

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Miguel Santiago, Chair

AB 1742 (Robert Rivas) – As Amended March 24, 2022

SUBJECT: California Cigarette Fire Safety and Firefighter Protection Act: Tobacco Master Settlement Agreement

SUMMARY: This bill transfers the authority to administer the California Fire Safety and Firefighter Protection Act (Act) from the Office of the State Fire Marshal (SFM) to the Attorney General and makes assorted clarifying changes in the Act. This bill also authorizes DOJ to develop rules and regulations to enforce the Act. Additionally, this bill provides the Department of Justice (DOJ) with additional authority to maintain the California Tobacco Directory (Directory) as well as compliance with the escrow provisions of the Master Settlement Agreement (MSA). Specifically, **this bill:**

- 1) Requires cigarette manufactures to provide certification to the Attorney General (AG) that their product has been tested and is in compliance with self-extinguishing fire safety standard established by the American Society of Testing and Materials (ASTM).
- 2) Authorizes the AG to specify the form and manner in which fire safety certifications are submitted and to adopt rules and regulations to implement the administration of the certification process.
- 3) Requires cigarette manufacturers to submit a proposed marking for the products packaging to indicate compliance with the fire safety standards and to receive approval from the AG prior to selling the product in California.
- 4) Provides that the proposed marking submitted to the Attorney General shall be deemed approved if the AG fails to act within 30 business days of receiving the proposed markings.
- 5) Authorizes the AG to adopt rules and regulations regarding the submission and approval process for the proposed product markings.
- 6) Provides that moneys deposited into the Cigarette Fire Safety and Firefighter Protection Fund as a result of civil penalties may be appropriated by the Legislature for administration and enforcement of the fire safety provisions by the AG and the SFM.
- 7) Requires the certification to also include a complete list of the tobacco product manufacturer's brand styles, as defined, and would make conforming changes. The bill would specify that listings on the Directory expire on April 29 each year.
- 8) Requires, beginning with the 2023 calendar year, a tobacco product manufacturer to renew its listing on the Directory by providing the annual certification and remitting an annual fee of \$1,000 payable to the office of the AG.
- 9) Requires any fees received to be deposited into the California Tobacco Directory Fund (Directory Fund), which the bill would create in the State Treasury. This bill would continuously appropriate amounts deposited in the Directory Fund to the office of the AG for the purpose of

administering the Directory. The bill would allow the AG to retain a listing for a tobacco product manufacturer on the Directory while the renewal for the certification is pending.

10) Eliminates the requirement, in the case where the nonparticipating manufacturer is not the fabricator or maker of the cigarettes, that the escrow agreement or other forms are signed by the company that fabricates or makes the cigarettes. This bill would require a nonparticipating manufacturer to certify that it fabricates all of the brand families of the cigarettes that it seeks to certify.

11) Requires the AG to list the brand styles of cigarettes that are compliant with the annual certification and the qualified escrow requirements. This bill would also prohibit the AG from including or retaining in the Directory any brand style that has not met specified requirements, including if the brand style has not been tested and marked in compliance with the California Cigarette Fire Safety and Firefighter Protection Act (Act).

12) Expands the criteria for when a nonparticipating manufacturer may be deemed to pose an elevated risk, including when, as of January 1, 2023, a nonparticipating manufacturer's cigarettes are sold in or into California by distributors that have not reported their last 12 months of California sales electronically, as prescribed.

13) Requires the California Department of Tax and Fee Administration (CDTFA) to disclose to the AG any information it receives under the Cigarette and Tobacco Products Tax Law for specified purposes and would authorize CDTFA and the AG to share information provided by distributors with specified entities for specified purposes.

14) Authorizes the AG to bring a civil action on behalf of the state for civil penalties and injunctive relief against a retailer, distributor, wholesaler, manufacturer, importer, or other person who violates the disclosure and certification provisions of existing law, as defined. This bill would require any civil penalties imposed to be deposited into the General Fund.

15) Authorizes the AG to bring a civil action for civil penalties and injunctive relief against any nonparticipating manufacturer that does not submit a timely, complete, and accurate certification related to those qualified escrow funds regarding its sales of cigarettes in this state, as provided. This bill would require any civil penalties imposed to be deposited into the General Fund.

16) Makes various technical and conforming changes to the statutes implementing the MSA.

EXISTING LAW:

1) Establishes the Act to prohibit the sale of cigarettes that do not meet specified fire safety standards.

2) Establishes the SFM within the Natural Resources Agency.

3) Directs the SFM to administer the Fire Safety Act to ensure cigarette manufacturers are meeting self-extinguishing fire safety standards and comply with fire safety certification requirements.

4) Requires cigarette manufactures to provide certification to the SFM that their product has been tested and is in compliance with self-extinguishing fire safety standard established by the ASTM.

