

Date of Hearing: April 7, 2015

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Ian Charles Calderon, Chair

AB 768 (Thurmond) – As Introduced February 25, 2015

SUBJECT: Tobacco Free Baseball Act.

SUMMARY: Would prohibit the use of tobacco products in any baseball stadium as defined. Specifically, **this bill:**

- 1) Prohibits the use of a tobacco product at any time at a baseball stadium.
- 2) Requires each baseball stadium to conspicuously post, at every entrance, a sign clearly communicating that the use of tobacco products, including smokeless tobacco, is prohibited.

Further provides that these signs shall also be posted in all dugouts, bullpens, locker rooms, and bathrooms.

- 3) Contains the following definitions:
 - a) “Baseball stadium” means the physical area in which a professional, collegiate, high school, or other organized baseball game or practice is occurring, including all open, semi-open, and enclosed spaces and structures. A baseball stadium includes, but is not limited to, playing fields, dugouts, bullpens, training rooms, locker rooms, team bench areas, spectator seating areas, pedestrian walkways, bathrooms, dining areas, vendor areas, offices, and recreational areas.
 - b) “Organized baseball” means baseball games played in connection with an established league or other association of persons.
 - c) “Smokeless tobacco” means a product that contains cut, ground, powdered, or leaf tobacco and is intended to be placed in the oral or nasal cavity, including, but not limited to, snuff, chewing tobacco, dipping tobacco, dissolvable tobacco products, and sinus.
 - d) “Tobacco product” as one that includes all of the following:
 - i) A product made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff.
 - ii) An electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.
 - iii) A component, part, or accessory of a tobacco product, whether or not sold separately.

- e) Excludes from the definition of “Tobacco product” any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for that approved purpose.
- 4) Makes various legislative findings and declarations.

EXISTING LAW:

- 1) Prohibits the smoking or use of cigarettes or other tobacco products in or nearby various places, as specified, including among other places: schools, public buildings, workplaces and playgrounds.
- 2) Provides for various definitions relating to smoke, smoking, cigarettes or tobacco products, among other things in relation to the aforementioned prohibitions.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) *Author and supporter's statements of need for legislation.*

The author points to recent events as reason for introducing AB 768, saying, "Last year Hall of Fame batting champion, Tony Gwynn, died of cancer. He was 54 and succumbed to cancer of the mouth and salivary glands. In the same year, Curt Schilling, a three-time World Series champion, was also diagnosed with cancer of the mouth. More specifically, both men were diagnosed with cancer of the lining of the mouth, and both men attributed their diagnoses to a single habit – chewing tobacco. And, according to the National Cancer Institute at the National Institutes of Health, smokeless tobacco does, in fact, cause oral cancer, esophageal cancer, and pancreatic cancer. AB 768 is an attempt, primarily, to reduce the use of smokeless tobacco (e.g. chewing and dipping) among youth. Because there exists a disproportionately high level of smokeless tobacco use in baseball, as well as a well-established 'role model effect' between professional players and baseball youth, this bill takes aim at the use of smokeless tobacco only at a baseball stadium in the hopes that impressionable youth never begin to use smokeless tobacco products or associate smokeless tobacco with the sport of baseball."

According to the bill's sponsor, The Campaign for Tobacco-Free Kids, "By eliminating the use of all tobacco products – including smokeless tobacco – at all baseball venues in California, (AB 768) sends a simple and powerful message to children: baseball and tobacco don't mix. Sports should be about promoting a healthy and active lifestyle, not a product that addicts, sickens and kills...Each year, more than half a million kids age 12-17 use smokeless tobacco for the first time. Even as cigarette use continues to decline among youth, smokeless tobacco use has remained troublingly steady. Sadly, baseball is one reason. The Tobacco Free Baseball Act is about the health and future of our children. Because young fans idolize and imitate them, baseball players are powerful role models for our kids. Using smokeless tobacco is one thing we don't want kids imitating."

