

ASSEMBLY BILL

No. 18

**Introduced by Assembly Member Bonilla
(Principal coauthor: Assembly Member Thurmond)
(Coauthors: Assembly Members Eggman, Frazier, Mark Stone,
and Wood)**

August 31, 2015

An act to add Section 6012.4 to, and to add Part 14.5 (commencing with Section 33001) to Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 18, as introduced, Bonilla. Taxation: distilled spirits: Cocktails for Healthy Outcomes Act.

(1) The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill, on and after January 1, 2016, would impose a surtax on every individual for each purchase of a cocktail from an on-sale licensee for consumption or other use on the licensed, in-state premises of that on-sale licensee at the rate of \$0.05 per cocktail, as defined. This bill would require the surtax rate to be adjusted annually, as specified. This bill would require an on-sale licensee to separately state and collect the surtax from an individual, as specified.

This bill would require the State Board of Equalization to administer and collect the surtax in accordance with the Fee Collection Procedures Law. By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program. The bill would require an on-sale licensee

to register with the board, to prepare and file with the board returns using electronic media in the form prescribed by the board, containing specified information, and to remit the fee quarterly. The bill would require that all revenues, less refunds, be remitted to the State Board of Equalization and deposited in the Healthy California Special Fund for the funding of, among other things, developmental disability services, upon appropriation by the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(2) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption of tangible personal property purchased from a retailer for the storage, use, or other consumption in this state measured by sales price. That law defines the terms “gross receipts” and “sales price.”

This bill would exclude from “gross receipts” subject to tax the amount of surtax imposed by this bill.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse any local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6012.4 is added to the Revenue and
2 Taxation Code, to read:
3 6012.4. Notwithstanding Section 6012, “gross receipts” shall
4 not include the surtax imposed pursuant to Part 14.5 (commencing
5 with Section 33001).
6 SEC. 2. Part 14.5 (commencing with Section 33001) is added
7 to Division 2 of the Revenue and Taxation Code, to read:
8
9 PART 14.5. COCKTAILS FOR HEALTHY OUTCOMES ACT
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11 33001. This part is known, and may be cited, as the “Cocktails
12 for Healthy Outcomes Act.”
13 33002. (a) On and after January 1, 2016, there is hereby
14 imposed a surtax on every individual for each purchase of a cocktail
15 from an on-sale licensee for consumption or other use on the
16 licensed, in-state premises of that on-sale licensee at the rate of
17 five cents (\$0.05) per cocktail.
18 (b) For each calendar year beginning on and after January 1,
19 2017, the State Board of Equalization shall recompute the rate in
20 subdivision (a) in accordance with the percentage change in the
21 California Consumer Price Index, and that recomputed rate shall
22 apply for that calendar year, except that the recomputed rate shall
23 not be less than five cents (\$0.05). The board shall recompute
24 before January 1, 2017, and before each January 1 thereafter.
25 33003. (a) Every on-sale licensee making sales of cocktails
26 for consumption or other use on the licensed, in-state premises of
27 the licensee shall, at the time of making such a sale to an individual,
28 collect the surtax as a charge separate from, and not included in,
29 any other fee, charge, or other amount paid by the purchaser.
30 (b) The on-sale licensee shall collect the surtax from the
31 individual purchasing cocktails on the licensee’s premises and
32 give to the purchaser a receipt therefore in the manner and form
33 prescribed by the board.

1 (c) The board shall administer and collect the surtax imposed
2 by this part pursuant to the Fee Collection Procedures Law (Part
3 30 (commencing with Section 55001)).

4 (d) (1) The surtax is required to be collected by an on-sale
5 licensee and any amount unreturned to the purchaser who paid an
6 amount in excess of the surtax, but was collected from the
7 purchaser under the representation by the licensee that it was owed
8 as a surtax, constitutes debts owed by the licensee to this state.

