

ASSEMBLY BILL

No. 16

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

AB 16, as introduced, Bonta. Public health: cigarette and tobacco products: electronic cigarettes: taxes: California Health Care, Research, and Prevention Tobacco Tax Act of 2015.

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 $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Tobacco use is the single most preventable cause of death
- 4 and disease in California, claiming the lives of more than 40,000
- 5 people every year. Each year thousands of Californians require
- 6 medical and dental treatment as a result of tobacco use.
- 7 (b) Health care treatment of all types of cancer, cardiovascular
- 8 and lung disease, oral disease, and tobacco-related diseases and
- 9 conditions continues to impose a significant financial burden upon
- 10 California’s overstressed health care system. Tobacco use costs
- 11 Californians more than \$13.29 billion in health care expenses every
- 12 year, of which \$3.5 billion is paid for by taxpayers through existing
- 13 health care programs and services that provide health care,
- 14 treatment, and services for Californians. The cost of lost
- 15 productivity due to tobacco use adds an additional estimated \$10.35

1 billion to the annual economic consequences of smoking and
2 tobacco use in California.

3 (c) An increase in the tobacco tax is an appropriate way to
4 decrease tobacco use and mitigate the costs of health care treatment
5 and improve existing programs providing quality health care and
6 access to health care services for families and children. It will save
7 lives and save state and local governments money in the future.

8 (d) Most electronic cigarettes contain nicotine, which is derived
9 from tobacco and is a highly addictive drug. Electronic cigarettes
10 are currently not subject to any tobacco taxation, making them
11 cheaper and potentially more attractive, especially to young people.

12 (e) There are more than 470 electronic cigarette brands for sale
13 today offered in over 7,700 flavors including candy-flavors that
14 appeal to youth, such as Captain Crunch, gummy bear, cotton
15 candy, Atomic Fireball, and fruit loops. The fastest growing age
16 range for electronic cigarettes is middle school and high school
17 students and according to the Centers for Disease Control,
18 electronic cigarette use among this group tripled from 2013 to
19 2014.

20 (f) Increasing the cost of cigarettes and tobacco products is
21 widely recognized as the most effective way to reduce smoking
22 across California, especially by young people. The 2000 U.S.
23 Surgeon General's Report, Reducing Tobacco Use, found that
24 raising tobacco-product prices decreases the prevalence of tobacco
25 use, particularly among kids and young adults, and that tobacco
26 tax increases produce "substantial long-term improvements in
27 health." From its review of existing research, the report concluded
28 that raising tobacco taxes is one of the most effective tobacco
29 prevention and control strategies. Reducing smoking will save
30 lives and saves state and local governments money in the future.

31 (g) Because increasing the tobacco tax will reduce smoking and
32 use of other tobacco products, it is important to protect existing
33 tobacco tax-funded programs from a decline in tax revenues.

34 (h) It is important that funding be dedicated to health care and
35 prevention programs.

36 (i) California currently taxes cigarettes at only \$0.87 per pack,
37 and ranks 35th in tobacco tax rates, reflecting one of the lowest
38 tobacco tax rates in the United States. The national average is
39 \$1.60 per pack. Thirty-five states have cigarette tax rates of \$1.00
40 per pack or higher, and California is well below other western

1 states (Washington: \$3.025, Oregon: \$1.31, Nevada: \$1.80, and
2 Arizona: \$2.00). California last raised its tobacco tax in 1998.

3 SEC. 2. Section 22971.05 is added to the Business and
4 Professions Code, to read:

5 22971.05. For purposes of this division, beginning on and after
6 the first day of the first calendar quarter commencing more than
7 90 days after the effective date of this section, “tobacco products”
8 also includes electronic cigarettes, as that term is defined in
9 subdivision (b) of Section 30130.51 of the Revenue and Taxation
10 Code.

11 SEC. 3. Section 30014 of the Revenue and Taxation Code is
12 amended to read:

13 30014. (a) “Transporter” means any person transporting into
14 or within this state any of the following:

15 (1) Cigarettes not contained in packages to which are affixed
16 California cigarette tax stamps or meter impressions.

17 (2) Tobacco products upon which the tobacco products surtax
18 imposed by Article 2 (commencing with Section 30121) and Article
19 3 (commencing with Section 30131) of Chapter 2 has not been
20 paid.

