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CIGARETTE AND TOBACCO TAX. BENEFIT
FUND. INITIATIVE CONSTITUTIONAL
AMENDMENT AND STATUTE

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Official Title and Summary Prepared by the Attorney General

CIGARETTE AND TOBACCO TAX. BENEFIT FUND. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE. Imposes additional tax upon cigarette distributors of one and one-fourth cents (1¼ cents) for each cigarette distributed. Imposes tax upon distributors of other tobacco products which is equivalent to combined rate of tax imposed on cigarettes. Directs State Board of Equalization to determine this tax annually. Places moneys raised in special account which can only be used for: treatment; research of tobacco-related diseases; school and community health education programs about tobacco; fire prevention; and environmental conservation and damage restoration programs. Declares revenues not subject to appropriations limit. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Will raise additional state revenues of approximately \$300 million in 1988-89 (part year) and \$600 million in 1989-90 (first full year). These revenue increases would decline gradually in subsequent years. Annual administrative costs are estimated at \$500,000 in 1988-89 and \$300,000 in subsequent years. There would be no substantial net effect on sales and excise tax revenues to the state, cities, and counties.

Analysis by the Legislative Analyst

Background

Current law imposes a state excise tax which amounts to 10 cents for each pack of 20 cigarettes. This tax is collected by the State Board of Equalization. Seventy percent of the proceeds are distributed to the State General Fund, and the remainder to cities and counties.

Proposal

This measure imposes an additional excise tax on cigarettes which amounts to 25 cents for each pack of 20 cigarettes. The total excise tax, therefore, would be 35 cents for each pack. In addition, it imposes a new excise tax on other types of tobacco products, such as cigars, chewing tobacco, pipe tobacco, and snuff. The rate of this tax would be determined by the Board of Equalization, and would be equivalent to the total excise tax on cigarettes.

The measure requires the revenues from the additional taxes to be spent for the following purposes:

- **Health Education.** Twenty percent must be used for the prevention and reduction of tobacco use, primarily among children, through school and community health education programs.
- **Hospital Services.** Thirty-five percent must be used to pay hospitals for the treatment of patients who cannot afford to pay, and for whom payment will not be made through private coverage or federally funded programs. The medical care services qualifying for payment are not limited to the treatment of tobacco-related illnesses.
- **Physician Services.** Ten percent must be used to pay physicians for medical care services provided to specified patients who cannot afford to pay, as described above.
- **Research.** Five percent must be used to fund tobacco-related disease research.
- **Public Resources.** Five percent must be equally

divided between programs that (1) protect, restore, enhance, or maintain fish, waterfowl, and other wildlife habitat areas; and (2) improve state and local park and recreation resources.

- **General Purposes.** The remaining 25 percent may be used for any of the specific purposes described above.

The measure requires all funds to be used to supplement current services, not to fund existing service levels.

In addition, this measure amends the California Constitution to provide that the appropriation of revenues from the additional taxes imposed by this measure subject to either the state or local appropriations limits.

The measure would become effective on January 1, 1989.

Fiscal Effect

This measure would raise additional state revenues of approximately \$300 million in 1988-89 (part year) and \$600 million in 1989-90 (first full year). These revenue increases would decline gradually in subsequent years.

In addition, this measure would have two offsetting effects on State General Fund and local revenues. First, the measure would *increase* sales tax revenues. This is because the sales tax is imposed on the total price of tobacco products, including the increased excise tax. Second, the measure would *reduce* revenues from the existing 10-cents-per-pack cigarette excise tax, because some consumers would reduce their purchases of tobacco products in response to the higher taxes. These revenue effects would offset each other, and there would be little or no *net* effect on the State General Fund or on local revenues.

Administration of the surtax on cigarettes and tobacco products would increase annual costs to the State Board of Equalization by approximately \$500,000 in 1988-89 and \$300,000 in subsequent years. These costs would be reimbursed out of the proceeds of the additional taxes.

Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by adding section thereto, and adds sections to the Revenue and Taxation Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. *This measure shall be known and may be cited as the Tobacco Tax and Health Protection Act of 1988.*

SEC. 2. *The people find and declare as follows:*

(a) *Tobacco use is the single most preventable cause of death and disease in America.*

(b) *Tobacco-related diseases create immense suffering and personal loss, and a staggering economic cost which all Californians have to pay.*

(c) *Tobacco-related diseases are a major burden on state and local governments by requiring them to provide medical care and health services.*

(d) *Tobacco use causes substantial environmental damage, and property damage and loss of life due to fire.*

(e) *To reduce the incidence of cancer, heart, and lung disease and to reduce the economic costs of tobacco use in California, it is the intent of the people of California to increase the state tax on cigarettes and tobacco products and do all of the following:*

(1) *Reduce smoking and other tobacco use among children.*

(2) *Support medical research into tobacco-related cancer, heart, and lung diseases.*

(3) *Treat people suffering from tobacco-related diseases.*

(4) *In recognition of the uncompensated costs of tobacco-related illness, support treatment of patients who cannot afford to pay for services.*

SEC. 3. Section 12 is added to Article XIII B of the Constitution, to read:

SEC. 12. *"Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988.*

No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988.

SEC. 4. Article 2 (commencing with Section 30121) is added to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

Article 2. Cigarette and Tobacco Products Surtax

30121. *For purposes of this article:*

(a) *"Cigarettes" has the same meaning as in Section 30003, as it read on January 1, 1988.*

(b) *"Tobacco products" includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50 percent, tobacco, but does not include cigarettes.*

(c) *"Fund" means the Cigarette and Tobacco Products Surtax Fund created by Section 30122.*

30122. (a) *The Cigarette and Tobacco Products Surtax Fund is hereby created in the State Treasury. The fund shall consist of all revenues deposited therein pursuant to this article. Moneys in the fund may only be appropriated for the following purposes:*

(1) *Tobacco-related school and community health education programs.*

(2) *Tobacco-related disease research.*

(3) *Medical and hospital care and treatment of patients who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.*

(4) *Programs for fire prevention; environmental conservation; protection, restoration, enhancement, and maintenance of fish, waterfowl, and wildlife habitat areas; and enhancement of state and local park and recreation purposes.*

(b) *The fund consists of six separate accounts, as follows:*

(1) *The Health Education Account, which shall only be available for*

appropriation for programs for the prevention and reduction of tobacco use, primarily among children, through school and community health education programs.

(2) *The Hospital Services Account, which shall only be available for appropriation for payment to public and private hospitals licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code for the treatment of hospital patients who cannot afford to pay for that treatment and for whom payment for hospital services will not be made through private coverage or by any program funded in whole or in part by the federal government.*

(3) *The Physician Services Account, which shall only be available for appropriation for payment to physicians for services to patients who cannot afford to pay for those services, and for whom payment for physician services will not be made through private coverage or by any program funded in whole or in part by the federal government.*

(4) *The Research Account, which shall only be available for appropriation for tobacco-related disease research.*

(5) *The Public Resources Account, which shall only be available for appropriation in equal amounts for both of the following:*

(A) *Programs to protect, restore, enhance, or maintain fish, waterfowl, and wildlife habitat on an equally funded basis.*

(B) *Programs to enhance state and local park and recreation resources.*

(6) *The Unallocated Account, which shall be available for appropriation for any purpose specified in subdivision (a).*

30123. (a) *In addition to the tax imposed upon the distribution of cigarettes by this chapter, there shall be imposed upon every distributor a tax upon the distribution of cigarettes at the rate of twelve and one-half mills (\$0.0125) for each cigarette distributed.*

(b) *There shall be imposed upon every distributor a tax upon the distribution of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the combined rate of tax imposed on cigarettes by subdivision (a) and the other provisions of this part.*

