

AMENDED IN SENATE APRIL 16, 2015

SENATE BILL

No. 591

Introduced by Senator Pan
(Principal coauthor: Assembly Member Bonta)

February 26, 2015

An act to amend Sections 30104, 30108, and 30181 of, and to add Article 2.5 (commencing with Section 30130.50) to Chapter 2 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to ~~taxation, and making an appropriation therefor, to take effect immediately, tax levy.~~ *public health finance.*

LEGISLATIVE COUNSEL'S DIGEST

SB 591, as amended, Pan. Cigarette and tobacco products taxes: California Tobacco Tax Act of 2015.

The Cigarette and Tobacco Products Tax Law, the violation of which is a crime, imposes a tax of \$0.87 per package of 20 cigarettes on every distributor of cigarettes and a tax on the wholesale cost of tobacco products distributed at a tax rate that is equivalent to the combined rate of all taxes imposed on cigarettes, and at a rate equivalent to \$0.50 per pack cigarette tax. 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~~ *Families* 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, beginning January 1, 2016, would impose an additional tax on the distribution of cigarettes at the rate of \$0.10 for each cigarette distributed~~ *distributed*, which would be \$2.00 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 increase the tax upon the distribution of tobacco products under that law.

The bill would provide that the revenues collected from the additional tax be deposited in the California Tobacco Tax Act of 2015 Fund created by this bill, ~~which would be a continuously appropriated fund,~~ and transferred into *accounts within that fund, which are created by this bill*, the Tobacco Prevention and Education Account, the Tobacco Disease Related Health Care Account, and the Tobacco Law Enforcement Account ~~to be expended for specified purposes. Because the California Tobacco Tax Act of 2015 Fund would be a continuously appropriated fund, the bill would make an appropriation.~~ *Account. The bill would provide that revenue from this tax would not be considered General Fund revenue, and would limit the use or loan of those revenues, as provided.*

~~The bill would require moneys in the California Tobacco Tax Act of 2015 Fund to be transferred from the fund to the California Children and Families First Trust Fund, which is a continuously appropriated fund, the Cigarette and Tobacco Products Surtax Fund, the Breast Cancer Fund, and the General Fund, as necessary to offset revenue decreases to those funds directly resulting from imposition of additional taxes by these provisions. Because this bill would require funds to be transferred to a continuously appropriated fund, it would make an appropriation.~~

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.

~~This bill would take effect immediately as a tax levy.~~

This bill would become operative only if AB 1396 of the 2015–16 Regular Session is also enacted and takes effect on or before January 1, 2016.

Vote: $\frac{2}{3}$. Appropriation: ~~yes~~-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 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 ~~36,000~~
5 *40,000* people every year. California still has approximately ~~3.4~~
6 *3.64* million adult smokers and ~~200,000~~ *224,000* youth smokers.

7 (b) The inevitable health care costs of smoking come to almost
8 \$10 for every pack of cigarettes sold in California.

9 (c) Tobacco use costs Californians more than ~~\$9.1~~ *\$13.29* billion
10 in tobacco-related medical expenses every year. The cost of lost
11 productivity due to tobacco use adds an additional estimated ~~\$8.5~~
12 *\$10.35* billion to the annual economic consequences of smoking
13 in California.

14 (d) The treatment of cancer, heart disease and stroke, lung
15 disease, diabetes, and other diseases related to tobacco use
16 continues to impose a significant burden upon California’s
17 overstressed health care system, including publicly funded health
18 care programs.

19 (e) In 2015–16, it is estimated that the General Fund cost of
20 publicly funded health care programs to the state will be more than
21 \$18 billion. In 2015–16, it is estimated that publicly funded health
22 care programs will provide health care coverage to more than 12
23 million Californians. At the same time, hundreds of thousands of
24 families and children go without any medical coverage due to
25 financial constraints upon the state and local government budgets
26 and recent cutbacks in publicly funded health care programs.

