

(Without Reference to File)

SENATE THIRD READING

SB 793 (Hill, et al.)

As Amended August 10, 2020

Majority vote

SUMMARY:

Prohibits a tobacco retailer, or any of its agents or employees from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer. Exempts from this prohibition the sale of Hookah water pipes and flavored shisha tobacco products, pipe tobacco, and premium cigars.

Major Provisions

- 1) Prohibits a tobacco retailer, or any of the tobacco retailer's agents or employees from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.
- 2) Establishes a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, makes a claim directed to consumers or the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.
- 3) Makes a tobacco retailer, or agent or employee of a tobacco retailer, who violates these provisions guilty of an infraction punishable by a fine of \$250 for each violation.
- 4) Specifies that nothing in this bill preempts or otherwise prohibits the adoption of a local standard that imposes greater restrictions on the access to tobacco products, and that to the extent that there is an inconsistency between the provisions of this bill and a local standard that imposes greater restrictions on the access to tobacco products, the greater restrictions in the local standard will prevail.

COMMENTS:

Cigarette smoking causes more than 480,000 deaths each year in the United States (U.S.), or nearly one in five deaths. Smoking causes more deaths each year than the following causes combined: Human immunodeficiency virus, illegal drug use, alcohol use, motor vehicle injuries, and firearm-related incidents. More than 10 times as many U.S. citizens have died prematurely from cigarette smoking than have died in all the wars fought by the U.S. Smoking causes about 90% (or nine out of 10) of all lung cancer deaths. More women die from lung cancer each year than from breast cancer. Smoking causes about 80% (or eight out of 10) of all deaths from chronic obstructive pulmonary disease. Cigarette smoking increases the risk for death from all causes in men and women. In California, smoking-related health care costs \$13.29 billion per year and smoking-related losses in productivity totals \$10.35 billion per year.

Youth tobacco use and electronic nicotine delivery systems. According to the federal Centers for Disease Control and Prevention (CDC), if cigarette smoking continues at the current rate among

youth in this country, 5.6 million of today's Americans younger than 18 will die early from a smoking-related illness, or about one of every 13 Americans aged 17 years or younger who are alive today. Tobacco product use is started and established primarily during adolescence. Nearly nine out of 10 daily cigarette smokers first try cigarettes by age 18, and 99% first try smoking by age 26.2. According to CDC data, each day in the U.S. about 1,600 youth under 18 years of age smoke their first cigarette and nearly 200 youth under 18 years of age become daily cigarette smokers. Flavorings in tobacco products can make them more appealing to youth. In 2018, 67% of high school students and 49% of middle school students who used tobacco products in the past 30 days reported using a flavored tobacco product during that time.

Menthol. Cigarettes with specific characterizing flavors were prohibited in the U.S. on September 22, 2009, as part of the federal Family Smoking Prevention and Tobacco Control Act of 2009 (TCA), that gave the federal Food and Drug Administration (FDA) authority over tobacco products. The TCA provision excluded menthol cigarettes, which have subsequently increased their share of the cigarette market. Sales of menthol cigarettes increased from 2011 to 2015, at a time when overall cigarette sales have been gradually decreasing. Data from the Federal Trade Commission (FTC) show that in 2018, menthol cigarettes comprised 36% of the market, the highest proportion on record since FTC began collecting this data in 1963. A 2013 FDA report on the health impact of menthol cigarettes determined that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction and decreased success in quitting smoking. The FDA's Tobacco Products Scientific Advisory Committee's (TPSAC) concluded, "Removal of menthol cigarettes from the marketplace would benefit public health in the United States." TPSAC's report and FDA's analysis conclude that African Americans are disproportionately burdened by the health harms of menthol cigarettes. Specifically, TPSAC concluded that the marketing and availability of menthol cigarettes increases the overall prevalence of smoking and reduces cessation among African Americans. TPSAC estimated that by 2020, 4,700 excess deaths in the African-American community will be attributable to menthol cigarettes, and over 460,000 African Americans will have started smoking because of menthol cigarettes. Unless action is taken, an estimated 1.6 million African Americans alive today, who are now under the age of 18, will become regular smokers; and about 500,000 of those will die prematurely from a tobacco-related disease.

Effectiveness of flavor bans. According to a 2019 study published by the National Institutes of Health, "Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use," the flavored products that remain legal present important concerns for adolescent tobacco use. Numerous studies have found that cigarette smokers who use primarily menthol cigarettes tend to be younger and newer smokers, progress to becoming established smokers faster, are more nicotine dependent, and have less successful quit attempts. The study notes that, by removing flavors from cigarettes, the ban intended to reduce adolescent cigarette use. However, some adolescents may have switched from non-menthol flavored cigarettes to menthol cigarettes or other flavored tobacco products. The ban could therefore have led to a reduction in the prevalence of non-menthol cigarette smoking while increasing cigar, smokeless tobacco, pipe, and menthol cigarette use. The study concludes that such switching behavior could provide support for broader regulations of menthol cigarettes and other flavored tobacco products.

A study published in the *Journal of Adolescent Health* in July of 2020, "Cigarette Use Before and After the 2009 Flavored Cigarette Ban," found that the flavored cigarette ban reduced smoking among youth (ages 12 to 17 years) by 43% and young adults (ages 18 to 25 years) by 27%. The study also noted an increase in smoking of menthol cigarettes among youth right after the ban took

effect. The authors suggest, to maximize the effectiveness of flavor bans among young people, and to avoid increasing health disparities among African Americans, flavor bans should include all flavors and tobacco products.