30124. (a) *With the exception of payments of refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, and reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the tax imposed by Section 30123, pursuant to its powers vested by this part, all moneys raised pursuant to the taxes imposed by Section 30123 shall be deposited into the fund as provided in subdivision (b).*

(b) *Moneys shall be deposited in the fund according to the following formula:*

(1) *Twenty percent shall be deposited in the Health Education Account.*

(2) *Thirty-five percent shall be deposited in the Hospital Services Account.*

(3) *Ten percent shall be deposited in the Physician Services Account.*

(4) *Five percent shall be deposited in the Research Account.*

(5) *Five percent shall be deposited in the Public Resources Account.*

(6) *Twenty-five percent shall be deposited in the Unallocated Account.*

(c) *Any amounts appropriated from any account specified in subdivision (b) which is not encumbered within the period prescribed by law shall revert to the account from which it was appropriated.*

30125. *Funds expended pursuant to this article shall be used only for the purposes expressed in this article and shall be used to supplement existing levels of service and not to fund existing levels of service.*

30126. *The annual determination required of the State Board of Equalization pursuant to subdivision (b) of Section 30123 shall be made based on the wholesale cost of tobacco products as of March 1, and shall be effective during the state's next fiscal year.*

30128. *This article shall take effect on January 1, 1989.*

30129. *The tax imposed by Section 30123 shall be imposed on every cigarette and tobacco product in the possession or under the control of every dealer and distributor on and after 12:01 a.m. on January 1, 1989, pursuant to rules and regulations promulgated by the State Board of Equalization.*

30130. *This article may be amended only by vote of four-fifths of the membership of both houses of the Legislature. All amendments to this article must be consistent with its purposes.*

SEC. 6. *If any section of this measure, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.*

Argument in Favor of Proposition 99

The alarming report released May 16, 1988, by the U.S. Surgeon General confirmed that the ADDICTIVE DRUG, NICOTINE, FOUND IN CIGARETTES is as habit forming and addictive as cocaine and heroin. "We must take steps to prevent young people from beginning to smoke," the report states. "We must insure that every child in every school in this country is educated as to the HEALTH RISKS AND ADDICTIVE NATURE OF TOBACCO USE."

A YES VOTE ON PROPOSITION 99 will place an additional 25-cent tax on every pack of cigarettes and guarantee strong antismoking programs in our schools.

That's why the out-of-state tobacco companies are spending millions of dollars to defeat PROPOSITION 99 the Tobacco Tax. They know that with the growing number of people who kick the habit and the 320,000 people who die annually from tobacco-related diseases, THE TOBACCO COMPANIES MUST HOOK 5,000 NEW YOUNG SMOKERS EVERY DAY JUST TO KEEP CIGARETTE SALES AT THEIR PRESENT LEVELS.

Tobacco companies know that passage of PROPOSITION 99 will hurt cigarette sales. They will spend whatever it takes to get a "No" vote even if it means sacrificing the health and safety of young people.

A YES VOTE FOR A 25-CENT TAX ON EVERY PACK OF CIGARETTES will also raise an additional 30 million dollars each year for medical research to help find a cure and treatment for cancer, emphysema, lung and heart diseases caused by smoking.

A YES VOTE FOR A 25-CENT TAX ON EVERY PACK OF CIGARETTES will pay for medical care for those who cannot afford it and take some of that burden off the taxpayer.

California's health care crisis is forcing some hospitals, clinics, trauma centers and emergency rooms to close. Cities and towns throughout California cannot raise the money necessary to keep them open. THE CLOSING OF HEALTH CARE FACILITIES

PUTS EVERY INDIVIDUAL AND FAMILY IN JEOPARDY.

A YES VOTE FOR A 25-CENT TAX ON EVERY PACK OF CIGARETTES will protect our wildlife and parklands.

Throughout California fires and devastation threaten wildlife and recreational park facilities. A YES VOTE ON PROPOSITION 99 will authorize funding for fire protection, restoration and enhancement of California's parks and open land.