9 (2) An individual is liable for the surtax until it has been paid
10 to the state, except that payment to the on-sale licensee relieves
11 the purchaser from further liability for the surtax. Any surtax
12 collected from a purchaser that has not been remitted to the board
13 shall be a debt owed to the state by the licensee required to collect
14 and remit the surtax.

15 (e) The board may prescribe, adopt, and enforce regulations
16 relating to the administration and enforcement of this part,
17 including, but not limited to, collections, reporting, refunds, and
18 appeals.

19 (f) (1) The surtax imposed by this part is due and payable to
20 the board quarterly on or before the last day of the month next
21 succeeding each quarterly period.

22 (2) On or before the last day of the month following each
23 quarterly period, a return for the preceding quarterly period shall
24 be filed with the board using electronic media, in the form
25 prescribed by the board. Returns shall be authenticated in a form
26 or pursuant to methods, as prescribed by the board.

27 33004. (a) An on-sale licensee required to collect the surtax
28 imposed under this part shall register with the board. Every
29 application for registration shall be made in a form prescribed by
30 the board and shall set forth the name under which the applicant
31 transacts or intends to transact business, the location of the
32 licensee’s place or places of business, and any other information
33 that the State Board of Equalization may require. An application
34 for registration shall be authenticated in a form or pursuant to
35 methods as may be prescribed by the State Board of Equalization.

36 (b) An application for registration filed pursuant to this section
37 may be filed using electronic media as prescribed by the State
38 Board of Equalization. Electronic media includes, but is not limited
39 to, computer modem, magnetic media, optical disc, facsimile
40 machine, or telephone.

1 33005. The taxes imposed by this part are in addition to any
2 other tax imposed under the Alcoholic Beverage Tax Law (Part
3 14 (commencing with Section 32001)), the Sales and Use Tax Law
4 (Part 1 (Commencing with Section 6001)), or the Bradley-Burns
5 Uniform Sales and Use Tax law (Part 1.5 (commencing with
6 Section 7200)), or in accordance with the Transactions and Use
7 Tax Law (Part 1.6 (commencing with Section 7251)).

8 33006. For purposes of this part, the following definitions shall
9 apply:

10 (a) “Board” means the State Board of Equalization.

11 (b) “Cocktail” means any beverage that is, or contains, distilled
12 spirits.

13 (c) “Distilled spirits” has the same meaning as that term is
14 defined by Section 23005 of the Business and Professions Code,
15 as in effect January 1, 2016.

16 (d) (1) “On-sale licensee” means an on-sale licensee under the
17 Alcoholic Beverage Control Act (Division 9 (commencing with
18 Section 23000) of the Business and Professions Code) that
19 exercises the privileges described in Section 23396 of the Business
20 and Professions Code, as in effect January 1, 2016.

21 (2) “On-sale licensee” does not include a licensee with any of
22 the following:

23 (A) An On-sale General for Train license.

24 (B) An On-sale General for Boat license.

25 (C) An On-sale General for Airplane license.

26 (D) A Daily On-sale General license.

27 (E) A Veterans’ Club license.

28 33007. The Healthy California Special Fund is hereby
29 established in the State Treasury. All revenues, less refunds,
30 collected pursuant to this part shall be made in remittances to the
31 State Board of Equalization and shall be deposited in the Healthy
32 California Special Fund. Upon appropriation by the Legislature,
33 all moneys in the fund shall be expended for the following
34 purposes:

35 (a) Developmental disability services, among other health
36 programs.

37 (b) Reimbursement to the State Board of Equalization for
38 expenses incurred in the implementation, administration, and
39 collection of the taxes imposed by this chapter.

1 SEC. 3. Notwithstanding Section 2230 of the Revenue and
2 Taxation Code, no appropriation is made by this act and the state
3 shall not reimburse any local agency for any sales and use tax
4 revenues lost by it under this act.

5 SEC. 4. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

14 SEC. 5. This act provides for a tax levy within the meaning of
15 Article IV of the Constitution and shall go into immediate effect.

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