- 5) Requires cigarette manufacturers to submit a proposed marking for the products packaging to indicate compliance with the fire safety standards and to receive approval from the SFM prior to selling the product in California.
- 6) Provides that the proposed marking submitted to the SFM shall be deemed approved if the SFM fails to act within 10 business days of receiving the proposed markings.
- 7) Imposes civil penalties on manufacturers, retailers, distributors, wholesalers, or other entities that knowingly sells cigarettes in violation of the specified fire safety and certification standards in the Fire Safety Act.
- 8) Establishes the California Department of Tax and Fee Administration (CDTFA) within the Government Operations Agency.
- 9) Authorizes the CDTFA or a law enforcement agency to seize cigarettes that any person offers or possesses for sale, or has made a sale of, that are in violation of the Act, as specified.
- 10) Defines “Master Settlement Agreement” to mean the settlement agreement and related documents entered into on November 23, 1998, by the State of California and leading United States tobacco product manufacturers. (Health and Safety Code Section 104556 (e).)
- 11) Requires that a tobacco product manufacturer selling cigarettes to consumers in California either become a participating manufacturer in the MSA or, as a nonparticipating manufacturer, place funds into a qualified escrow fund, as specified.
- 12) Calculates the amount of each non-signatory manufacturer’s required escrow contribution based on the number of tobacco “units sold” per year, which is the number of individual cigarettes sold by the manufacturer to California consumers as measured by the state excise taxes collected on these sales.
- 13) Implements the terms of the tobacco litigation MSA that grants legal immunity to major tobacco manufacturers in exchange for advertising restrictions and annual settlement payments to states.
- 14) Requires tobacco product manufacturers to annually certify to the AG that the manufacturer has complied with existing law, and provides that the failure to place all required funds into escrow subjects the manufacturer to civil penalties, as specified.
- 15) Requires the AG to develop and publish on its web site a directory listing of all tobacco product manufacturers that have provided current, timely, and accurate certifications.
- 16) Prescribes the conditions and process for the AG’s office to remove products from the Directory.
- 17) Describes the criteria the AG’s office uses to determine whether or not a nonparticipating manufacturer poses an elevated risk for noncompliance with escrow requirements.
- 18) Authorizes the CDTFA to share certain sales reports and data to the AG’s office and other governmental organizations for enforcement purpose.

FISCAL EFFECT: This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose of the bill. According to the author's office, this bill strengthens California's ability to enforce both the MSA and Fire Safety Act to ensure that the state receives the money it is entitled to from tobacco companies and to protect against dangerous non-fire-safe cigarettes entering the California market. This bill will further equip the AG with tools to better enforce the MSA by enacting additional safeguards to monitor and impose financial obligations on tobacco manufacturers that are not part of the MSA. The proposed changes to the state tobacco directory law expand the circumstances in which tobacco product manufacturers may be considered "elevated risk," clarifies penalties for non-compliant sellers, and helps improve information-sharing and coordination between state agencies, among other changes.

Additionally, AB 1742 transfers authority of the Fire Safety Act to the AG's office to streamline enforcement and extends the review window from 10 days to 30 days to allow for adequate review to avoid approval of products by default. Together, these provisions help prevent the state from missing out on hundreds of millions of dollars in annual MSA payments and protect the public from cigarettes that fail to meet fire safety standards. This bill will promote government efficiency and protect consumers by ensuring that cigarettes receive necessary review and approval before they are sold in California.

Background.

California's Fire Safety Act. California's Fire Safety Act became effective on January 1, 2007 and is designed to save lives by reducing the risk that cigarettes will ignite upholstered furniture, mattresses, household furnishings and other combustible material. According to a 2019 National Fire Protection Association report, smoking remained the leading cause of home fire deaths over the total five-year period of 2012-2016.

Under the Fire Safety Act, cigarettes sold in California must meet the following criteria: 1) satisfy the American Society of Testing and Materials (ASTM) Standard, "Standard Test Method for Measuring the Ignition Strength of Cigarettes; 2) be sold in packaging marked and approved by the SFM; and 3) a certification must be submitted by the manufacturer to the SFM certifying that each cigarette listed was tested and satisfies the performance requirements of the ASTM. The Act also allows for the automatic approval of cigarette markings used to indicate compliance with safety standards if SFM does not act within 10 business days of receiving the proposed markings.

According to the SFM's staff, no funds were ever appropriated for enforcement or oversight activities. The Attorney General's staff notes that this has led to proposed cigarette markings being approved automatically without adequate state oversight.

The Master Settle Agreement. The MSA is a legal contract entered into in 1998, in a settlement of various lawsuits between the attorneys general of 46 states, including California, and five U.S. Territories, with participating tobacco manufacturers. As a part of the MSA, the participating states released the participating manufacturers from liability for healthcare costs incurred by the states for smoking-related illnesses in return for annual settlement payments to the state. Eventually, over 45 tobacco companies settled with states under the MSA. Although Florida, Minnesota, Mississippi, and Texas are not signatories to the MSA, they have their own individual tobacco settlements, which occurred prior to the MSA.