American Lung Association of California points to statements from an expert from the Centers for Disease Control and Prevention (CDC), who opines that: "Professional athletes in certain sports, including baseball...have traditionally had high levels of smokeless tobacco use. Athletes serve as role models for youth, and smokeless tobacco manufacturers have used advertising, images, and testimonials featuring athletes and sports to make smokeless tobacco products appear attractive to youth. Children and teens closely observe athletes' actions, including their use of tobacco products, and are influenced by what they see. Adolescents tend to mimic the behaviors of those they look up to and identify with, including baseball players and other athletes."

The American Heart Association shared the following in support, "Smokeless tobacco use is on the rise, and is highest in young men between the ages of 18 and 24. Smokeless tobacco contains at least 28 known carcinogens and causes oral, pancreatic and esophageal cancer – as well as other serious health problems such as cardiovascular disease, gum disease, tooth decay and mouth lesions." The California American College of Emergency Physicians adds, "In 2012, approximately 1 in 15 middle school students and 1 in 4 high school students, nationally, were current tobacco users. Children are easily influenced and become lifelong tobacco users, whether it be by the tobacco industry or by a baseball player they view as a role model. AB 768 is an important step toward reducing tobacco use by banning tobacco products, including smokeless tobacco, from baseball stadiums across California. Eliminating tobacco products at baseball stadiums will help change the culture of smokeless tobacco use by baseball players and set an example to children that no form of tobacco is safe."

2) *Current tobacco policies in baseball for players, teams and fans.*

a) *Major League Baseball.*

According to information supplied by the author, Major League Baseball (MLB) is supportive of the concept put forth in AB 768. In a press release shared with the Committee, "Major League Baseball issued the following statement today on the announcement from California lawmakers and the Campaign for Tobacco-Free Kids on its "Knock Tobacco Out of the Park" program:

Major League Baseball has long supported a ban of smokeless tobacco at the Major League level. We have sought a ban of its use on-field in discussions with the Major League Baseball Players Association. Currently, players, managers and coaches cannot use smokeless tobacco during interviews or Club appearances. Personnel may not carry tobacco products in uniform when fans are in the ballpark. The use of smokeless tobacco has long been banned in the Minor Leagues, where the matter is not subject to collective bargaining.

Currently all baseball stadiums have restrictions on smoking, which vary from designated smoking areas within the ballpark to total bans on any form of smoking. In addition, according to the sponsors, five stadiums have also prohibited the use of smokeless tobacco in the ballpark; Cleveland, Milwaukee, Saint Louis, San Diego and Seattle.

b) *Minor League Baseball.*

As of 1993, all minor league players, coaches and umpires are forbidden to smoke or chew tobacco anywhere in their ball parks or on team buses. The ban applies to more

than 6,000 uniformed baseball personnel on the 160 minor league teams, but not to fans, employees of the clubs or to any major league players, including those sent down to the minors for rehabilitation.

Under the policy, violators are subject to ejection and fines -- ranging from \$100 to \$300 depending on the league level -- for each offense.

c) *National Collegiate Athletic Association.*

Players and coaches using "spit tobacco" during college baseball games since 2003 are subject to immediate expulsion under the zero-tolerance policy of the National Collegiate Athletic Association (NCAA). Approved in July, 2002, the rule requires umpires to immediately eject any player or coach using the substance. According to news reports, "The use of tobacco by players, coaches, administrators, and officials during practices and competitions has been illegal since 1993 under NCAA bylaws. But enforcement focused on warning rule-breakers and giving programs time to comply, says Dave Yeast, NCAA National Umpire Coordinator. The new policy will force umpires to toss players and coaches out of contests for infractions."