21 (3) *Electronic cigarettes upon which the electronic cigarette*
22 *tax imposed by Section 30130.52 has not been paid.*

23 (b) “Transporter” shall not include any of the following:

24 (1) A licensed distributor.

25 (2) A common carrier.

26 (3) A person transporting cigarettes and tobacco products under
27 federal internal revenue bond or customs control that are
28 non-tax-paid under Chapter 52 of the Internal Revenue Act of 1954
29 as amended.

30 SEC. 4. Section 30104 of the Revenue and Taxation Code is
31 amended to read:

32 30104. The taxes imposed by this part shall not apply to the
33 sale of cigarettes or tobacco products by a distributor to a common
34 carrier engaged in interstate or foreign passenger service or to a
35 person authorized to sell cigarettes or tobacco products on the
36 facilities of the carrier. Whenever cigarettes or tobacco products
37 are sold by distributors to common carriers engaged in interstate
38 or foreign passenger service for use or sale on facilities of the
39 carriers, or to persons authorized to sell cigarettes or tobacco
40 products on those facilities, the tax imposed by Sections 30101,

1 ~~30123, and 30131.2~~ *under this part* shall not be levied with respect
 2 to the sales of the cigarettes or tobacco products by the distributors,
 3 but a tax is hereby levied upon the carriers or upon the persons
 4 authorized to sell cigarettes or tobacco products on the facilities
 5 of the carriers, as the case may be, for the privilege of making sales
 6 in California at the same rate as set forth in ~~Sections 30101, 30123,~~
 7 ~~and 30131.2.~~ *under this part.* Those common carriers and
 8 authorized persons shall pay the tax imposed by this section and
 9 file reports with the board, as provided in Section 30186.

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

12 30108. (a) Every distributor engaged in business in this state
 13 and selling or accepting orders for cigarettes or tobacco products
 14 with respect to the sale of which the tax imposed by ~~Sections~~
 15 ~~30101, 30123, and 30131.2~~ *under this part* is inapplicable shall,
 16 at the time of making the sale or accepting the order or, if the
 17 purchaser is not then obligated to pay the tax with respect to his
 18 or her distribution of the cigarettes or tobacco products, at the time
 19 the purchaser becomes so obligated, collect the tax from the
 20 purchaser, if the purchaser is other than a licensed distributor, and
 21 shall give to the purchaser a receipt therefor in the manner and
 22 form prescribed by the board.

23 (b) Every person engaged in business in this state and making
 24 gifts of untaxed cigarettes or tobacco products as samples with
 25 respect to which the tax imposed by ~~Sections 30101, 30123, and~~
 26 ~~30131.2~~ *under this part* is inapplicable shall, at the time of making
 27 the gift or, if the donee is not then obligated to pay the tax with
 28 respect to his or her distribution of the cigarettes or tobacco
 29 products, at the time the donee becomes so obligated, collect the
 30 tax from the donee, if the donee is other than a licensed distributor,
 31 and shall give the donee a receipt therefor in the manner and form
 32 prescribed by the board. This section shall not apply to those
 33 distributions of cigarettes or tobacco products ~~which~~ *that* are
 34 exempt from tax under Section 30105.5.

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

37 (1) Maintaining, occupying, or using, permanently or
 38 temporarily, directly or indirectly, or through a subsidiary, or agent,
 39 by whatever name called, an office, place of distribution, sales or

1 sample room or place, warehouse or storage place, or other place
2 of business.

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

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

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

14
15 Article 2.5. The California Health Care, Research, and
16 Prevention Tobacco Tax Act of 2015

17
18 30130.51. For the purposes of this article:

19 (a) “Cigarette” has the same meaning as in Section 30003 as it
20 read on January 1, 2015.

21 (b) “Electronic cigarettes” means any device that is intended to
22 be used to deliver aerosolized or vaporized nicotine to the person
23 inhaling from the device, including, but not limited to, an
24 e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic
25 cigarettes include any component, part, or accessory of that a
26 device that is used during the operation of the device, whether sold
27 separately or as a package with that device, if it is intended to be
28 used to deliver aerosolized or vaporized nicotine to the person
29 using the device. Electronic cigarettes also include any liquid or
30 substance containing nicotine intended to be inhaled during the
31 use of the device. Electronic cigarettes do not include any battery,
32 battery charger, carrying case, or other accessory not used in the
33 operation of the device if sold separately. E-cigarettes shall not
34 include any product that has been approved by the United States
35 Food and Drug Administration for sale as a tobacco cessation
36 product or for other therapeutic purposes where that product is
37 marketed and sold solely for such an approved purpose.