According to the Author:

Youth usage of flavored tobacco products has exploded recently. Fueled by kid friendly flavors like cotton candy and bubblegum, 3.6 million more middle and high school students started using e-cigarettes in 2018. The disturbing rates of teen e-cigarette use continued to rise in 2019 with the overwhelming majority of youth citing use of popular fruit and menthol or mint flavors. In the last two years alone, e-cigarette use among young people surged by 135% and there are now 5.3 million young Americans who use e-cigarettes regularly. The author states that California needs to take swift action to address this epidemic. As the World Health Organization, CDC, DPH, and other public health experts warn smoking may increase risk of severe illness from COVID-19 the need to enact strong policies that promote tobacco cessation and prevent youth from initiating tobacco use has become more critical.

Arguments in Support:

This bill is sponsored by the Campaign for Tobacco-Free Kids, American Lung Association in California, American Heart Association, American Cancer Society Cancer Action Network, and Common Sense. The sponsors note that California has long been a national leader in its commitment to reducing the death and disease from tobacco use. While California has made great strides in reducing tobacco use, it remains the number one preventable cause of premature death and disease in our state and the nation, killing 480,000 Americans annually. The sponsors state that nationally, eight out of 10 of current youth tobacco users have used a flavored tobacco product in the past month and that prohibiting the sale of flavored tobacco products, including menthol cigarettes, in all tobacco retailers is a critical step that will help protect children living in California from the unrelenting efforts by the tobacco industry to hook them to a deadly addiction.

The African American Tobacco Control Leadership Council (AATCLC) supports this bill and notes that 85% of African American adults and 94% of Black youth who smoke are using menthol products. AATCLC states that these striking statistics arise from the predatory marketing of these products in the Black Community, where there are more advertisements, more lucrative promotions, and *cheaper prices* for menthol cigarettes compared to other communities. These predacious practices for the past 60 years have led to Black folks dying disproportionately from heart attacks, lung cancer, strokes, and other tobacco related diseases and if we are to have a healthier California, then it is imperative that the sale of menthol and all other flavored tobacco products be prevented and that the marketing of these products be stopped.

Arguments in Opposition:

The California Fuels and Convenience Alliance (CFCA) opposes this bill, stating it will have a significant impact on state tax revenues, while failing to truly address the issue of teen vaping. CFCA states this bill arbitrarily prohibits the sale of flavored tobacco products in brick and mortar retail stores and simply shifts the market to online vendors and unscrupulous out-of-state actors that will continue to provide unauthorized access to these products. The Vapor Technology Association opposes this bill, stating that any ban or limitation on access to vapor products directly impacts consumers who are reliant upon vapor products as an alternative to

combustible cigarettes, not to mention, jeopardizes the businesses that Californians have built and are still building.

Pastors of Compton states that they are concerned that the proposed ban on menthol cigarettes will disproportionately impact people and communities of color, and that they don't believe a prohibition on menthol cigarettes will reduce smoking among Black people, young people, or others. Pastors of Compton note that they focus on changing family dynamics to protect young people against smoking and that they find they have the greatest results in engaging young people in messaging to other youth against smoking.

FISCAL COMMENTS:

According to the Assembly Appropriations Committee:

- 1) Significant annual revenue loss from reduction in excise taxes on cigarettes and other tobacco products, potentially in the high tens of millions of dollars to low hundreds of millions of dollars (mostly special funds). The Department of Tax and Fee Administration (CDTFA) estimated a prior version of this bill would have resulted in \$218 million in revenue loss for 2021-22, the first full fiscal year in which a ban would be in place. A total of \$5.7 million of this revenue loss is to the General Fund (GF), based on a \$0.10 tax per pack of cigarettes only. DPH notes few data sources are available on consumer responses to banned flavored products, so consumer impacts are highly uncertain. In addition, some minor exemptions have been added since this time; thus the revenue loss is slightly overstated.
- 2) CDTFA estimated a prior version of this bill would have resulted in sales tax losses of around \$53 million statewide (\$24.3 million GF) in 2021-22, the first full fiscal year in which a ban would be in place. As above, this estimate is uncertain and the revenue loss is slightly overstated due to narrow exemptions.
- 3) Potential minor cost pressure to DPH for additional investigations conducted as complaint-driven or as follow-ups to field observations during routine inspections (special fund).
- 4) Unknown but potentially significant long-term cost savings to state public health and health care systems from reductions in cardiovascular and respiratory health-related illnesses from reduced use of tobacco and vape products (various funds).

VOTES:

SENATE FLOOR: 33-4-3

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

NO: Grove, Jones, Melendez, Morrell

ABS, ABST OR NV: Bates, Borgeas, Moorlach

ASM HEALTH: 10-2-3

YES: Wood, Aguiar-Curry, Bonta, Burke, Carrillo, Limón, McCarty, Nazarian, Rodriguez, Santiago

NO: Bigelow, Flora

ABS, ABST OR NV: Mayes, Ramos, Waldron

ASM APPROPRIATIONS: 13-3-2

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, Quirk, Robert Rivas

NO: Bigelow, Fong, Voepel

ABS, ABST OR NV: Megan Dahle, Diep

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