

**Assembly Bill 71**  
**“California Cigarette and Tobacco Products**  
**Licensing Act of 2003” – As Amended 6/19/03**  
**(J. Horton, Dem. – Inglewood)**

**Highlights**

- There are no public health provisions in the bill - its focus is tax evasion.
- The bill does not pre-empt local efforts.
- Provisions of the bill could result in additional revenue for Prop 99.
- Retailers are required to pay a one-time license fee of \$100.

**Summary**

Assembly Bill 71 establishes a statewide licensing program, for tobacco retailers, wholesalers, distributors, manufacturers and importers, which would be administered by the state Board of Equalization (BOE). The purpose of the bill is to combat tobacco tax evasion, smuggling and counterfeiting which results in lost tax revenue to the state, both in the form of sales tax and tobacco tax revenues. The requirements and penalties established under the license are intended to serve as a deterrent to retailers possessing or selling of unstamped cigarettes or cigarettes stamped with a counterfeit stamp.

BOE estimates that the increased enforcement that would result from the passage of this bill would capture between \$58 and \$87 million of the \$288 million in annual revenue lost due to tax evasion and smuggling. If these estimates are realized, it could mean roughly an additional \$16-\$24 million of revenue collection for Proposition 99.

One of the major issues that the bill faces is that it does not provide on going funding for the program it establishes. In the original bill, a percentage of any new tobacco tax would have gone to support this program. That funding mechanism was removed by amendment leaving a program primarily funded through one-time fees. The one-time fee assessments include a penny a pack for tobacco manufacturers and \$100 per retail outlet for retailers. Only distributors and wholesalers would be required to pay an annual fee (\$1,000 annually).

Under the current funding mechanism the program is estimated to bring in \$22.1 million in revenue in the first year and only \$2.7 million in revenue each subsequent year. The most likely resolution to the lack of on going funding is an amendment that would fund the program through the increase in tax revenue and fines that result from

the increase enforcement efforts. This is possible since there will be sufficient revenue raised for an effective enforcement program during the first year.

### **Support/Opposition**

The California Distributors Association is in strong support of this bill. Illegal sales due to black market and smuggling result in lost revenue for distributors. Phillip Morris also supports the bill. Black market sales are of great concern to Philip Morris because, as the largest manufacturer of tobacco products with the biggest brand name (Marlboro), it loses the most revenue due to black market sells. In fact, as recently reported in the press, Philip Morris has begun an aggressive campaign to find black market products in California and sue the retailer when they are found. Other tobacco manufacturers, including RJ Reynolds and Lorillard tobacco companies, oppose the bill citing the one-time penny-per-pack fee assessed to manufacturers during the first year of the program.

The City of Los Angeles, the League of California Cities and the state's Attorney General's Office support the bill. Los Angeles has worked closely with Assembly Member Horton's office to ensure that AB 71 in no way conflicts with their local licensing program.

The position of the American Cancer Society, the American Heart Association and the American Lung Association has been to support the bill if amended. Currently there are no public health provisions in the bill. For example, if a retailer violates state law by selling cigarettes to minors, there would be no mechanism for suspending or revoking the retailer's state license under this bill. The three voluntary organizations have requested that the bill be amended to include the following provisions:

- An annual licensing fee for retailers, manufacturers and manufacturers of other tobacco products.
- Link the tobacco retailer license to PC 308 and the STAKE ACT (sales to minors).
- Provide additional funding for the STAKE program.

### **Background**

Currently, there is no statewide requirement that retailers obtain a license to sell tobacco products. There have been several previous attempts to pass tobacco-licensing legislation, most of which have been similarly focused on black market cigarettes, tobacco smuggling and tax evasion. However, during the 2002 legislative session attempts were made to include public health provisions such as suspension or revocation of a merchant's license for illegal sales to minors within a statewide tobacco-licensing bill. There were three versions of tobacco licensing bills during the 2002 legislative session, all of which eventually died: Senate Bill (SB) 1700 (Peace), Assembly Bill (AB) 1666 (Horton) and SB 1843 (Senate Budget and Fiscal Review Committee). AB 71 is very similar to the final version of SB 1843.

Although there is no statewide tobacco license requirement, 29 cities and 3 counties in California have enacted a tobacco retailer license or permit requirement. There are ongoing efforts throughout the state to pass additional city and county tobacco retail licensing ordinances. Unlike AB 71, the purpose of these local ordinances is to enforce public health tobacco control laws including sales to minors.

## **Impact on Local Efforts / Why AB 71 Should Not Stop Local Licensing Efforts**

Whether or not AB 71 becomes a law, the existence of an effort to pass a state tobacco licensing law is likely to raise the question in the minds of many of why retailers would need both a local and a state tobacco license. There are a numerous answers to this question – here are a few:

- **AB 71 Is Not a Public Health Bill:** in fact, few of the tobacco licensing bills that have been introduced in the state legislature over the past several years address any of the public health concerns that local coalitions are trying to address through their efforts. In many ways, we are talking about apples and oranges. AB 71 is a program that addresses the problem of smuggling and black market cigarettes; it does nothing to protect youth. Strong local licenses protect public health by requiring compliance with all tobacco control laws, paying for the enforcement of existing laws and suspending or revoking a license when these laws are violated.
- **Obtaining Two Licenses Will Not Be Overly Burdensome for Retailers:** If a statewide tobacco license requirement becomes law, many retailers in the state will be required to obtain both a local and a state tobacco licenses. Currently, 29 cities, including Los Angeles (the city with the most tobacco retailers) and three counties have existing tobacco retail license requirements. AB 71 was crafted with this in mind. Assembly Member Horton's Office worked closely with the city of Los Angeles to ensure that the state law would not conflict with local efforts. Furthermore, AB 71 only requires retailers to pay a one-time fee of \$100, not an annual fee. Besides, obtaining the licenses necessary to operate a business is part of the cost of doing business; a tobacco license is no different.
- **Strong Local Laws Make Strong State Laws Possible:** the history of tobacco control has shown that it usually takes a great deal of pressure from strong local tobacco control ordinances before a strong statewide law can gain support and become law. Currently there are very few local retail licensing efforts that contain all the elements necessary to pressure the state to pass a strong tobacco licensing law. These elements include:
  - A requirement that all retailers that sale tobacco products obtain a license and renew it annually.
  - A fee set high enough to sufficiently fund an effective program including administration of the program and enforcement efforts.
  - A coordination of tobacco regulations so that a violation of any existing local, state or federal tobacco regulation violates the license.
  - A strong financial deterrent through the suspension and revocation of the license for a violation of any tobacco control law.
- **AB 71 Includes Anti-Preemption Language:** the Anti-Preemption language was added to protect local control – do not let this control slip away. Not only does local legislation tend to experience less opposition, it is also more likely to have a greater affect on social norms. People are more aware of local laws and pay more attention to education efforts around new local laws. Changing social norms around tobacco use is the ultimate goal of any tobacco control policy.

**Vote**

The bill was passed out of the Assembly on June 2, 2003 and will now be heard in the Senate. A majority of both parties' members voted in favor of the bill on the Assembly floor (67 Ayes, 8 Noes, 5 absent or abstaining).

*If you have questions about this analysis, please contact the Center's Policy Coordinator, Julie Bradley-Hart at (916) 442-4299 or at [jbhart@alac.org](mailto:jbhart@alac.org).*