38 (c) The references to “tobacco products” in this part, except in
39 Article 2 (commencing with Section 30121) and Article 3
40 (commencing with Section 30131) of Chapter 2 (commencing with

1 Section 30101), and Chapter 9 (commencing with Section 30461),
2 shall include electronic cigarettes, unless the context otherwise
3 requires.

4 30130.52. (a) In addition to any other taxes imposed upon the
5 distribution of cigarettes, there shall be imposed an additional tax
6 upon every distributor of cigarettes at the rate of one hundred mills
7 (\$0.10) for each cigarette distributed on or after the first day of
8 the first calendar quarter commencing more than 90 days after the
9 effective date of this article.

10 (b) (1) There shall be imposed upon every distributor a tax
11 upon the distribution of electronic cigarettes, based on the
12 wholesale cost of these products, at a tax rate, as determined
13 annually by the State Board of Equalization, that is equivalent to
14 the total rate of tax imposed on cigarettes by this part, on or after
15 the first day of the first calendar quarter commencing more than
16 90 days after the effective date of this article.

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

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

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

30 (c) The wholesale cost used to calculate the amount of tax due
31 under subdivision (b) does not include the wholesale cost of
32 electronic cigarettes that were returned by a customer during the
33 same reporting period in which the electronic cigarettes were
34 distributed, when the distributor refunds the entire amount the
35 customer paid for the tobacco products either in cash or credit. For
36 purposes of this subdivision, refund or credit of the entire amount
37 shall be deemed to be given when the purchase price less
38 rehandling and restocking costs is refunded or credited to the
39 customer. The amount withheld for rehandling and restocking
40 costs may be a percentage of the sales price determined by the

1 average cost of rehandling and restocking returned merchandise
2 during the previous accounting cycle.

3 30130.53. (a) (1) Every dealer and wholesaler, for the
4 privilege of holding or storing cigarettes for sale, use, or
5 consumption, shall pay a floor stock tax for each cigarette in its
6 possession or under its control in this state at 12:01 a.m. on the
7 first day of the first calendar quarter commencing more than 90
8 days after the effective date of this article at the rate of one hundred
9 mills (\$0.10) for each cigarette.

10 (2) Every dealer and wholesaler shall file a return with the State
11 Board of Equalization on or before the first day of the first calendar
12 quarter commencing more than 180 days after the effective date
13 of this act on a form prescribed by the State Board of Equalization,
14 showing the number of cigarettes in its possession or under its
15 control in this state at 12:01 a.m. on the first day of the first
16 calendar quarter commencing more than 90 days after the effective
17 date of this article. The amount of tax shall be computed and shown
18 on the return.

19 (b) (1) Every licensed cigarette distributor, for the privilege of
20 distributing cigarettes and for holding or storing cigarettes for sale,
21 use, or consumption, shall pay a cigarette indicia adjustment tax
22 for each California cigarette tax stamp that is affixed to any
23 package of cigarettes and for each unaffixed California cigarette
24 tax stamp in its possession or under its control at 12:01 a.m. on
25 the first day of the first calendar quarter commencing more than
26 90 days after the effective date of this article at the following rates:

27 (A) Two dollars and fifty cents (\$2.50) for each stamp bearing
28 the designation "25."

29 (B) Two dollars (\$2.00) for each stamp bearing the designation
30 "20."

31 (C) One dollar (\$1.00) for each stamp bearing the designation
32 "10."

33 (2) Every licensed cigarette distributor shall file a return with
34 the board on or before the first day of the first calendar quarter
35 commencing 180 days after the effective date of this act on a form
36 prescribed by the board, showing the number of stamps described
37 in subparagraphs (A), (B), and (C) of paragraph (1). The amount
38 of tax shall be computed and shown on the return.

39 (c) The taxes required to be paid by this section are due and
40 payable on or before the first day of the first calendar quarter

1 commencing 180 days after the effective date of this act. Payments
2 shall be made by remittances payable to the board and the payments
3 shall accompany the return and forms required to be filed by this
4 section.