27 (f) A recent cost-benefit analysis concluded that if states
28 followed the United States Centers for Disease Control and
29 Prevention’s Best Practices for Comprehensive Tobacco Control

1 Programs 2007 funding guidelines, up to 14 to 20 times the cost
2 of program implementation could be saved through reduced
3 medical and productivity costs as well as reduced Medicaid costs.

4 (g) The California Tobacco Tax Act of 2015 will help fund the
5 comprehensive California Tobacco Control Program designed to
6 change social norms about tobacco and discourage individuals
7 from taking up smoking and the use of other tobacco products
8 through educational programs, thereby saving the state and local
9 governments significant money now and in the future.

10 (h) Tobacco tax increases are an appropriate way to mitigate
11 the impacts of tobacco-related diseases and improve existing
12 programs providing for quality and access to health care services
13 for families and children.

14 (i) An increase in the tobacco tax will have an immediate effect
15 on smoking and is the most appropriate mechanism to fund services
16 to prevent tobacco use, help people quit smoking, and discourage
17 many people from taking up smoking.

18 (j) California taxes cigarettes at only \$0.87 per pack, and ranks
19 33rd in tobacco tax rates, reflecting one of the lowest tobacco taxes
20 in the United States. Thirty states have cigarette tax rates of \$1 per
21 pack or higher, and California is well below other west coast states
22 (Washington: \$3.025, Oregon: ~~\$1.18~~, \$1.31, and Arizona: \$2).
23 California last raised its tobacco tax in 1998.

24 (k) The burden of smoking is not equally shared across
25 California populations and communities. Tobacco use rates are
26 much higher than the general population in African Americans,
27 white men, Korean men, enlisted military personnel, lesbian, gay,
28 bisexual, and transgender, young adult, rural, and low-income
29 populations.

30 (l) A reinvigorated tobacco control program will allow targeted
31 public health and research efforts to combat the tobacco industry's
32 predatory marketing to ethnic groups, driving down smoking rates
33 and ultimately reducing heart disease, stroke, lung disease, and
34 cancer in these California communities, which together represent
35 more than half of our state's residents.

36 SEC. 2. Section 30104 of the Revenue and Taxation Code is
37 amended to read:

38 30104. The taxes imposed by this part shall not apply to the
39 sale of cigarettes or tobacco products by a distributor to a common
40 carrier engaged in interstate or foreign passenger service or to a

1 person authorized to sell cigarettes or tobacco products on the
2 facilities of the carrier. Whenever cigarettes or tobacco products
3 are sold by distributors to common carriers engaged in interstate
4 or foreign passenger service for use or sale on facilities of the
5 carriers, or to persons authorized to sell cigarettes or tobacco
6 products on those facilities, the tax imposed under this part shall
7 not be levied with respect to the sales of the cigarettes or tobacco
8 products by the distributors, but a tax is hereby levied upon the
9 carriers or upon the persons authorized to sell cigarettes or tobacco
10 products on the facilities of the carriers, as the case may be, for
11 the privilege of making sales in California at the same rate as set
12 forth under this part. Those common carriers and authorized
13 persons shall pay the tax imposed by this section and file reports
14 with the board, as provided in Section 30186.

15 SEC. 3. Section 30108 of the Revenue and Taxation Code is
16 amended to read:

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

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

38 (c) "Engaged in business in the state" means and includes any
39 of the following:

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

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

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

13 SEC. 4. Article 2.5 (commencing with Section 30130.50) is
 14 added to Chapter 2 of Part 13 of Division 2 of the Revenue and
 15 Taxation Code, to read:

16
 17 Article 2.5. The California Tobacco Tax Act of 2015

18
 19 30130.50. For the purposes of this article:

20 (a) "Cigarette" has the same meaning as in Section 30003 as it
 21 read on January 1, ~~2013~~. 2015.

22 (b) "Tobacco products" includes, but is not limited to, all forms
 23 of cigars, smoking tobacco, chewing tobacco, snuff, and any other
 24 articles or products made of, or containing at least 50 percent,
 25 tobacco, but does not include cigarettes.

