

AMENDED IN SENATE JUNE 2, 2015

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 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 Children and Families Act of 1998 (Proposition 10).

This 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, 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, 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. 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.

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 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: 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 40,000

1 people every year. California still has approximately 3.64 million
2 adult smokers and 224,000 youth smokers.

3 (b) The inevitable health care costs of smoking come to almost
4 \$10 for every pack of cigarettes sold in California.

5 (c) Tobacco use costs Californians more than \$13.29 billion in
6 tobacco-related medical expenses every year. The cost of lost
7 productivity due to tobacco use adds an additional estimated \$10.35
8 billion to the annual economic consequences of smoking in
9 California.

10 (d) The treatment of cancer, heart disease and stroke, lung
11 disease, diabetes, and other diseases related to tobacco use
12 continues to impose a significant burden upon California's
13 overstressed health care system, including publicly funded health
14 care programs.

15 (e) In 2015–16, it is estimated that the General Fund cost of
16 publicly funded health care programs to the state will be more than
17 \$18 billion. In 2015–16, it is estimated that publicly funded health
18 care programs will provide health care coverage to more than 12
19 million Californians. At the same time, hundreds of thousands of
20 families and children go without any medical coverage due to
21 financial constraints upon the state and local government budgets
22 and recent cutbacks in publicly funded health care programs.

23 (f) A recent cost-benefit analysis concluded that if states
24 followed the United States Centers for Disease Control and
25 Prevention's Best Practices for Comprehensive Tobacco Control
26 Programs 2007 funding guidelines, up to 14 to 20 times the cost
27 of program implementation could be saved through reduced
28 medical and productivity costs as well as reduced Medicaid costs.

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

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

39 (i) An increase in the tobacco tax will have an immediate effect
40 on smoking and is the most appropriate mechanism to fund services

1 to prevent tobacco use, help people quit smoking, and discourage
2 many people from taking up smoking.

3 (j) California taxes cigarettes at only \$0.87 per pack, and ranks
4 33rd in tobacco tax rates, reflecting one of the lowest tobacco taxes
5 in the United States. Thirty states have cigarette tax rates of \$1 per
6 pack or higher, and California is well below other west coast states
7 (Washington: \$3.025, Oregon: \$1.31, and Arizona: \$2). California
8 last raised its tobacco tax in 1998.

9 (k) The burden of smoking is not equally shared across
10 California populations and communities. Tobacco use rates are
11 much higher than the general population in African Americans,
12 white men, Korean men, enlisted military personnel, lesbian, gay,
13 bisexual, and transgender, young adult, rural, and low-income
14 populations.

15 (l) A reinvigorated tobacco control program will allow targeted
16 public health and research efforts to combat the tobacco industry's
17 predatory marketing to ethnic groups, driving down smoking rates
18 and ultimately reducing heart disease, stroke, lung disease, and
19 cancer in these California communities, which together represent
20 more than ~~half~~ *one-half* of our state's residents.

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

23 30104. The taxes imposed by this part shall not apply to the
24 sale of cigarettes or tobacco products by a distributor to a common
25 carrier engaged in interstate or foreign passenger service or to a
26 person authorized to sell cigarettes or tobacco products on the
27 facilities of the carrier. Whenever cigarettes or tobacco products
28 are sold by distributors to common carriers engaged in interstate
29 or foreign passenger service for use or sale on facilities of the
30 carriers, or to persons authorized to sell cigarettes or tobacco
31 products on those facilities, the tax imposed under this part shall
32 not be levied with respect to the sales of the cigarettes or tobacco
33 products by the distributors, but a tax is hereby levied upon the
34 carriers or upon the persons authorized to sell cigarettes or tobacco
35 products on the facilities of the carriers, as the case may be, for
36 the privilege of making sales in California at the same rate as set
37 forth under this part. Those common carriers and authorized
38 persons shall pay the tax imposed by this section and file reports
39 with the board, as provided in Section 30186.

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

3 30108. (a) Every distributor engaged in business in this state
4 and selling or accepting orders for cigarettes or tobacco products
5 with respect to the sale of which the tax imposed under this part
6 is inapplicable shall, at the time of making the sale or accepting
7 the order or, if the purchaser is not then obligated to pay the tax
8 with respect to his or her distribution of the cigarettes or tobacco
9 products, at the time the purchaser becomes so obligated, collect
10 the tax from the purchaser, if the purchaser is other than a licensed
11 distributor, and shall give to the purchaser a receipt therefor in the
12 manner and form prescribed by the board.

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

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

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

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

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

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

1 Article 2.5. The California Tobacco Tax Act of 2015

2
3 30130.50. For the purposes of this article:

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

6 (b) “Tobacco products” includes, but is not limited to, all forms
7 of cigars, smoking tobacco, chewing tobacco, snuff, and any other
8 articles or products made of, or containing at least 50 percent,
9 tobacco, but does not include cigarettes.

10 30130.51. In addition to any other taxes imposed upon the
11 distribution of cigarettes, there shall be imposed an additional tax
12 upon every distributor of cigarettes at the rate of one hundred mills
13 (\$0.10) for each cigarette distributed on or after January 1, 2016.

