

Assembly Bill 71
“California Cigarette and Tobacco Products Licensing Act of 2003”
As Introduced – December 13, 2002

SUMMARY

Assembly Bill 71 (J. Horton, D. – Inglewood), establishes a comprehensive statewide licensing program, for tobacco retailers, wholesalers, distributors, manufacturers and importers, which would be administered by the state Board of Equalization (BOE). AB 71 does not include public health measures such as revocation of a license for illegal sales to minors. 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 and tobacco tax revenues. The requirements and penalties established under the license are intended to serve as a deterrent to retailers possessing or making a sale of unstamped cigarettes or cigarettes stamped with a counterfeit stamp.

AB 71 would also change the way in which tobacco wholesalers and distributors are compensated for placing the tobacco tax stamp on each pack of cigarettes. For many years, the state has given the distributors a “discount” on the stamps as a way of paying for some of their costs to do what is essentially the work of the state (affixing the stamp).

Current law requires distributors to purchase and affix a tax stamp to each pack of cigarettes before distribution. The distributor pays the cost of the stamp (the tax of 87 cents per pack) less the discount established by law (0.85 percent of the price of the stamp). The 0.85 percent discount as applied to the 87-cent tax equates to distributors receiving a discount of 0.7395 cents per pack or \$4.437 per case. The distributor discount is deducted proportionately from each fund that receives cigarette tax revenue (General Fund, Prop 99, Prop 10 and the Breast Cancer Early Detection Program).

This bill would replace the above discount with a flat fee payment to the wholesalers and distributors at the rate of \$4.68/case. The bill authorizes BOE to adjust this amount to cover the wholesaler’s and distributor’s “average actual costs,” which will be determined by BOE in 2004 and reevaluated every two years thereafter. AB 71 would also deduct the distributor discount solely from any new cigarette tax, relieving Prop 99, Prop 10 and the Breast Cancer Early Detection Program from this burden.

BACKGROUND

Currently, there is no statewide requirement that retailers obtain a license to sell tobacco products. Previous attempts to pass tobacco licensing legislation have focused primarily on black market cigarettes, tobacco smuggling and tax evasion, although there were attempts in

the 2002 legislative session to address public health provisions such as suspension or revocation of a merchant's license for illegal sales to minors. In 2002, there were three statewide licensing bills: Senate Bill (SB) 1700 (Peace), Assembly Bill (AB) 1666 (Horton) and SB 1843 (Senate Budget and Fiscal Review Committee). As introduced, AB 71 is very similar to the final version of SB 1843 which died at the end of last year's legislative session.

Although there is no statewide tobacco license requirement, 29 cities and 3 counties in California have enacted a tobacco retailer license or permit requirement.

PAYING FOR THE PROGRAM

AB 71 establishes the Cigarette and Tobacco Products Compliance Fund and proposes to fund this new licensing and enforcement program through a combination of fees on retailers, tobacco wholesalers and cigarette companies, and through revenues generated by a new tobacco tax. No specific tobacco tax has been proposed to be linked to AB 71. However, as written, it could be assumed that the Governor's proposed \$1.10/pack tobacco tax would apply to this bill, as would any other proposed tobacco tax that deposits the tax revenue into the General Fund.

Fees in the bill are established as follows:

- Retailers are required to pay a one-time license fee of \$100.
- Tobacco wholesalers/distributors pay an annual fee of \$1,000.
- Tobacco manufacturers and importers would pay a one-time fee of a penny-a-pack based on the number of packs shipped to the state during 2002.

BOE has estimated that fee revenues would total \$19.5 million in the first year from the following sources:

- \$12.7 million from the manufacturer and importer fee.
- \$6 million from the retailer-licensing fee.
- \$800,000 from distributors/wholesalers.

The bill appropriates \$11 million of the \$19.5 million to BOE to implement, administer and enforce the program. Of this amount, \$5.4 million is made available for reimbursement to the Department of Justice for investigations and enforcement.

Because many of the fees are only required to be paid one time, in subsequent years fee revenue would be expected to drop to \$2 million annually. The \$2 million would come from the following sources:

- \$1.2 million from *new* retailers.
- \$800,000 from distributors/wholesalers.

To supplement these fees, a small portion of any new tobacco tax would be transferred to the Cigarette and Tobacco Products Compliance Fund as an ongoing source of revenue to support the program.

IMPACT ON EXISTING TOBACCO TAX FUNDS

Prop 99, Prop 10, the Breast Cancer Early Detection Program, and the General Fund are likely to receive a boost in revenue if this bill becomes law. An increase in revenue should result from

improved enforcement and reduced tax evasion. BOE estimates that this could total as much as an additional \$40 million in lost revenues, which would be divided as follows:

Proposition 99 - \$11.4 million
Proposition 10 - \$23 million
Breast Cancer - \$1 million
General Fund - \$4.6 million

As mentioned previously, these funds would also be bolstered by no longer having to pay the distributors discount. For Prop 99 this would amount to about \$2.76 million in 2003.

IMPACT ON LOCAL LICENSING EFFORTS

AB 71 includes language that specifies, if passed, the law would not preempt local tobacco control laws. Therefore, regardless of the outcome of this bill, tobacco control advocates can continue to work for strong, local retail tobacco licensing ordinances.

That being said, if this bill becomes a law it could pose some problems for local efforts. Although, the focus of local retail licensing laws is public health and not tax evasion and smuggling issues, opposition forces are likely to argue that retailers are already required to obtain a license from the state and pay a fee (albeit only one time).

POSITION OF TOBACCO CONTROL ORGANIZATIONS

In order to provide a context for upcoming legislation, the Center will include the positions taken by the following organizations as part of our bill analysis: the American Lung Association of California; the American Heart Association, Western Affiliate; the American Cancer Society, California Division; and Americans for Nonsmokers' Rights. To date, these organizations have not taken a position on AB 71.

WHAT TO EXPECT

Like all bills, there will be several opportunities for AB 71 to change; amendments can happen throughout the process. The bill has from now until the end of the legislative session to be heard and voted on in committees and on the floor of each legislative house.

A copy of the bill may be obtained at the Assembly's web site:

<http://www.assembly.ca.gov/acs/acsframeset2text.htm>. If you have questions about this bill analysis, please contact the Center's Policy Coordinator, Julie Bradley-Hart at (916) 442-4299 or at jbhart@alac.org.

The Center for Tobacco Policy & Organizing promotes community organizing strategies to empower local coalitions to achieve tobacco policy change, and serves as state tobacco control policy analysis and information resource. If you would like assistance with advancing tobacco policy issues in your community or more information about the Center, please contact Brian Peterson, Project Director, at (916) 442-4299 or thecenter@californialung.org.

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