26 30130.51. In addition to any other taxes imposed upon the
 27 distribution of cigarettes, there shall be imposed an additional tax
 28 upon every distributor of cigarettes at the rate of one hundred mills
 29 (\$0.10) for each cigarette distributed on or after ~~the first day of~~
 30 ~~the first calendar quarter commencing more than 90 days after the~~
 31 ~~effective date of this act.~~ *January 1, 2016.*

32 30130.52. (a) (1) Every dealer and wholesaler, for the
 33 privilege of holding or storing cigarettes for sale, use, or
 34 consumption, shall pay a floor stock tax for each cigarette in its
 35 possession or under its control in this state at 12:01 a.m. on ~~the~~
 36 ~~first day of the first calendar quarter commencing more than 90~~
 37 ~~days after the effective date of this act~~ *January 1, 2016*, at the rate
 38 of one hundred mills (\$0.10) for each cigarette.

39 (2) Every dealer and wholesaler shall file a return with the ~~State~~
 40 ~~Board of Equalization~~ *board* on or before ~~the first day of the first~~

1 ~~calendar quarter commencing more than 180 days after the effective~~
2 ~~date of this act July 1, 2016, on a form prescribed by the State~~
3 ~~Board of Equalization, board, showing the number of cigarettes~~
4 ~~in its possession or under its control in this state at 12:01 a.m. on~~
5 ~~the first day of the first calendar quarter commencing more than~~
6 ~~90 days after the effective date of this act. January 1, 2016. The~~
7 amount of tax shall be computed and shown on the return.

8 (b) (1) Every licensed cigarette distributor, for the privilege of
9 distributing cigarettes and for holding or storing cigarettes for sale,
10 use, or consumption, shall pay a cigarette indicia adjustment tax
11 for each California cigarette tax stamp that is affixed to any
12 package of cigarettes and for each unaffixed California cigarette
13 tax stamp in its possession or under its control at 12:01 a.m. on
14 ~~the first day of the first calendar quarter commencing more than~~
15 ~~90 days after the effective date of this act January 1, 2016, at the~~
16 following rates:

17 (A) Two dollars and fifty cents (\$2.50) for each stamp bearing
18 the designation “25.”

19 (B) Two dollars (\$2) for each stamp bearing the designation
20 “20.”

21 (C) One dollar (\$1) for each stamp bearing the designation “10.”

22 (2) Every licensed cigarette distributor shall file a return with
23 the board on or before ~~the first day of the first calendar quarter~~
24 ~~commencing 180 days after the effective date of this act July 1,~~
25 ~~2016, on a form prescribed by the board, showing the number of~~
26 stamps described in subparagraphs (A), (B), and (C) of paragraph
27 (1). The amount of tax shall be computed and shown on the return.

28 (c) The taxes required to be paid by this section are due and
29 payable on or before ~~the first day of the first calendar quarter~~
30 ~~commencing 180 days after the effective date of this act. July 1,~~
31 ~~2016. Payments shall be made by remittances payable to the board~~
32 and the payments shall accompany the return and forms required
33 to be filed by this section.

34 (d) Any amount required to be paid by this section that is not
35 timely paid shall bear interest at the rate and by the method
36 established pursuant to Section 30202 from ~~the first day of the first~~
37 ~~calendar quarter commencing 180 days after the effective date of~~
38 ~~this act, July 1, 2016, until paid, and shall be subject to~~
39 determination, and redetermination, and any penalties provided
40 with respect to determinations and redeterminations.

