

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 06/18/2012
POSITION: Neutral

BILL NUMBER: AB 1301
AUTHOR: Hill, Jerry

BILL SUMMARY: Retail Tobacco Sales: STAKE Act

Current law, the Tobacco Licensing Act, requires the Board of Equalization (BOE) and the California Department of Public Health (CDPH) to take action against a retailer found to be in violation of either the Stop Tobacco Access to Kids Enforcement (STAKE) Act or the Penal Code.

This bill would provide for enhanced civil penalties and expand BOE's authority to suspend retailers' licenses for violations of the laws governing sale of tobacco products to persons under the age of 18.

It is our understanding that the purpose of the bill is to hold retailers accountable for repeated violations of the STAKE Act by requiring the BOE to take action against a retailer's license to engage in the sale of cigarettes or tobacco products.

FISCAL SUMMARY

The CDPH estimates that to support actions prosecuted under the California Administrative Procedures Act, an appeal would require CDPH legal staff to review the facts of the case, prepare, and litigate the case in front of an administrative law judge. CDPH would need an additional Staff Counsel I to process the anticipated increased number of appeals and workload which would be created by this bill. This bill does not provide funding for the increased workload. The estimated cost for one full time Staff Counsel I is \$131,000 per year and CDPH states that cost would be absorbable from the collection of expected fines and penalties

Finance concurs with BOE estimates that BOE costs to administer the provisions related to suspending or revoking retail licenses for violations reported by CDPH, estimated by CDPH to be between 10 to 20 reportable violations annually, would be minor and absorbable and would be at least partially offset by the bill's additional BOE assessed \$200 civil penalty imposed on the offending retailers.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the April 25, 2011 version deleted all previous provisions of the bill. The bill would now provide additional civil penalties for violations of the STAKE Act and would change the criteria for imposition of tobacco retailer license suspension or revocation. Finance's position on the bill has changed from "oppose" to "neutral" because the bill would no longer have a significant state General Fund impact.

COMMENTS

Finance notes the following with regard to this bill:

- This bill could address existing jurisdictional concerns by requiring CDPH to direct BOE to suspend or revoke a tobacco retailer's license for violations of law.

Analyst/Principal (0762) C.Hill	Date	Program Budget Manager Kristin Shelton	Date
Department Deputy Director			Date
Governor's Office:	By:	Date:	Position Approved _____ Position Disapproved _____
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

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ANALYSIS

1. Programmatic Analysis

Current law, the Tobacco Licensing Act requires the CDPH to take action against a retailer found to be in violation of either the STAKE Act or the Penal Code, according to the following schedule:

- Upon the first 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 CDPH, which must also impose a civil penalty of \$400 to \$600.
- Upon the second violation within five years, the retailer is subject to a civil penalty of \$900 to \$1,000 imposed by CDPH.
- Upon the third violation within 5 years, the retailer is subject to a civil penalty of \$1,200 to \$1,800 by CDPH.
- Upon the fourth violation within five years, the retailer is subject to a civil penalty of \$3,000 to \$4,000 imposed by CDPH.
- Upon the fifth violation within five years, the retailer is subject to a civil penalty of \$5,000 to \$6,000 imposed by CDPH.

Existing law provides that CDPH is mandated to operate a program of random inspections of tobacco retailers to determine the availability of tobacco products to persons under the age of 18. BOE's authority to revoke or suspend is contingent on the issuance of a federally mandated CDPH report on the results of that inspection program to the federal Department of Health and Human Services showing that tobacco products were able to be purchased by more than 13 percent of persons under the age of 18.

Under current law, after a second violation of either the STAKE Act or the Penal Code, BOE is required to separately impose penalties against a retailer, according to the following schedule:

- 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.

Under current law, in order to suspend a retailer's license, BOE must provide an adjudicatory process, separate from the CDPH citation process, that addresses the substance of the violation on which the suspension or revocation would be based.

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ANALYSIS (continued)**This bill would:**

- Provide that BOE shall, upon final adjudication by CDPH or voluntary payment of a civil penalty for a third, fourth or fifth violation, and notification of BOE by CDPH, assess an additional \$200 civil penalty against a retailer to be paid into the Cigarette & Tobacco Products Compliance Fund to offset BOE's costs arising from the suspension or revocation of the retailer's license.
- Repeal provisions of existing law requiring BOE to separately impose penalties on retailers for violations of the STAKE Act or the Penal Code.
- Repeal provisions of existing law that restrict BOE's authority to revoke or suspend retail licenses, depending on the percentage of persons under the age of 18 years able to purchase tobacco products.
- Require that CDPH shall direct the BOE to suspend or revoke a license according to the following schedule:
 - A 45-day license suspension for a third violation within a five-year period.
 - A 90-day license suspension for a fourth violation within a five-year period.
 - A license revocation for a fifth violation within a five-year period.
- Provide that BOE shall consider no appeal of a license suspension or revocation except for an appeal to correct a mistake or clerical error.

2. Fiscal Analysis

The CDPH estimates that to support actions prosecuted under the California Administrative Procedures Act, an appeal would require CDPH legal staff to review the facts of the case, prepare, and litigate the case in front of an administrative law judge. CDPH would need an additional Staff Counsel I to process the anticipated increased number of appeals and workload which would be created by this bill. This bill does not provide funding for the increased workload. The estimated cost for one full time Staff Counsel I is \$131,000 per year and CDPH states that cost would be absorbable from the collection of expected fines and penalties

Finance concurs with BOE estimates that BOE costs to administer the provisions related to suspending or revoking retail licenses for violations reported by CDPH, estimated by CDPH to be between 10 to 20 reportable violations annually, would be minor and absorbable and would be at least partially offset by the bill's additional BOE assessed \$200 civil penalty imposed on the offending retailers.

BILL ANALYSIS--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

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Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year)			Fund Code
				(Dollars in Thousands)			
				2011-2012 FC	2012-2013 FC	2013-2014	
0860/Equalization	SO	No		-----	No/Minor Fiscal Impact	-----	3067
0860/Equalization	SO	No		-----	No/Minor Fiscal Impact	-----	0001
4265/PublicHealth	SO	No		-- C	131 C	131	0066
<u>Fund Code</u>	<u>Title</u>						
0001	General Fund						
0066	Sale of Tobacco to Minors Control Acct						
3067	Cigarette & Tobacco Products Compliance						