

AMENDED IN SENATE MAY 7, 2013

**SENATE BILL**

**No. 782**

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**Introduced by Senator DeSaulnier**

February 22, 2013

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An act to add *and repeal* Chapter 20 (commencing with Section 26300) to Division 20 of the Health and Safety Code, to amend Section 13836 of the Penal Code, and to add *and repeal* Part 14.7 (commencing with Section 34001) to Division 2 of the Revenue and Taxation Code, relating to sexual assaults.

LEGISLATIVE COUNSEL'S DIGEST

SB 782, as amended, DeSaulnier. Sexual assault treatment and prevention: sexually oriented business tax.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would, *until January 1, 2024*, impose a tax on persons operating a sexually oriented business, as defined, at the rate of \$10 per visit by a customer to the business inclusive of admission and ~~reentry~~ *reentry*. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would create the Sexual Assault Treatment and Prevention Fund, and would require that all revenues, less refunds and the costs of the administration of the tax, derived from the tax be transferred to the fund. This bill would provide that moneys in the fund, upon appropriation by the Legislature, be used by the Office of Emergency Services for specified purposes related to the treatment and prevention of sexual assault. *This bill would prohibit*

*the Office of Emergency Services from allocating any funds until an appellate court has determined that the tax on persons operating a sexually oriented business is not unconstitutional.*

Because this bill would expand application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

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.

This bill would become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of 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.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) It is the intent of the Legislature that an award of a grant to
- 4 an organization pursuant to this act shall not result in a reduction
- 5 in moneys appropriated by the Legislature to that organization.
- 6 The taxes imposed by this measure are intended to ameliorate the
- 7 negative secondary effects associated with the combination of
- 8 sexually oriented businesses and alcohol so as to promote the
- 9 health, safety, and welfare of the citizens of California.
- 10 (b) Sexually oriented businesses that serve alcohol or that are
- 11 located near liquor-serving businesses pose larger and qualitatively
- 12 different ambient public safety hazards. Governments rely on this
- 13 consistent finding of the empirical secondary effect literature as a
- 14 rationale for limiting nudity in liquor-serving businesses.
- 15 (c) Accordingly, the consumption of alcohol on the premises
- 16 of a sexually oriented business contributes to the need for
- 17 community-based services to respond to victims of all forms of

1 sexual exploitation, including sexual harassment, trafficking, and  
2 sexual assault.

3 (d) Rape crisis centers and other victim service providers play  
4 a unique role in responding to assault, sexual abuse, trafficking,  
5 and domestic violence. They also work to prevent crimes such as  
6 these through the creation of public awareness and prevention that  
7 empowers and restores persons who have been sexually violated.

8 (e) This act is not intended to directly or indirectly impose  
9 limitations or restrictions on live nude dancing, nor is it the intent  
10 of this act to restrict or deny access by adults to live nude dancing  
11 performances that may be protected by the First Amendment to  
12 the United States Constitution or by the California Constitution.

13 (f) This act shall be known and may be cited as the Sexual  
14 Assault Victims Equity (SAVE) Act.

15 SEC. 2. Chapter 20 (commencing with Section 26300) is added  
16 to Division 20 of the Health and Safety Code, to read:

17

18 CHAPTER 20. SEXUAL ASSAULT TREATMENT AND PREVENTION

19

20 26300. (a) The Office of Emergency Services shall use funds  
21 transferred from the Sexual Assault Treatment and Prevention  
22 Fund. Funding allocations shall be determined by the Office of  
23 Emergency Services, in collaboration with the State Advisory  
24 Committee on Sexual Assault Victim Services, as stipulated in  
25 Section 13836 of the Penal Code, ~~no later than June 20, 2014.~~  
26 Except as provided in subdivision ~~(d)~~; (f), funds transferred from  
27 the Sexual Assault Treatment and Prevention Fund shall be used  
28 only for the following purposes:

29 (1) To award grants for intervention services related to sexual  
30 assault survivors and rape prevention programs provided by rape  
31 crisis centers, as stipulated in Section 13837 of the Penal Code.

32 (2) To award grants to, and contracts with, a statewide  
33 organization organized and operated as described in Section  
34 501(c)(3) of the Internal Revenue Code that has the primary  
35 purpose of ending sexual violence in this state, for programs for  
36 the intervention and prevention of sexual violence, outreach  
37 programs, training, and technical assistance to and support of  
38 California rape crisis centers, as stipulated in Section 13837 of  
39 Penal Code, and other organizations funded by the Sexual Assault  
40 Treatment and Prevention Fund to prevent and intervene in sexual

1 violence in underserved communities. Funds awarded pursuant to  
2 this paragraph shall be administered by the Office of Emergency  
3 Services and approved by the State Advisory Committee on Sexual  
4 Assault Victim Services, as authorized in Section 13836 of the  
5 Penal Code.

