

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: April 25, 2011
POSITION: Oppose

BILL NUMBER: AB 1301
AUTHOR: J. Hill

BILL SUMMARY: Retail Tobacco Sales: STAKE Act

Current law, the Tobacco Licensing Act requires the Board of Equalization (BOE) to take action against a retailer convicted of a violation of either the Stop Tobacco Access to Kids Enforcement (STAKE) Act or the Penal Code according to the following schedule:

- Upon the first conviction of a violation, the retailer receives a warning letter from BOE that delineates the circumstances under which a retailer's license may be suspended or revoked and the amount of time the license may be suspended or revoked. The retailer and its employees are required to receive training on tobacco control laws from the Department of Health Services upon a first conviction.
- Upon the second conviction of a violation within 12 months, the retailer is subject to a fine of \$500.
- Upon the third conviction of a violation within 12 months, the retailer is subject to a fine of \$1,000.
- Upon the fourth to the seventh conviction of a violation within 12 months, the BOE is required to suspend the retailer's license to sell cigarette and tobacco products for 90 days.
- Upon the eighth conviction of a violation within 24 months, the BOE is required to revoke the retailer's license to sell cigarette and tobacco products.

This bill would also require BOE to take action against a retailer for a "violation" rather than a "conviction of a violation." For purposes of determining the accumulation of violations the bill provides that a violation of the STAKE Act has occurred when either a final administrative adjudication is reached or when the retailer pays the fine of an uncontested violation. A violation of the Penal Code has occurred when a final judgment of guilty, either by jury, appeal, or plea, is entered against the retailer or any employee or agent of the retailer.

This bill would also change the penalty structure for violations of either the STAKE Act or the Penal Code:

- Upon the second violation within five years, the retailer would be subject to a fine of \$500 unless the retailer can show proof that he or she has purchased and installed an identification verification scanner since the date of the violation.
- Upon the third violation within five years, the retailer's license would be suspended for 90 days.
- Upon the fourth violation within five years, the retailer's license would be suspended for 180 days.
- Upon the fifth violation within five years, the retailer's license would be revoked.

Analyst/Principal (0762) C. Hill	Date	Program Budget Manager Mark Hill	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

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When determining the penalty for violations, the BOE would be prohibited from including violations that occurred prior to January 1, 2011.

FISCAL SUMMARY

Finance concurs with BOE estimates that costs to administer the provisions related to sales to minors could be substantial. Costs would be related to imposing fines, suspending or revoking retail licenses, inspecting suspended or revoked retail licensee locations, and seizing cigarettes or tobacco products for continued sales of such products after a license has been suspended or revoked. Additional costs would also be incurred for the storage and destruction of seized property. A detailed cost estimate is pending; however, for similar legislation, SB 602 (Padilla) 2009-10, costs were estimated at \$2.4 million annually.

Since this bill is intended to address youth smoking and not the administration and collection of cigarette and tobacco products taxes, it is unclear how this bill would be funded. While the Licensing Act provides that all moneys in the Cigarette and Tobacco Products Compliance Fund, funded through license fees on tobacco retailers, wholesalers and distributors, are to be used for the purpose of implementing, enforcing, and administering the Licensing Act, revenues available to that fund would be insufficient to offset the costs arising from this bill. Shortfalls in the Compliance Fund are required to be backfilled by other funds receiving cigarette tax revenue, including the General Fund. The General Fund share of a \$2.4 million backfill could approximate \$275,000.

COMMENTS

Finance opposes this bill for the following reason:

- This bill could result in General Fund costs not contained in the 2011-12 Governors Budget.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO RV	PROP 98	FC	2010-2011 FC	2011-2012 FC	2012-2013 FC			
0860/Equalization	SO	No			See Fiscal Summary				0230
0860/Equalization	SO	No			See Fiscal Summary				3067
0860/Equalization	SO	No			See Fiscal Summary				0001
0860/Equalization	SO	No			See Fiscal Summary				0623
0860/Equalization	SO	No			See Fiscal Summary				0004
Fund Code	Title								
0001	General Fund								
0004	Breast Cancer Fund								
0230	Cigarette & Tobacco Products Surtax Fund								
0623	Children & Families First Trust Fd, Cal								
3067	Cigarette & Tobacco Products Compliance								