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**SB-395 Excise tax: electronic cigarettes: Health Careers Opportunity Grant Program: Small and Rural Hospital Relief Program. (2021-2022)**

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**Senate Bill No. 395**

**CHAPTER 489**

An act to amend Section 127885 of, and to add Chapter 1.5 (commencing with Section 130075) to Part 7 of Division 107 of, the Health and Safety Code, and to add Part 13.6 (commencing with Section 31000) to Division 2 of the Revenue and Taxation Code, relating to the Healthy Outcomes and Prevention Education Act, and making an appropriation therefor.

[ Approved by Governor October 04, 2021. Filed with Secretary of State October 04, 2021. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 395, Caballero. Excise tax: electronic cigarettes: Health Careers Opportunity Grant Program: Small and Rural Hospital Relief Program.

(1) Existing law establishes the Department of Health Care Access and Information and requires the department to maintain a Health Professions Career Opportunity Program to, among other things, implement programs at colleges and universities selected by the department and include in those programs pipeline programs that provide comprehensive academic enrichment, career development, mentorship, and advising in order to support students from underrepresented regions and backgrounds to pursue health careers. Existing law requires, in accordance with the compliance schedule approved by the department, but in any case no later than January 1, 2030, owners of all acute care inpatient hospitals to either demolish, replace, or change to nonacute care use all hospital buildings not in substantial compliance with certain regulations and standards developed by the department related to seismic safety or to seismically retrofit all acute care inpatient hospital buildings so that they are in substantial compliance with those regulations and standards.

This bill would authorize the department to enter into contracts, to meet the requirements of the Health Professions Career Opportunity Program, with nonprofit entities headquartered in California that have previous experience with administering statewide workforce programs aimed at building a diverse provider workforce.

This bill would establish the Small and Rural Hospital Relief Program under the administration of the department for the purpose of funding seismic safety compliance with respect to small hospitals, rural hospitals, and critical access hospitals in the state. The bill would require the department to provide grants to small, rural, and critical access hospital applicants that meet certain criteria, including that seismic safety compliance, as defined, imposes a financial burden on the applicant that may result in hospital closure. The bill would also create the Small and Rural Hospital Relief Fund and would continuously appropriate the moneys in the fund for the purposes of administering and funding the grant program.

(2) The Cigarette and Tobacco Products Tax Law imposes a tax on distributors of cigarettes at the rate of \$2.87 per package of 20 cigarettes and a tax on distributors of tobacco products, based on wholesale cost, at a rate determined annually that is equivalent to the combined rate of all taxes imposed on cigarettes plus an additional rate equivalent to \$0.50 per package of 20 cigarettes.

These taxes are inclusive of the taxes imposed under the Tobacco Tax and Health Protection Act of 1988, the California Families and Children Act of 1998, and the California Healthcare, Research and Prevention Tobacco Tax Act of 2016.

The California Healthcare, Research and Prevention Tobacco Tax Act of 2016 (Proposition 56), an initiative measure approved at the November 8, 2016, statewide general election, revised the definition of tobacco products to include electronic cigarettes, thereby extending the taxes on distributors of tobacco products to distributors of electronic cigarettes, which is based on the wholesale cost of these products. Proposition 56 requires the California Department of Tax and Fee Administration to adopt regulations providing for the implementation of the equivalent tax on electronic cigarettes and the methods for collection of the tax.

This bill would, beginning July 1, 2022, require a purchaser of electronic cigarettes, as defined, at retail to pay a tax on the purchase for use in this state of an electronic cigarette from a retailer of 12.5% of the sales price from the sale of an electronic cigarette. The bill would require a retailer to collect the tax from the purchaser at the time of the retail sale of an electronic cigarette. The bill would require all revenues, interest, and penalties, less refunds, collected from the tax described above to be deposited into the California Electronic Cigarette Excise Tax Fund, a continuously appropriated fund created by the bill, and would require all amounts in the fund to be distributed to the Health Education Account in the Cigarette and Tobacco Products Surtax Fund, the California Children and Families Trust Fund, to fund the Proposition 56 Medi-Cal Physicians and Dentists Loan Repayment Act, the University of California, to support the joint program in medical education between the University of California, Merced and the University of California, San Francisco at Fresno, the Small and Rural Hospital Relief Fund created by this bill, and to the Department of Health Care Access and Information to fund the Health Professions Career Opportunity Program described above, as specified. By creating a continuously appropriated fund and allocating additional moneys to continuously appropriated funds, this bill would make an appropriation.

