2.50) for each stamp bearing
the designation “25.”
(B) Two dollars ($2.00) for each stamp bearing the designation
“20.”
(C) One dollar ($1.00) for each stamp bearing the designation
“10.”
(2) Every licensed cigarette distributor shall file a return with
the board on or before the first day of the first calendar quarter
commencing 180 days after the effective date of this act on a form
prescribed by the board, showing the number of stamps described
in subparagraphs (A), (B), and (C) of paragraph (1). The amount
of tax shall be computed and shown on the return.
(c) The taxes required to be paid by this section are due and
payable on or before the first day of the first calendar quarter
commencing 180 days after the effective date of this act. Payments
shall be made by remittances payable to the board and the payments
shall accompany the return and forms required to be filed by this
section.
(d) Any amount required to be paid by this section that is not
timely paid shall bear interest at the rate and by the method
established pursuant to Section 30202 from the first day of the first
calendar quarter commencing 180 days after the effective date of
this article until paid, shall be subject to determination,
redetermination, and any penalties provided with respect to
determinations and redeterminations.
30130.54. (a) The California Health Care, Research, and
Prevention Tobacco Tax Act of 2015 Fund is hereby established
in the State Treasury for the purposes set forth in this article.
Notwithstanding Section 30461, all revenues, less refunds, derived
from the taxes imposed by this article on cigarettes and electronic
cigarettes shall be deposited in the California Health Care,
(b) Notwithstanding any other law, the California Health Care,
Research, and Prevention Tobacco Tax Act of 2015 Fund is a trust
fund established solely to carry out the purposes set forth in this
article, and all revenues deposited into the California Health Care,
Research, and Prevention Tobacco Tax Act of 2015 Fund, together
with interest earned by the fund, are hereby continuously
appropriated without regard to fiscal year to the Controller, to be
used to fund health care and prevention programs.
(c) Notwithstanding any other law, the taxes imposed by this
article and the revenue derived therefrom, including investment
interest, shall not be considered to be part of the General Fund, as
that term is used in Chapter 1 (commencing with Section 16300)
of Part 2 of Division 4 of Title 2 of the Government Code, and
shall not be considered General Fund revenue for purposes of
Section 8 of Article XVI of the California Constitution, and its
implementing statutes.
(d) Notwithstanding any other law, revenues deposited into the
California Health Care, Research, and Prevention Tobacco Tax
Act of 2015 Fund, and any interest earned by the fund, shall only
be used for the specific purposes set forth in this article. Revenues
deposited into the California Health Care, Research, and Prevention
Tobacco Tax Act of 2015 Fund shall not be subject to
appropriation, reversion, or transfer by the Legislature, the
Governor, the Director of Finance, or the Controller for any other
purpose, nor shall the funds be loaned to the General Fund or any
other fund of the state or any local government fund.

SEC. 7. Section 30166 of the Revenue and Taxation Code is
amended to read:

30166. Stamps and meter register settings shall be sold at their
denominated values less a discount of 0.85 percent to licensed
distributors. percent, which shall be calculated on the first one
dollar ($1.00) in denomination value. Payment for stamps or meter
register settings shall be made at the time of purchase, provided
that a licensed distributor, subject to the conditions and provisions
of this article, may be permitted to defer payments therefor.

SEC. 8. Section 30181 of the Revenue and Taxation Code is
amended to read:

30181. (a) When-if any tax imposed upon cigarettes under
Article 1 (commencing with Section 30101), Article 2
(commencing with Section 30121), and Article 3 (commencing
with Section 30131) of Chapter 2 this part is not paid through the
use of stamps or meter impressions, the tax shall be due and
payable monthly on or before the 25th day of the month following
the calendar month in which a distribution of cigarettes occurs, or
in the case of a sale of cigarettes on the facilities of a common
carrier for which the tax is imposed pursuant to Section 30104,
the tax shall be due and payable monthly on or before the 25th day
of the month following the calendar month in which a sale of
cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the
form, as prescribed by the board, which may include, but not
be limited to, electronic media respecting the distributions of
tobacco products and their wholesale cost during the preceding
month, and any other information as the board may require to carry
out this part. The return shall be filed with the board on or before
the 25th day of the calendar month following the close of the
monthly period for which it relates, together with a remittance
payable to the board, of the amount of tax, if any, due under Article
2 (commencing with Section 30121) or Article 3 (commencing
with Section 30131) of Chapter 2 for that period.

(c) To facilitate the administration of this part, the board may
require the filing of the returns for longer than monthly periods.
(d) Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(e) This section shall become operative on January 1, 2007.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.