3) *Committee comments:*

a) *Scope of proposed ban extends far beyond stated goals.*

The scope of AB 768 is truly ambitious, as it aspires to cover all organized baseball from Tiny Tot T Ball to the MLB, and reach all "persons" who are within the physical areas of the broadly defined "baseball stadium" at any and all times a baseball game or practice is taking place. While this vast scope of reach may be well intended, it extends far beyond the stated goal of AB 768 of preventing Major League Baseball players from setting a poor example of personal behavior for California youth.

i) *Scope of persons covered under AB 768: includes office and stadium employees, along with Little League parents and park maintenance crews*

While the author and supporters state that the target of AB 768 is professional baseball players, the language of the bill applies to any "person" in the "physical area in which a professional, collegiate, high school or other organized baseball game or practice is occurring." This restriction would be placed upon fans, players, vendors, stadium employees and visiting teams, both on the field and in offices and facilities. It would also reach parents in the stands of Little League baseball and public facilities such as bathrooms in city parks where they play. An example of how broadly this language could be applied finds that it could be read to cover employees of private batting cage facilities when teams take practice there, along with other customers of the batting cage business in adjacent cages.

ii) *Scope of territory covered by bill extends from stated target of MLB stadiums to private businesses and city parks.*

The bill defines baseball stadium to mean the physical area in which a professional, collegiate, high school, or other *organized baseball* game or practice is occurring (emphasis added). It encompasses "all open, semi-open, and enclosed spaces and

structures including, but not limited to, playing fields, dugouts, bullpens, training rooms, locker rooms, team bench areas, spectator seating areas, pedestrian walkways, bathrooms, dining areas, vendor areas, offices, and recreational areas."

The bill attempts to refine its reach with a definition of "organized baseball" which it defines as, "baseball games played in connection with an established league or other association of persons," but this language is subject to many different interpretations and therefore may be too imprecise to be an effective limitation. Instead, the bill's language opens its provisions up to all recreational leagues and the parks they play in. As mentioned in comment (a)(i) above, the bill would apply to a broad array of persons. In addition, a plain reading of the language could prohibit any unrelated person in a recreational area such as a park, relaxing in the same physical area where a group is practicing recreation league baseball from using any legal tobacco product, in addition to the players and spectators of the baseball-related activity.

b) *Why target only baseball?*

This measure is focused upon the sport of baseball. However, the issue of tobacco use is a much broader one in both society and professional athletics. In professional auto racing the Winston cigarette company famously sponsored the NASCAR *Winston Cup* and the National Association of Stock Car Auto Racing (NASCAR), as of this writing, continues to allow smokeless tobacco sponsorships for driving teams. In formula racing, the Marlborough Grand Prix remains well known on the international circuit. In addition, the Professional Rodeo Cowboy Association continues to be strongly associated with U.S. Smokeless Tobacco Company (USSTC), even though their official sponsorship ended in 2009. Federation Internationale de Football Association (FIFA), the world sanctioning body for soccer - the most popular sport in the world - continues to allow teams to accept tobacco sponsorships. To a lesser extent, players and coaches on the sidelines of football and basketball games have also been known to use smokeless tobacco, such as the Illinois coach recently caught dipping on the sideline of a televised football game.

When committee staff raised the question of why AB 768 only targeted baseball, and not other sports, the author responded that the problem is mostly one of baseball, saying, "According to the Journal of Athletic Training, athletes, *particularly baseball players*, are known to be heavy users of smokeless tobacco. Moreover, while the use of smokeless tobacco may also be prevalent at rodeos, for instance, *AB 768, primarily, is focused on youth*, and baseball is a sport that is professional and gathers a very substantial amount of media exposure. That is to say, a lot of youth aspire to be professional baseball players, many of whom use smokeless tobacco, and there aren't nearly as many kids that aspire to perform in a rodeo."

c) *This issue is part of an existing collective bargaining agreement between MLB and the Player's Union (Major League Baseball Players Association).*

As mentioned by the MLB press release in Comment 2 (a) above, smokeless tobacco use by baseball players is an issue which is the subject of an existing collective bargaining agreement. Currently, baseball players do not carry tobacco tins or packages in their pockets when fans are allowed in the ballpark or use tobacco during pregame or postgame interviews or team functions, as part of their existing contracts. The players have agreed to these restrictions based in part upon their understanding of the importance

of their status as role models; however the players union strongly opposes any further limitation of their private rights to engage in legal conduct.

d) *Drafting issue: "Smokeless" Tobacco could still be allowed under AB 768.*

As drafted, AB 768 contains a definition of "smokeless tobacco" which is not included in the definition of prohibited tobacco products, and therefore smokeless tobacco products could be read as exempt from the prohibition against use of other tobacco products in baseball stadiums. Should this measure move forward, the author may consider including smokeless tobacco in the language of proposed 118916(4)(A).