The bill would provide for the administration and collection of this tax pursuant to procedures set forth in 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.

(3) 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.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 127885 of the Health and Safety Code is amended to read:

**127885.** (a) The department shall maintain a Health Professions Career Opportunity Program that shall include, but not be limited to, all of the following:

(1) Implementing programs at colleges and universities selected by the department, which may include public and private institutions.

(A) In selecting campuses for the programs, the department shall give priority to campuses in medically underserved areas or with students from groups underrepresented in medicine, demonstrated commitment to diversity and associated institutional change, a track record of providing tailored student support, and strong health professions school partnerships.

(B) The department may enter into contracts, to meet the requirements of this article, with nonprofit entities headquartered in California that have previous experience with administering statewide workforce programs aimed at building a diverse provider workforce.

(C) The programs shall include one or both of the following:

(i) Pipeline programs that provide comprehensive academic enrichment, career development, mentorship, and advising in order to support students from underrepresented regions and backgrounds to pursue health careers. This may include internships and fellowships to enable students to compete for admission to graduate health professions schools or employment in the health field, including, but not limited to, both of the following:

(I) Paid summer internships for students interning in community health centers, public health departments, public behavioral health settings, and with geriatric providers, as well as community-based initiatives that promote health equity.

(II) One-year postundergraduate fellowships for in-depth, pregraduate school experience in primary care and prevention, behavioral health, and geriatric health.

(ii) Annual postbaccalaureate reapplicant slots and the provision of student scholarships for reapplicant postbaccalaureate students to cover program tuition.

(2) Producing and disseminating a series of publications aimed at informing and motivating minority and disadvantaged students to pursue health professional careers.

(3) Conducting a conference series aimed at informing students of opportunities in health professional training and mechanisms of successfully preparing to enter the training.

(4) Providing support and technical assistance to health professional schools and colleges as well as to student and community organizations active in health professional development of underrepresented groups in medicine.

(5) Conducting relevant health workforce information and data analysis regarding underrepresented groups in medicine.

(6) Providing necessary consultation, recruitment, and counseling through other means.

(7) Supporting and encouraging health professionals in training who are from underrepresented groups to practice in health professional shortage areas of California.

(b) This section shall be implemented only to the extent that funds are appropriated for its purposes in the annual Budget Act or other statute.

**SEC. 2.** Chapter 1.5 (commencing with Section 130075) is added to Part 7 of Division 107 of the Health and Safety Code, to read:

#### **CHAPTER 1.5. Small and Rural Hospital Relief Program**

**130075.** The Small and Rural Hospital Relief Program is hereby established under the administration of the Department of Health Care Access and Information for the purpose of funding seismic safety compliance with respect to small hospitals, rural hospitals, and critical access hospitals in the state.

**130076.** For purposes of this chapter:

(a) "Department" means the Department of Health Care Access and Information.

(b) "Fund" means the Small and Rural Hospital Relief Fund established in Section 130077.

(c) "Seismic safety compliance" means compliance with Article 9 (commencing with Section 130050) of Chapter 1.

(d) "Qualified applicant" means any of the following hospitals:

(1) A small hospital.

(2) A rural hospital.

(3) A critical access hospital.

**130077.** (a) The Small and Rural Hospital Relief Fund is hereby established in the Treasury.

(b) Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated, without regard to fiscal years, for the administration and funding of the grant program pursuant to this chapter.

**130078.** (a) The department shall provide a grant to a qualified applicant that meets both of the following criteria:

(1) Seismic safety compliance imposes a financial burden on the applicant that may result in hospital closure.

(2) The hospital closure described in paragraph (1) would substantially impact the accessibility to health care in the communities surrounding the hospital.

(b) A grant provided by the department pursuant to this section may be used only for funding seismic safety compliance.