At the time of the settlement, California was projected to receive \$25 billion by 2025. As part of the MSA, states agreed to drop their lawsuits against the named tobacco companies and agreed to impose similar settlement terms, via state law, on nonparticipating tobacco manufacturers. States must enforce the terms of agreement or else risk reductions in their MSA settlement payments. Participating states were required to establish a method for non-participating tobacco manufacturers to fund escrow accounts to cover the potential liability to the state of those manufacturers. Under state law, the nonparticipating manufacturers must make annual payments into an escrow account, and these payments are based on the number of cigarettes sold in California.

The MSA also restricted cigarette advertising and marketing by participating tobacco manufacturers in various ways, including a ban on cartoons in tobacco advertisements, youth exposure to sampling, certain sponsorships, and most outdoor advertisements.

As a participant in the MSA, California has codified its duties and rights in several statutes. One such statute outlines the process for nonparticipating tobacco manufacturers to contribute to an escrow account. Generally, the escrow statutes require a tobacco manufacturer that is not a participant in the settlement agreement to contribute a sum to the account which is equivalent to the amount of settlement money paid to the state by the companies that opt to take part in the MSA. If the AG believes a manufacturer poses an elevated risk of not complying with the escrow statutes, the AG has the authority to require a manufacturer to get a surety bond to cover its potential liabilities.

To ensure proper oversight and continued enforcement of the settlement, in 2003 the Legislature passed AB 71 (Horton, Chapter 890, Stats. 2003), which created the California Tobacco Directory, a registry where tobacco manufacturers must certify that their products comply with the laws implementing the MSA. If a product is not certified and entered into the Directory, the product may not be lawfully distributed, sold, offered for sale, or possessed for sale in this state.

Much of the day-to-day management of the Directory involves regular filings by tobacco manufacturers regarding their financial status and tax disclosures to permit the AG to track sales of their products in California. The failure of manufacturers to adhere to proper reporting deadlines may not result in significant penalties under existing law, but nonetheless complicate the Attorney General's management of the program.

Double-referral. This bill is double-referred and if passed by this Committee will be referred to the Assembly Judiciary Committee.

In support. The sponsor of this measure, Attorney General Rob Bonta states "This bill will preserve California's continued ability to receive substantial annual payments under the MSA, promotes efficiency, and better protects Californians from cigarettes that do not meet public safety standards. The MSA payments to California have exceeded \$800 million in recent years. These annual payments, however, are conditioned upon California's enactment and diligent enforcement of an escrow statute, which imposes similar financial obligations on non-participating manufacturers (NPM), who are not parties to the MSA. The MSA provides that, if California fails to diligently enforce its escrow statute in a given year, it risks the loss of some, and potentially all, of its annual settlement payment. AB 1742 provides the AG with additional tools to deter NPMs from non-compliance with state regulations, expands the circumstances in which NPMs may be required to post a surety bond for compliance failure, and increases

coordination between state agencies in enforcement related proceedings as part of the MSA payment dispute process, among other changes. Additionally, the AG enforces the fire-safe-cigarette laws throughout the state and default approval has impaired the AG's responsibilities to protect the public from non-fire-safe-cigarettes. AB 1742 would shift the responsibility to review fire-safe-cigarette certification from the SFM to the AG and increase the review period to 30 days. This bill will ensure cigarettes receive the necessary review by the state. Moreover, AB 1742 promotes government efficiency, as the AG already receives fire-safe-cigarette certification information as part of its tobacco enforcement work."

The League of California Cities (Cal Cities) writes in support, "This bill would help ensure local governments continue to receive the substantial annual payments that tobacco companies owe under the MSA and strengthen tobacco safety and enforcement laws. These changes will help strengthen and clarify the law to aid the AG in California's tobacco enforcement efforts. Strong enforcement is key to ensuring cities continue to receive revenues from the MSA to mitigate the effects of tobacco use in our communities. AB 1742 would be a step in the right direction, strengthening the Attorney General's ability to enforce state tobacco laws."

Prior legislation. AB 1626 (R. Rivas) of 2019-2020 Regular Session. This bill would have transferred the authority to administer the Act from the SFM to the AG and makes assorted clarifying changes in the Act. Additionally, it would have authorized DOJ to develop rules and regulations to enforce the Act. Never heard by the Senate Judiciary Committee.

AB 1627 (R. Rivas) of 2019-2020 Regular Session. This bill would have provided the DOJ with additional authority over maintaining the California Tobacco Directory and ensuring compliance with the escrow statutes of the MSA. Never heard by the Senate Judiciary Committee.

SB 1408 (Pan), Chapter 613, Statutes of 2018. Revised the legal characterization of cigarettes found to be in violation of the Act.

AB 178 (Koretz), Chapter 633, Statutes of 2005. Established the Act, which prohibited the sale of cigarettes that do not meet specified fire safety standards beginning January 1, 2007, established fire safety certification requirements and new civil penalties for violations.

AB 71 (Horton), Chapter 890, Statutes of 2003. Created the Directory to ensure all tobacco manufacturers comply with California's tobacco laws implementing the MSA. If a product is not certified and entered into the Directory, it may not be lawfully distributed or sold in California

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Counties
League of California Cities
State of California Attorney General (Sponsor)

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