NONSMOKING CALIFORNIANS SHOULD NOT HAVE TO PAY HIGHER TAXES AND INSURANCE PREMIUMS BECAUSE SMOKING CAUSES FIRES AND DISEASE. Smokers should pay their fair share. A 25-cent tax on every pack of cigarettes is a small price to pay.

VOTE YES ON 99 to educate children about the dangers of smoking.

VOTE YES ON 99 for medical care for people who cannot afford health care.

VOTE YES ON 99 for continued research into tobacco-related diseases.

VOTE YES ON 99 for wildlife protection and restoration of parklands.

P.S. The people who care about your health and welfare—THE AMERICAN CANCER SOCIETY, AMERICAN LUNG ASSOCIATION, AMERICAN HEART ASSOCIATION, PHYSICIANS, DENTISTS, HOSPITALS, NURSES, EDUCATORS, ENVIRONMENTAL, CITIZEN AND CONSUMER GROUPS—are sponsoring this initiative and urge you to vote YES ON PROPOSITION 99.

JESSE STEINFELD, M.D.
Surgeon General (Ret.)

NEIL C. ANDREWS, M.D.

President, American Cancer Society, California Division

PATRICIA A. SCHIFFERLE

*Regional Director, The Wilderness Society,
California/Nevada Region*

Rebuttal to Argument in Favor of Proposition 99

If you want to *triple a tax, invite more crime, treat many hard-working Californians unfairly, punish some of your neighbors and hand over more money to many wealthy doctors*, you'll vote for Proposition 99.

Read Proposition 99 carefully. You'll see what serious problems it creates for Californians.

Here are just five of the many reasons to *oppose Proposition 99*:

- It would *invite serious crime*. New pressures will be put on police. Officials in 13 states recently joined in a hotline to combat the growing problem of cigarette smuggling. The California State Sheriffs Association and the California Peace Officers Association oppose Proposition 99.
- It would provide a *potential new cash source for street gangs and other criminals*. Smugglers could avoid up to \$200,000 in taxes on a truckload of cigarettes bootlegged from another state. Resulting illegal profits could finance the purchase of drugs or guns that could be used against innocent citizens.
- It would *single out and penalize the behavior of one group of people who are breaking no laws*. Is that in the American

tradition of fairness?

- It would *unfairly burden lower-income Californians*. Taxes like this take a bigger chunk of a poor family's income. That's called "regressive." Even a 1986 report of the American Hospital Association acknowledges tobacco taxes "tend to produce a regressive distribution of the cost of government programs."

- It would *enrich the medical industry with hundreds of millions of dollars*. A 1987 study indicated one in four doctors surveyed already is a millionaire.

No on taxes.

No on crime.

No on Proposition 99.

PAUL GANN

President, The People's Advocate

VINCENT CALDERON

National Chairman, Latino Peace Officers Association

WILLIAM BAKER

Member of the Assembly, 15th District

Vice Chairman, Ways and Means Committee

Cigarette and Tobacco Tax. Benefit Fund. Initiative Constitutional Amendment and Statute

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Argument Against Proposition 99

Proposition 99 is a 250-percent tax increase and special interest giveaway disguised as a health initiative. It is not a smoking ban.

Proposition 99 will encourage crime, discriminate against one group of Californians, penalize some lower-income families and reward its major promoters hundreds of millions of dollars.

Proposition 99 would establish several historic firsts:

- *This ballot measure will encourage crime in California.* Large tax increases on tobacco products in other states have triggered bootlegging, highjacking, vandalism and other criminal behavior. They create a financial bonanza for street gangs and organized crime. *The California State Sheriffs Association and the California Peace Officers Association know the facts and oppose Proposition 99.*
- *This ballot measure was designed to pay off many of its promoters.* Most taxes benefit all citizens. But California's medical industry would pocket at least \$292 million of these projected taxes each year. And those least able to afford it would feel the sharpest impact of these new taxes. Proposition 99 would create an unacceptable precedent for other self-serving ballot measures sponsored by special interests seeking new tax dollars for their "special" agendas.
- *This ballot measure was drafted by one group to punish by taxation the behavior of another.* Proposition 99's promoters would impose their values on everyone, penalizing one segment of society for its conduct. Who will be punished next? Can new taxes on beer, wine, coffee or even red meat and eggs be far behind?