6 (3) Civil legal services to sexual assault survivors.

7 (4) Coordination of sexual assault response teams that provide  
8 multidisciplinary response services to sexual assault survivors.

9 (5) Culturally and linguistically appropriate intervention services  
10 to sexual assault survivors from underrepresented or underserved  
11 communities.

12 (6) To award grants to reimburse the payment of adult and  
13 adolescent sexual assault forensic exams.

14 (7) To award grants to nonprofit, ~~community-based~~  
15 organizations to support intervention and treatment services for  
16 victims of sexual exploitation of human trafficking. Eligible  
17 programs for these grants include, but are not limited to,  
18 ~~community-based~~ organizations that provide services for victims  
19 of sexual and domestic violence and work to end and prevent  
20 sexual and domestic violence.

21 (8) To award grants to nonprofit, ~~community-based~~  
22 organizations to support the intervention and treatment services  
23 for victims of sexual assault as part of dating or domestic violence,  
24 including, but not limited to, sexual assault services programs, as  
25 defined in Section 13837 of the Penal Code, or domestic violence  
26 victim service organizations, as defined in Section 1037.1 of the  
27 Evidence Code. Funds awarded pursuant to this paragraph shall  
28 be administered by the Office of Emergency Services and approved  
29 by the State Advisory Committee on Sexual Assault Victim  
30 Services, as stipulated in Section 13836 of the Penal Code.

31 (b) Grants awarded pursuant to paragraphs ~~3 to 8~~ (3) to (8),  
32 inclusive, of subdivision (a) shall be awarded as a result of a  
33 competitive request for proposal process.

34 (c) No more than 10 percent annually of the funds deposited in  
35 the Sexual Assault Treatment and Prevention Fund may be used  
36 for the administration by the Office of Emergency Services of  
37 these grant programs.

38 (d) *The Office of Emergency Services shall not allocate any*  
39 *funds under this section until an appellate court has determined*  
40 *that the tax imposed by Part 14.7 (commencing with Section 34001)*

1 of Division 2 of the Revenue and Taxation Code is not  
2 unconstitutional. The Office of Emergency Services may allocate  
3 funds immediately after the determination.

4 (e) Notwithstanding subdivisions (a) and (b), the Office of  
5 Emergency Services shall not allocate more than 20 percent of  
6 moneys in the Sexual Assault Treatment and Prevention Fund in  
7 any calendar year to one group, organization, corporation,  
8 partnership, or other entity, whether for profit or nonprofit, or  
9 individual.

10 ~~(f)~~

11 (f) (1) Notwithstanding subdivision (a), two hundred thousand  
12 dollars (\$200,000) shall be appropriated biennially by the  
13 Legislature to the Office of Emergency Services from the Sexual  
14 Assault Treatment and Prevention Fund to fund a report created  
15 by the Office of Emergency Services to the Governor and the  
16 Legislature reporting the following:

17 (A) The deficiencies with respect to research, prevention,  
18 response, victim services, adjudication, and incarceration, related  
19 to sexual assaults at state and local levels.

20 (B) The effectiveness of appropriations made to fund this chapter  
21 and other legislation related to sexual assault intervention enacted  
22 by the Legislature.

23 (C) Recommendations for appropriate performance measures  
24 that enable the Governor and the Legislature to assess and respond  
25 to the status of sexual assault prevention in this state.

26 (2) Notwithstanding Section 10231.5 of the Government Code,  
27 a report, pursuant to paragraph (1), shall be submitted on July 1,  
28 2015, and biennially thereafter.

29 (3) A report to be submitted pursuant to this subdivision shall  
30 be submitted in compliance with Section 9795 of the Government  
31 Code.

32 (g) *This chapter shall remain in effect only until January 1,*  
33 *2024, and as of that date is repealed.*

34 SEC. 3. Section 13836 of the Penal Code is amended to read:  
35 13836. The office shall establish the State Advisory Committee  
36 on Sexual Assault Victim Services which shall develop a course  
37 of training for district attorneys in the investigation and prosecution  
38 of sexual assault cases, child sexual exploitation cases, and child  
39 sexual abuse cases and shall approve grants awarded pursuant to  
40 Section 13837 and Chapter 20 (commencing with Section 26300)

1 of Division 20 of the Health and Safety Code. The courses shall  
2 include training in the unique emotional trauma experienced by  
3 victims of these crimes.