1 ~~30130.53.—(a) The State Board of Equalization shall determine~~
2 ~~within one year of the effective date of this act, and annually~~
3 ~~thereafter, the effect that the additional taxes imposed on cigarettes~~
4 ~~by this article, and the resulting increase in the tax on tobacco~~
5 ~~products required by subdivision (b) of Section 30123, have on~~
6 ~~the consumption of cigarettes and tobacco products in this state.~~
7 ~~To the extent that a decrease in consumption is determined by the~~
8 ~~State Board of Equalization to be a direct result of the additional~~
9 ~~tax imposed by this article, or the resulting increase in the tax on~~
10 ~~tobacco products required by subdivision (b) of Section 30123,~~
11 ~~the State Board of Equalization shall determine the fiscal effect~~
12 ~~the decrease in consumption has on the Cigarette and Tobacco~~
13 ~~Products Surtax Fund created by Section 30122 (Proposition 99~~
14 ~~as approved by the voters at the November 8, 1988, statewide~~
15 ~~general election), the Breast Cancer Fund created by Section~~
16 ~~30461.6, the California Children and Families Trust Fund created~~
17 ~~by Section 30131 (Proposition 10 as approved by the voters at the~~
18 ~~November 3, 1998, statewide general election), and the General~~
19 ~~Fund with respect to revenues derived from Section 30101.~~

20 ~~(b) Funds shall be transferred from the California Tobacco Tax~~
21 ~~Act of 2015 Fund to the Cigarette and Tobacco Products Surtax~~
22 ~~Fund, the Breast Cancer Fund, the California Children and Families~~
23 ~~Trust Fund, and the General Fund, to offset the revenue decrease~~
24 ~~directly resulting from imposition of additional taxes by this article.~~

25 ~~(c) Transfers under this section shall be made by the board at~~
26 ~~times as the board determines necessary to further the intent of~~
27 ~~this section.~~

28 30130.54. (a) The California Tobacco Tax Act of 2015 Fund
29 is hereby established in the State Treasury for the purposes set
30 forth in this article. All revenues, less refunds *and moneys*
31 *transferred pursuant to Section 30130.53*, derived from the taxes
32 imposed by this article shall be deposited in the California Tobacco
33 Tax Act of 2015 Fund.

34 (b) Moneys in the California Tobacco Tax Act of 2015 Fund;
35 less moneys transferred pursuant to Section 30130.53, shall be
36 transferred as follows:

37 (1) ___ percent to the Tobacco Prevention and Education
38 Account, which is hereby created in the California Tobacco Tax
39 Act of 2015 Fund.

1 (2) ___ percent to the Tobacco Disease Related Health Care
2 Account, which is hereby created in the California Tobacco Tax
3 Act of 2015 Fund.

4 (3) ___ percent to the Tobacco Law Enforcement Account,
5 which is hereby created in the California Tobacco Tax Act of 2015
6 Fund.

7 (c) Funds deposited into the California Tobacco Tax Act of
8 2015 Fund may be placed into the Pooled Money Investment
9 Account for investment only, and interest earned shall be credited
10 to the fund and deposited, apportioned, and expended only in
11 accordance with this article and its purposes.

12 ~~(d) Notwithstanding any other law, the California Tobacco Tax~~
13 ~~Act of 2015 Fund is a trust fund established solely to carry out the~~
14 ~~purposes set forth in this article and all revenues deposited into~~
15 ~~the California Tobacco Tax Act of 2015 Fund, together with~~
16 ~~interest earned by the fund, are hereby continuously appropriated~~
17 ~~without regard to fiscal year to be expended only in accordance~~
18 ~~with this article and its purposes.~~

19 (e)

20 (d) Notwithstanding any other law, the taxes imposed by this
21 article and the revenue derived therefrom, including investment
22 interest, shall not be considered to be part of the General Fund, as
23 that term is used in Chapter 1 (commencing with Section 16300)
24 of Part 2 of Division 4 of the Government Code, shall not be
25 considered General Fund revenue for purposes of Section 8 of
26 Article XVI of the California Constitution, and its implementing
27 statutes, and shall not be considered “moneys to be applied by the
28 state for the support of school districts and community college
29 districts” pursuant to Section 8 of Article XVI of the California
30 Constitution, and its implementing statutes.

31 (f)

32 (e) Notwithstanding any other law, revenues deposited into the
33 California Tobacco Tax Act of 2015 Fund, and any interest earned
34 by the fund, shall only be used for the specific purposes set forth
35 in this article. Revenues deposited into the California Tobacco Tax
36 Act of 2015 Fund shall not be subject to appropriation, reversion,
37 or transfer by the Legislature, the Governor, the Director of
38 Finance, or the Controller for any other purpose, nor shall the funds
39 be loaned to the General Fund or any other fund of the state or any
40 local government fund.