14 30130.52. (a) (1) Every dealer and wholesaler, for the
15 privilege of holding or storing cigarettes for sale, use, or
16 consumption, shall pay a floor stock tax for each cigarette in its
17 possession or under its control in this state at 12:01 a.m. on January
18 1, 2016, at the rate of one hundred mills (\$0.10) for each cigarette.

19 (2) Every dealer and wholesaler shall file a return with the board
20 on or before July 1, 2016, on a form prescribed by the board,
21 showing the number of cigarettes in its possession or under its
22 control in this state at 12:01 a.m. on January 1, 2016. The amount
23 of tax shall be computed and shown on the return.

24 (b) (1) Every licensed cigarette distributor, for the privilege of
25 distributing cigarettes and for holding or storing cigarettes for sale,
26 use, or consumption, shall pay a cigarette indicia adjustment tax
27 for each California cigarette tax stamp that is affixed to any
28 package of cigarettes and for each unaffixed California cigarette
29 tax stamp in its possession or under its control at 12:01 a.m. on
30 January 1, 2016, at the following rates:

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

33 (B) Two dollars (\$2) for each stamp bearing the designation
34 “20.”

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

36 (2) Every licensed cigarette distributor shall file a return with
37 the board on or before July 1, 2016, on a form prescribed by the
38 board, showing the number of stamps described in subparagraphs
39 (A), (B), and (C) of paragraph (1). The amount of tax shall be
40 computed and shown on the return.

1 (c) The taxes required to be paid by this section are due and
2 payable on or before July 1, 2016. Payments shall be made by
3 remittances payable to the board and the payments shall accompany
4 the return and forms required to be filed by this 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 July 1, 2016, until
8 paid, and shall be subject to determination, and redetermination,
9 and any penalties provided with respect to determinations and
10 redeterminations.

11 30130.54. (a) The California Tobacco Tax Act of 2015 Fund
12 is hereby established in the State Treasury for the purposes set
13 forth in this article. All revenues, less refunds and moneys
14 transferred pursuant to Section 30130.53, derived from the taxes
15 imposed by this article shall be deposited in the California Tobacco
16 Tax Act of 2015 Fund.

17 (b) Moneys in the California Tobacco Tax Act of 2015 Fund
18 shall be transferred as follows:

19 (1) ~~Fourteen~~ percent to the Tobacco Prevention and
20 Education Account, which is hereby created in the California
21 Tobacco Tax Act of 2015 Fund.

22 (2) ~~Eighty-four~~ percent to the Tobacco Disease Related
23 Health Care Account, which is hereby created in the California
24 Tobacco Tax Act of 2015 Fund.

25 (3) ~~Two~~ percent to the Tobacco Law Enforcement Account,
26 which is hereby created in the California Tobacco Tax Act of 2015
27 Fund.

28 (c) Funds deposited into the California Tobacco Tax Act of
29 2015 Fund may be placed into the Pooled Money Investment
30 Account for investment only, and interest earned shall be credited
31 to the fund and deposited, apportioned, and expended only in
32 accordance with this article and its purposes.

33 (d) Notwithstanding any other law, the taxes imposed by this
34 article and the revenue derived therefrom, including investment
35 interest, shall not be considered to be part of the General Fund, as
36 that term is used in Chapter 1 (commencing with Section 16300)
37 of Part 2 of Division 4 of the Government Code, shall not be
38 considered General Fund revenue for purposes of Section 8 of
39 Article XVI of the California Constitution, and its implementing
40 statutes, and shall not be considered “moneys to be applied by the

1 state for the support of school districts and community college
2 districts” pursuant to Section 8 of Article XVI of the California
3 Constitution, and its implementing statutes.

4 (e) Notwithstanding any other law, revenues deposited into the
5 California Tobacco Tax Act of 2015 Fund, and any interest earned
6 by the fund, shall only be used for the specific purposes set forth
7 in this article. Revenues deposited into the California Tobacco Tax
8 Act of 2015 Fund shall not be subject to appropriation, reversion,
9 or transfer by the Legislature, the Governor, the Director of
10 Finance, or the Controller for any other purpose, nor shall the funds
11 be loaned to the General Fund or any other fund of the state or any
12 local government fund.

13 (f) All revenues deposited into the California Tobacco Tax Act
14 of 2015 Fund shall be expended only for the purposes expressed
15 in this article, and shall be used only to supplement existing levels
16 of service and not to fund existing levels of service. Moneys in
17 the fund shall not be used to supplant state or local general fund
18 moneys for any purpose.

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

21 30181. (a) If any tax imposed upon cigarettes under this part
22 is not paid through the use of stamps or meter impressions, the tax
23 shall be due and payable monthly on or before the 25th day of the
24 month following the calendar month in which a distribution of
25 cigarettes occurs, or in the case of a sale of cigarettes on the
26 facilities of a common carrier for which the tax is imposed pursuant
27 to Section 30104, the tax shall be due and payable monthly on or
28 before the 25th day of the month following the calendar month in
29 which a sale of cigarettes on the facilities of the carrier occurs.

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

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

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

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

14 SEC. 7. This act shall become operative only if Assembly Bill
15 1396 of the 2015–16 Regular Session is also enacted and takes
16 effect on or before January 1, 2016.