**130079.** The department may adopt regulations necessary to implement this chapter.

**SEC. 3.** Part 13.6 (commencing with Section 31000) is added to Division 2 of the Revenue and Taxation Code, to read:

## PART 13.6 Healthy Outcomes and Prevention Education (HOPE) Act

**31000.** This article shall be known, and may be cited, as the “Healthy Outcomes and Prevention Education (HOPE) Act.”

**31001.** For purposes of this article:

(a) “California Electronic Cigarette Excise Tax” means the tax imposed by Section 31002.

(b) “Department” means the California Department of Tax and Fee Administration.

(c) (1) “Electronic cigarette” means any of the following:

(A) A device or delivery system sold in combination with any liquid substance containing nicotine that can be used to deliver to a person nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

(B) A component, part, or accessory of a device described in subparagraph (A) that is used during the operation of the device if sold in combination with a liquid substance containing nicotine.

(C) A liquid or substance containing nicotine, whether sold separately or sold in combination with any device, that could be used to deliver to a person nicotine in aerosolized or vaporized form.

(2) “Electronic cigarette” does not include a 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 if that product is marketed and sold solely for that approved use.

(d) “In this state” means within the exterior limits of California and includes all territory within these limits owned by or ceded to the United States of America.

(e) “Purchase” has the same meaning as defined in Section 6010.

(f) “Purchaser” means a person who purchases electronic cigarettes in a retail sale.

(g) (1) “Retailer” has the same meaning as defined in Section 6015.

(2) “Retailer” includes a person that operates vending machines from which electronic cigarettes are sold in this state or a person conducting a sale regulated by Section 22963 of the Business and Professions Code.

(h) “Retail sale” has the same meaning as defined in Section 6007.

(i) “Sales price” has the same meaning as defined in Section 6011.

(j) “Use” has the same meaning as defined in Section 6009.

**31002.** (a) (1) (A) Beginning July 1, 2022, a purchaser shall pay a tax on the purchase for use in this state of an electronic cigarette from a retailer at the rate of 12.5 percent of the sales price of the electronic cigarette.

(B) There is a rebuttable presumption that an electronic cigarette is purchased for use in this state if either of the following is true:

(i) The electronic cigarette is purchased from a retailer physically located in this state.

(ii) The address to which the retailer ships the purchased electronic cigarette is located in this state.

(2) A retailer shall collect the tax imposed by this part from the purchaser at the time of the retail sale of an electronic cigarette.

(b) A retailer shall include the amount of the tax imposed by this part in any price marketing on any sign or display inside or outside a licensed brick and mortar establishment.

(c) (1) The department shall collect the tax imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)).

(2) For purposes of this part, the references in the Fee Collection Procedures Law to “fee” shall include the tax imposed by this part, and references to “feepayer” shall include any retailer liable for the payment, pursuant to subdivision (d), of the tax imposed by this part.

(3) A retailer may retain 1 percent of the tax imposed by this part as reimbursement for all costs associated with collection of the tax and shall transmit the remainder of the tax to the department pursuant to subdivision (d).

(d) (1) Except as provided in paragraph (3), the tax imposed by this part shall be due and payable quarterly on or before the last day of the month following each calendar quarter.

(2) (A) The payments shall be accompanied by a return filed by the retailer using electronic media on or before the last day of the month following each quarterly period for the preceding quarterly period.

(B) Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the department.

(3) The department may require the payment of the tax imposed by this part and the filing of returns for other than quarterly periods.

(e) The tax that is required to be collected by the retailer and any amount unreturned to the purchaser which is not tax but was collected from the purchaser under the representation by the retailer that it was tax constitutes debts owed by the retailer to the state.

(f) A retailer subject to the provisions of this part shall register for a permit with the department using electronic media and shall set forth the name under which it transacts or intends to transact business and any other information as the department may require.

(g) (1) The department may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

(2) (A) The department may prescribe, adopt, and enforce emergency regulations as necessary to implement this part.

(B) An emergency regulation prescribed, adopted, or enforced pursuant to this paragraph shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

**31003.** For each retail sale of an electronic cigarette, a retailer shall provide a purchaser with a receipt or other document that sets out and separately identifies the "California Electronic Cigarette Excise Tax" and the amount paid by the purchaser.

