

Date of Hearing: May 11, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

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

Policy Committee:	Governmental Organization	Vote:	14 - 5
	Judiciary		7 - 1

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill transfers oversight of the California Cigarette Fire Safety and Firefighter Protection Act (Act) from the State Fire Marshal (SFM) to the Attorney General (AG) and expands enforcement of the Master Settlement Agreement (MSA). Specifically, this bill:

- 1) Authorizes the AG to publish the written certification made by a cigarette manufacturer attesting that each cigarette has been tested on the AG's internet website and deems a proposed cigarette marking submitted by a manufacturer to be approved if the AG fails to act on the decision within 30 business days (instead of 10 business days).
- 2) Requires a tobacco product manufacturer to annually renew its listing on the California Tobacco Directory (Directory) and additionally provide a list of the manufacturer's brand styles. An annual fee of \$1,000 must be remitted to renew the listing, with fees deposited into the newly created California Tobacco Directory Fund.
- 3) Expands the criteria for when an MSA "nonparticipating manufacturer" is deemed to pose an elevated risk of not having sufficient reserves to pay settlement costs, thus requiring the manufacturer to file a surety bond with the AG.
- 4) Requires the California Department of Tax and Fee Administration (CDTFA) to disclose specified information to the AG and authorizes CDTFA and AG to share specified information with other government agencies and courts to resolve MSA payment disputes.
- 5) Authorizes the AG to bring a civil action for civil penalties and injunctive relief against tobacco licensees that violate MSA disclosure and certification requirements.

FISCAL EFFECT:

- 1) Minor and absorbable costs to the Department of Justice (DOJ), in the tens of thousands of dollars annually, for the Tobacco Litigation and Enforcement Section to review submissions by cigarette manufacturers for compliance with fire safety standards. DOJ notes such review is closely related to existing enforcement work already performed by staff. In 2020, there were an estimated 40 submissions across 28 cigarette manufacturers each year.

No cost savings for the SFM, as the SFM never enforced the provisions of the Act.

- 2) Additional license fee revenues in the tens of thousands of dollars (California Tobacco Directory Fund) to DOJ as a result of the new annual fee. This fee revenue is likely sufficient to cover any new costs associated with enforcing expanded Directory requirements.
- 3) Minor and absorbable costs to CDTFA to share information with DOJ.

COMMENTS:

- 1) **Purpose.** According to the author:

AB 1742 strengthens California's ability to enforce both the [MSA] and [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 market. This bill equips the [AG] with tools to better enforce the MSA...[and] transfers authority of the [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.

This bill is sponsored by AG Rob Bonta and supported by local government associations.

- 2) **The Act.** The Act aims to increase fire safety by prohibiting the sales of cigarettes that do not meet certain fire safety standards established by the American Society of Testing and Materials Standards. Manufacturers must provide written certification to the SFM that a cigarette variety meets testing standards. The Act also provides the automatic approval of cigarette markings used to indicate compliance with testing standards if the SFM does not act within 10 business days of receiving the proposed markings. While the SFM has jurisdiction over enforcement of the Act, SFM notes that no funds were ever appropriated for enforcement or oversight activities. According to DOJ staff, this has led to proposed cigarette markings being approved automatically without adequate state oversight. This bill transfers enforcement of the Act to the AG and grants the AG 30 business days to approve proposed markings before the markings are automatically approved.
- 3) **The MSA.** The MSA is a 1998 legal contract between states and participating tobacco manufacturers providing a settlement amount of \$206 billion to participating states. 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 are obligated to enforce the terms of agreement or else risk reductions in their MSA settlement payments. Under state law, nonparticipating manufacturers must make annual payments into an escrow account, based on the number of cigarettes sold in California. State law also creates the Directory to help enforce the MSA. If a manufacturer is not certified to be in compliance with the MSA and entered into the Directory, the manufacturer's products cannot be distributed or sold in California. This bill requires a manufacturer to annually renew its Directory listing with a \$1,000 fee, enacts controls to ensure nonparticipating manufacturers pay their share of settlement costs, authorizes the AG to bring a civil action against tobacco licensees that violate MSA disclosure and certification requirements and makes other changes to improve enforcement of the MSA.

- 4) **Prior Legislation.** AB 1626 (Rivas), of the 2019-20 Legislative Session, would have enacted provisions of this bill regarding the Act. AB 1626 was referred to, but not heard by, the Senate Judiciary Committee.

AB 1627 (Rivas), of the 2019-20 Legislative Session, would have enacted provisions of this bill regarding the MSA. AB 1627 was referred to, but not heard by, the Senate Judiciary Committee.

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