5 (d) Any amount required to be paid by this section that is not
6 timely paid shall bear interest at the rate and by the method
7 established pursuant to Section 30202 from the first day of the first
8 calendar quarter commencing 180 days after the effective date of
9 this article until paid, shall be subject to determination,
10 redetermination, and any penalties provided with respect to
11 determinations and redeterminations.

12 30130.54. (a) The California Health Care, Research, and
13 Prevention Tobacco Tax Act of 2015 Fund is hereby established
14 in the State Treasury for the purposes set forth in this article.
15 Notwithstanding Section 30461, all revenues, less refunds, derived
16 from the taxes imposed by this article on cigarettes and electronic
17 cigarettes shall be deposited in the California Health Care,
18 Research, and Prevention Tobacco Tax Act of 2015 Fund.

19 (b) Notwithstanding any other law, the California Health Care,
20 Research, and Prevention Tobacco Tax Act of 2015 Fund is a trust
21 fund established solely to carry out the purposes set forth in this
22 article, and all revenues deposited into the California Health Care,
23 Research, and Prevention Tobacco Tax Act of 2015 Fund, together
24 with interest earned by the fund, are hereby continuously
25 appropriated without regard to fiscal year to the Controller, to be
26 used to fund health care and prevention programs.

27 (c) Notwithstanding any other law, the taxes imposed by this
28 article and the revenue derived therefrom, including investment
29 interest, shall not be considered to be part of the General Fund, as
30 that term is used in Chapter 1 (commencing with Section 16300)
31 of Part 2 of Division 4 of Title 2 of the Government Code, and
32 shall not be considered General Fund revenue for purposes of
33 Section 8 of Article XVI of the California Constitution, and its
34 implementing statutes.

35 (d) Notwithstanding any other law, revenues deposited into the
36 California Health Care, Research, and Prevention Tobacco Tax
37 Act of 2015 Fund, and any interest earned by the fund, shall only
38 be used for the specific purposes set forth in this article. Revenues
39 deposited into the California Health Care, Research, and Prevention
40 Tobacco Tax Act of 2015 Fund shall not be subject to

1 appropriation, reversion, or transfer by the Legislature, the
2 Governor, the Director of Finance, or the Controller for any other
3 purpose, nor shall the funds be loaned to the General Fund or any
4 other fund of the state or any local government fund.

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

7 30166. Stamps and meter register settings shall be sold at their
8 denominated values less *a discount of 0.85 percent to licensed*
9 ~~distributors~~ *percent, which shall be calculated on the first one*
10 *dollar (\$1.00) in denomination value.* Payment for stamps or meter
11 register settings shall be made at the time of purchase, provided
12 that a licensed distributor, subject to the conditions and provisions
13 of this article, may be permitted to defer payments therefor.

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

16 30181. (a) ~~When~~ *If* any tax imposed upon cigarettes under
17 ~~Article 1 (commencing with Section 30101), Article 2~~
18 ~~(commencing with Section 30121), and Article 3 (commencing~~
19 ~~with Section 30131) of Chapter 2~~ *this part* is not paid through the
20 use of stamps or meter impressions, the tax shall be due and
21 payable monthly on or before the 25th day of the month following
22 the calendar month in which a distribution of cigarettes occurs, or
23 in the case of a sale of cigarettes on the facilities of a common
24 carrier for which the tax is imposed pursuant to Section 30104,
25 the tax shall be due and payable monthly on or before the 25th day
26 of the month following the calendar month in which a sale of
27 cigarettes on the facilities of the carrier occurs.

28 (b) Each distributor of tobacco products shall file a return in the
29 form, as prescribed by the board, ~~which~~ *that* may include, but not
30 be limited to, electronic media respecting the distributions of
31 tobacco products and their wholesale cost during the preceding
32 month, and any other information as the board may require to carry
33 out this part. The return shall be filed with the board on or before
34 the 25th day of the calendar month following the close of the
35 monthly period for which it relates, together with a remittance
36 payable to the board, of the amount of tax, if any, due under Article
37 2 (commencing with Section 30121) or Article 3 (commencing
38 with Section 30131) of Chapter 2 for that period.

39 (c) To facilitate the administration of this part, the board may
40 require the filing of the returns for longer than monthly periods.

1 (d) Returns shall be authenticated in a form or pursuant to
2 methods as may be prescribed by the board.

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

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

O