- 4) *Recent amendments.* The author removed language from the findings and declarations which would have stated the Legislature's intent to cover the field of tobacco regulation in baseball stadiums. By striking the phrase, "thereby eliminating the need for local governments to enact tobacco restrictions within their respective jurisdictions", the author intends to allow local jurisdictions to act in this area.
- 5) *Double referral.* This bill has been double referred and should it pass will be sent to the Assembly Governmental Organization Committee for further consideration.
- 6) *Prior and Related Legislation.*
- e) SB 648 (Corbett) of 2013, would have extended the restrictions and prohibitions against the smoking of tobacco products to include restrictions or prohibitions against e-cigarette in various places, including, but not limited to, places of employment, school campuses, public buildings, day care facilities, retail food facilities, and health facilities. Failed passage in the Assembly Governmental Organization Committee.
- f) SB 575 (DeSaulnier) of 2011, would have expanded the prohibition on smoking in a place of employment to include an owner-operated business, and also eliminates most of the specified exemptions that permit smoking in certain work environments, such as hotel lobbies, bars and taverns, banquet rooms, warehouse facilities, private residences used as family day care homes, and employee break rooms. Held in the Assembly Governmental Organization Committee.
- g) AB 217 (Carter) of 2011, would have modified an exemption in current law authorizing smoking in "patient smoking areas" in long-term health care facilities. As recently amended, the bill would allow for patient smoking areas that meet specified conditions. The bill was vetoed by Governor Brown.
- h) AB 1467 (DeSaulnier) of 2007, would have removed the exemptions that permit smoking in specified bars, warehouses, hotel lobbies, employee break rooms, and meeting and banquet rooms, while retaining exemptions for other types of businesses. In addition, the bill would have prohibited smoking in specified owner-operated businesses regardless of whether or not they have employees. The bill was vetoed by Governor Schwarzenegger.
- i) AB 2067 (Oropeza), Chapter 736, Statutes of 2006, prohibits smoking in covered parking lots and adds to the definition of "enclosed spaces" lobbies, lounges, waiting areas, elevators, stairwells and restrooms that are a structural part of the building, thereby prohibiting smoking in those areas.

- j) AB 3037 (Cannella), Chapter 989, Statutes of 1996, extends exemptions to the prohibition of smoking in bars, taverns, and gaming clubs to January 1, 1998. Smoking in bars, taverns, and gaming clubs could only continue beyond that date if regulations were adopted by either the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency on an exposure level of environmental tobacco smoke that carried insignificantly harmful effects to exposed persons.
- k) AB 13 (Friedman), Chapter 310, Statutes of 1994, prohibits employers from knowingly or intentionally permitting, or any person from engaging in, the smoking of tobacco products in enclosed places of employment, with specific exemptions. The bill allowed for the smoking of tobacco products in bars, taverns, and gaming clubs until January 1, 1997 if regulations were adopted by either the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency on an exposure level of environmental tobacco smoke that carried insignificantly harmful effects to exposed persons.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics
American Heart Association
American Lung Association
California Academy of Family Physicians
California American College of Emergency Physicians
California Black Health Network
California Children's Hospital Association
California Dental Association
California Dental Hygienists' Association
California Medical Association
Cancer Action Network
Children's Defense Fund – California
County Health Executives Association of California
Health Access California
The Campaign for Tobacco-Free Kids
Shasta County Tobacco Education Coalition
University of Southern California, Trojans Athletic Compliance
UCSF Benioff Children's Hospital Oakland

Opposition

There is no opposition on file.

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