Proposition 99 is an excise tax. It hits one group of citizens for what they buy, not what they earn. In 1987 the Congressional Budget Office reported that excise taxes such as tobacco taxes proposed by Proposition 99 are a greater burden on lower-

income Americans than other taxes. Tobacco taxes are more unfair than taxes on gasoline, beer or wine.

Groups representing the needy, minorities, business and labor opposed last year's proposed federal excise tax increase and Congress rejected it. Similarly, a state tobacco tax increase failed to get one vote in the California Legislature last year.

The promoters of Proposition 99 have billed it as a health research initiative. Yet, *only five pennies of each new tax dollar would go to health research*—the smallest allocation in the initiative.

The promoters of Proposition 99 have billed it as a health education initiative as well. The promoters say some of the new education money would be used to finance "major local and statewide media campaigns." Don't be misled. Even the state's largest teachers organization took no position on this initiative. *Earmarking Proposition 99 funds for a health education account could result in a cut in the level of financial support for reading, math and other basic classroom subjects.*

Don't be fooled by trendy, noble-sounding rhetoric. *Read Proposition 99 carefully.* The promoters want you to penalize one group of Californians, impose an unfair tax that falls hardest on lower-income families, and put millions of dollars into their pockets—while encouraging crime . . . all at the same time.

Proposition 99 is less than meets the eye. *Voters should reject Proposition 99.*

PAUL GANN

President, The People's Advocate

VINCENT CALDERON

National Chairman, Latino Peace Officers Association

RICHARD FLOYD

Member of the Assembly, 53rd District

Chairman, Governmental Organization Committee.

Rebuttal to Argument Against Proposition 99

TOBACCO COMPANIES WON'T TELL YOU THE TRUTH about why they oppose Proposition 99.

THE TRUTH IS they oppose increasing tobacco taxes because **THEY WILL LOSE MONEY.** Every other argument against Proposition 99 is a smokescreen.

THE TRUTH IS CIGARETTE SALES WILL DECLINE. Fewer children will start smoking and more adults will stop.

THE TRUTH IS crime is not the issue. Bootlegging from low-tax tobacco-growing states up the East Coast was a problem in the 1970s. No longer. **ILLEGAL DRUG TRADE IS MORE ATTRACTIVE TO CRIMINALS AND GANGS THAN SMUGGLING CIGARETTES.**

THE TRUTH IS the State Board of Equalization enforces the tobacco taxes. This is generally not a police matter.

THE TRUTH IS TOBACCO COMPANIES EAGERLY SELL CIGARETTES NO MATTER HOW POOR THE BUYER. They advertise heavily to minority and low-income youth. The result—55% of Blacks die from the major smoking-related diseases, and smoking among Hispanic teens is skyrocketing.

That's why antismoking education and training is so important.

THE TRUTH IS IT TAKES MONEY TO DELIVER MEDICAL CARE. Proposition 99 provides additional resources to care for those in need.

THE TRUTH IS \$32 MILLION EVERY YEAR SUPPORTS RESEARCH ON TOBACCO-RELATED DISEASES. It may be "only pennies" to tobacco companies, but it is four times what the National Cancer Institute spent in California last year.

WHOM DO YOU TRUST? The out-of-state tobacco industry after more profits? Or the American Cancer Society, American Lung Association and American Heart Association? **VOTE YES ON 99.**

JOHN VAN DE KAMP

Attorney General, State of California

CAROL KAWANAMI

Immediate Past President, American Lung Association

RICHARD V. LOYA

Coordinator, California Association of School Health Educators and Health Teacher