4 It is the intent of the Legislature in the enactment of this chapter  
5 to encourage the establishment of sex crime prosecution units,  
6 which shall include, but not be limited to, child sexual exploitation  
7 and child sexual abuse cases, in district attorneys' offices  
8 throughout the state.

9 SEC. 4. Part 14.7 (commencing with Section 34001) is added  
10 to Division 2 of the Revenue and Taxation Code, to read:

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12 PART 14.7. SEXUALLY ORIENTED BUSINESS TAX

13

14 34001. For purposes of this part, the following definitions  
15 apply:

16 (a) "Nude" means clothed in a manner that leaves uncovered  
17 or visible through less than fully opaque clothing, any portion of  
18 the genitals or, in the case of a female, any portion of the breasts  
19 below the top of the areola of the breasts.

20 (b) "Sexually oriented business" means a nightclub, bar,  
21 restaurant, or similar commercial enterprise that does both of the  
22 following:

23 (1) Provides for an audience of two or more individuals live  
24 nude entertainment or live nude performances where the nudity is  
25 a function of everyday business operations and where nudity is a  
26 planned and intentional part of the entertainment or performance.

27 (2) Authorizes on-premises consumption of alcoholic beverages,  
28 regardless of whether the consumption of alcoholic beverages is  
29 under a license or permit issued under the Alcoholic Beverage  
30 Control Act.

31 34002. The tax imposed by this part shall be in addition to any  
32 other taxes imposed by law.

33 34003. For the privilege of operating a sexually oriented  
34 business, a tax is hereby imposed upon all persons who operate a  
35 sexually oriented business at the rate of ten dollars (\$10) per visit  
36 by a customer to the business inclusive of admission and reentry.

37 34004. A person who operates a sexually oriented business  
38 shall record daily in the manner required by the board the number  
39 of customers admitted to the business.

1 34005. A person who operates a sexually oriented business  
2 may not require the tax imposed by this part to be reimbursed by  
3 an employee or independent contractor of the sexually oriented  
4 business, but may require the tax to be reimbursed by the customer  
5 whose entry the tax is imposed upon, in a manner prescribed by  
6 the board.

7 34006. (a) The taxes imposed by ~~the~~ *this* part shall be due and  
8 payable to the board on or before the last day of the month  
9 following each calendar quarter.

10 (b) (1) On or before the last day of the month following each  
11 calendar quarter, a return for the preceding quarterly period shall  
12 be filed with the board using electronic media.

13 (2) The board may prescribe those forms and reporting  
14 requirements as are necessary to implement the tax, including, but  
15 not limited to, information regarding the number of entries to the  
16 business and the amount of tax due.

17 34006.5. Every person required to pay the tax imposed under  
18 this part shall register with the board. Every application for  
19 registration shall be made upon a form prescribed by the board  
20 and shall set forth the name under which the applicant transacts  
21 or intends to transact business, the location of the applicant's place  
22 or places of business, and such other information as the board may  
23 require. An application for an account shall be authenticated in a  
24 form or pursuant to methods as may be prescribed by the board.

25 34007. The board shall administer and collect the tax imposed  
26 by this part pursuant to the Fee Collection Procedures Law (Part  
27 30 (commencing with Section 55001)). For purposes of this part,  
28 the references in the Fee Collection Procedures Law to "fee" shall  
29 include the tax imposed by this part and references to "feepayer"  
30 shall include a person required to pay the tax imposed by this part.

31 34008. The board shall enforce the provisions of this part and  
32 may prescribe, adopt, and enforce rules and regulations relating  
33 to the administration and enforcement of this part. The board may  
34 prescribe the extent to which any ruling or regulation shall be  
35 applied without retroactive effect.

36 34009. (a) The board shall transmit all payments, less refunds  
37 and the board's costs of administration, to the Treasurer to be  
38 deposited in the State Treasury to the credit of the Sexual Assault  
39 Treatment and Prevention Fund, which is hereby created.

1 (b) Moneys in the Sexual Assault Treatment and Prevention  
2 Fund shall, upon appropriation by the Legislature, be ~~used~~  
3 *transferred* as specified in Section 26300 of the Health and Safety  
4 Code.

5 *34010. This part shall remain in effect only until January 1,*  
6 *2024, and as of that date is repealed.*

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

16 SEC. 6. The provisions of this act shall become operative on  
17 the first day of the first calendar quarter commencing more than  
18 90 days after the effective date of this act.