



Assembly Bill 2344

(an amendment to the California Cigarette and Tobacco Products Licensing Act of 2003)

Questions and Answers

What does Assembly Bill (AB) 2344 propose?

AB 2344 (Beall) would amend the existing California Cigarette and Tobacco Products Licensing Act of 2003 (state licensing program) that is administered by the Board of Equalization (BOE). The primary purpose of the state licensing program is to reduce cigarette smuggling and the resulting loss of tobacco tax revenues to the state by having a stepped-up enforcement program to catch smugglers and cigarette counterfeiters. In addition, the state licensing program sets up a system for suspending or revoking a tobacco retailer's license if they are convicted a certain number of times for selling tobacco to minors. Under current law, all tobacco retailers in the state pay a one-time fee of \$100 for a state tobacco retailer license. If enacted, AB 2344 would make this fee an annual fee and would increase the fee to \$185. The new revenue from the annual \$185 fee would be used by the BOE for implementing, enforcing and administering the state licensing program.

How does the BOE currently pay for administering the state retailer licensing program?

The BOE collects fees from retailers and wholesalers/distributors. The retailer fee is only one-time, so it is not an ongoing source of revenue. The wholesaler/distributor fee is \$1,000 annually. Between the two sources, the BOE annually collects approximately \$1.2 million. However, the program annually costs approximately \$9 million to operate. Therefore, BOE takes funds from Proposition (Prop) 99, Prop 10, the Breast Cancer Fund, and the General Fund to support the administration of the state licensing program. The new annual fee would raise approximately \$7 million in new annual revenue, which would negate the need for BOE to take funds from the aforementioned accounts. Prop 99 could save as much as \$2 million annually.

Does AB 2344 propose anything to reduce illegal sales of tobacco to minors?

No. AB 2344 would provide no funding for enforcement to reduce illegal sales of tobacco to minors. The primary purpose of the state licensing program is to prevent cigarette tax evasion, not to help reduce illegal sales of tobacco to minors. AB 2344 is being proposed to allow BOE to operate a self-sustaining state licensing program.

The state licensing program does contain some “public health” provisions. However, they do not serve as a realistic deterrent against selling tobacco products to minors. Penalties for the suspension or revocation of a tobacco license for selling tobacco products to minors only go into effect in years when the statewide youth tobacco purchase rate is greater than 13 percent. Given that the current youth tobacco purchase survey rate is less than 13 percent (10.7) no sales to minors violations are currently being counted against a retailer’s state license. Even in years when the state’s illegal sales rate is greater than 13 percent, a retailer is at little to no risk of having their state license suspended or revoked. Under the state licensing program, the state would not suspend a retailer’s license until that retailer has been convicted of selling to minors four times in one year and it requires eight convictions in two years before a license can be revoked.

These conviction rates are unrealistic considering the extent of resources for local enforcement. In fact, since 1995, the STAKE Act program has not fined the same retailer more than three times, due to a lack of sufficient funding to conduct enforcement compliance checks and inspections.

Would AB 2344 preempt cities or counties from passing their own local tobacco licensing ordinance?

No. AB 2344 would not preempt local governments from passing their own tobacco licensing ordinance, including annual fees on retailers to pay for local enforcement of the laws against selling tobacco to minors. In fact, the anti-preemption language in the state licensing program supports stronger local licensing ordinances. This language states, “Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.”

If AB 2344 is signed into law, can a city or county continue to charge a retailer an annual tobacco license fee even though they will have to pay an increased, and annual fee as prescribed by AB 2344?

Yes. There is nothing in AB 2344 or the state licensing program that prohibits a city or county from requiring an annual tobacco license fee. In addition, AB 2344 or the state licensing program does not provide any funding for enforcement of laws against selling tobacco to minors, so cities and counties will need to consider fees on local retailers in order to help reduce illegal sales of tobacco to minors.

Shouldn't cities and counties wait and see what happens in the Legislature with AB 2344 before considering a local tobacco licensing ordinance?

Absolutely not. As proposed, AB 2344 does nothing to provide new resources for cities and counties to address the problem of selling tobacco products to minors. However, cities and counties can collect funds to enforce youth access laws via local tobacco retailer licensing fees.

If the state licensing fee were increased and made annual, why would a city or county need to charge another fee for its local licensing program?

For a local licensing ordinance to be effective (i.e., to reduce the illegal sales of tobacco to minors in the city or county), it requires a sustainable funding source to pay for local enforcement. Whether it is assigned to the police department, sheriff or the health department, conducting the enforcement actions leading to reduced illegal tobacco sales will require local funding. Neither AB 2344 as proposed, nor the state licensing program, is designed to specifically accomplish the goal of reducing illegal sales to minors. Neither provides enforcement funding for this purpose.

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