1 ~~(g)~~

2 ~~(f)~~ All revenues deposited into the California Tobacco Tax Act
3 of 2015 Fund shall be expended only for the purposes expressed
4 in this article, and shall be used only to supplement existing levels
5 of service and not to fund existing levels of service. Moneys in
6 the fund shall not be used to supplant state or local general fund
7 moneys for any purpose.

8 ~~30130.55.— After transferring the moneys as required pursuant~~
9 ~~to subdivision (b) of Section 30130.53 and pursuant to subdivision~~
10 ~~(b) of Section 30130.54, the Controller shall allocate the moneys~~
11 ~~from the accounts in the California Tobacco Tax Act of 2015 Fund~~
12 ~~as follows:~~

13 ~~(a) The Tobacco Prevention and Education Account shall be~~
14 ~~allocated to supplement tobacco prevention and control programs~~
15 ~~as follows:~~

16 ~~(1) — percent to the State Department of Public Health.~~

17 ~~(2) — percent to the State Department of Education.~~

18 ~~(3) — percent to the University of California.~~

19 ~~(b) Funds in the Tobacco Disease Related Health Care Account~~
20 ~~shall be allocated to the State Department of Health Care Services~~
21 ~~to improve existing programs to provide quality and access to~~
22 ~~health care programs for families and children pursuant to Chapter~~
23 ~~7 (commencing with Section 14000) to Chapter 8.9 (commencing~~
24 ~~with Section 14700), inclusive, of Part 3 of Division 9 of the~~
25 ~~Welfare and Institutions Code.~~

26 ~~(c) Funds in the Tobacco Law Enforcement Account shall be~~
27 ~~allocated to the State Board of Equalization, the Department of~~
28 ~~Justice, and the State Department of Public Health for the purpose~~
29 ~~of supplementing funding for the enforcement of laws that regulate~~
30 ~~the distribution and sale of cigarettes and other tobacco products,~~
31 ~~including, but not limited to, laws that prohibit cigarette smuggling,~~
32 ~~counterfeiting, selling untaxed tobacco, selling tobacco without a~~
33 ~~proper license, and selling tobacco to minors, and enforcing~~
34 ~~tobacco-related laws, court judgments, and settlements.~~

35 ~~(d) Not more than 2 percent of the funds received from the~~
36 ~~California Tobacco Tax Act of 2015 Fund shall be used by any~~
37 ~~department for administrative costs.~~

38 ~~(e) The Department of Justice, the State Department of Public~~
39 ~~Health, the State Department of Education, the State Department~~
40 ~~of Health Care Services, and the University of California shall, on~~

1 ~~an annual basis, publish on their respective Internet Web sites an~~
2 ~~accounting of moneys received from the California Tobacco Tax~~
3 ~~Act of 2015 Fund and how the moneys were spent.~~

4 SEC. 5. Section 30181 of the Revenue and Taxation Code is
5 amended to read:

6 30181. (a) If any tax imposed upon cigarettes under this part
7 is not paid through the use of stamps or meter impressions, the tax
8 shall be due and payable monthly on or before the 25th day of the
9 month following the calendar month in which a distribution of
10 cigarettes occurs, or in the case of a sale of cigarettes on the
11 facilities of a common carrier for which the tax is imposed pursuant
12 to Section 30104, the tax shall be due and payable monthly on or
13 before the 25th day of the month following the calendar month in
14 which a sale of cigarettes on the facilities of the carrier occurs.

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

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

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

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

39 ~~SEC. 7. This act provides for a tax levy within the meaning~~
40 ~~of Article IV of the Constitution and shall go into immediate effect.~~

1 *SEC. 7. This act shall become operative only if Assembly Bill*
2 *1396 of the 2015–16 Regular Session is also enacted and takes*
3 *effect on or before January 1, 2016.*

O