**31004.** (a) (1) The department may, upon a hearing, revoke or suspend one or more of the permits held by a person pursuant to this part after giving the person 10 days' notice in writing specifying the time and place of the hearing and requiring the person to show cause why the person's permit or permits should not be revoked if any of the following is true:

(A) A person fails to comply with a provision of this part or any rule or regulation of the department prescribed and adopted under this part.

(B) A person's seller's permit has been suspended or revoked under Part 1 (commencing with Section 6001).

(C) A person's license has been suspended or revoked under Division 8.6 (commencing with Section 22970) of the Business and Professions Code.

(2) The department shall give to the person written notice of the suspension or revocation of any of the person's permits held pursuant to this part.

(b) The notice required by subdivision (a) shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination under Section 55061.

(c) The department shall not issue a new permit after the revocation of a permit pursuant to this section unless it is satisfied that the former holder of the permit will comply with the provisions of this part and any rule or regulation of the department adopted pursuant to this part.

(d) A person whose permit held pursuant to this part has been previously suspended or revoked shall pay the department a fee of one hundred dollars (\$100) for the issuance of a permit.

**31005.** (a) All revenues, interest, and penalties derived from the California Electronic Cigarette Excise Tax shall be deposited into the California Electronic Cigarette Excise Tax Fund, which is hereby created in the State Treasury, less payments for refunds and reimbursement to the department for expenses incurred in the administration and collection of the tax.

(b) Notwithstanding Section 13340 of the Government Code and subject to subdivision (d), all amounts in the California Electronic Cigarette Excise Tax Fund are continuously appropriated without regard to fiscal year as follows:

(1) Eighteen percent of the moneys to the Health Education Account, established in paragraph (1) of subdivision (b) of Section 30122, for tobacco control programs described in Article 1 (commencing with Section 104350) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code.

(2) Twelve percent of the moneys into the California Children and Families Trust Fund created by Section 30131.

(3) (A) Forty-eight percent of the moneys to fund the Proposition 56 Medi-Cal Physicians and Dentists Loan Repayment Act (Section 14114 of the Welfare and Institutions Code).

(B) Of the moneys described by subparagraph (A), 70 percent shall be allocated to the physician payment pool and 30 percent to the dentist payment pool.

(4) Five percent of the moneys to the Department of Health Care Access and Information to fund the Health Professions Career Opportunity Program described by Section 127885 of the Health and Safety Code.

(5) Seven percent of the moneys to the University of California to support the joint program in medical education between the University of California San Francisco (UCSF) School of Medicine, UCSF Fresno, and the University of California, Merced, including, but not limited to, using funds to establish new residency and clinical rotation positions for program participants and graduates in the San Joaquin Valley.

(6) Ten percent of the moneys to the Small and Rural Hospital Relief Fund established in Section 130077 of the Health and Safety Code.

(c) (1) The department shall transmit the funds, pursuant to subdivision (b), periodically as promptly as feasible but shall transmit funds at least once in each calendar quarter.

(2) The department shall furnish a quarterly statement indicating the amounts paid and withheld for expenses of the department.

(d) (1) The amount of three million dollars (\$3,000,000) shall be loaned from the General Fund to the department during the 2021–22 fiscal year and deposited into the California Electronic Cigarette Excise Tax Fund for the purpose of implementing the tax imposed by this part and shall be repaid on or before June 30, 2023, from the taxes collected pursuant to this part.

(2) The loan made pursuant to this subdivision shall be repaid to the General Fund before any appropriations of funds pursuant to subdivisions (b) and (c) are made.

**31008.** (a) On or before July 1, 2024, the department shall provide a report to the Assembly Committee on Revenue and Taxation, the Assembly Committee on Health, the Senate Committee on Health, and the Senate Governance and Finance Committee regarding the effect of collecting the California Electronic Cigarette Excise Tax on the purchase of electronic cigarettes at retail in the state.

(b) The report required by this section shall include an estimate of retail electronic cigarette purchases to compare to the total purchase price reported under this part for calendar years 2022 and 2023. The estimated retail electronic cigarette purchases shall be calculated using any information available to the department, including, but not limited to, the reported wholesale cost of electronic cigarettes as reported under Part 13 (commencing with Section 30001) of Division 2.

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