

ASSEMBLY THIRD READING

AB 1742 (Robert Rivas)

As Amended March 24, 2022

Majority vote

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 (AG) and makes assorted clarifying changes in the Act. Additionally, updates and expands the Department of Justice's (DOJ) authority to maintain the California Tobacco Directory (Directory) as well as compliance with the escrow provisions of the Master Settlement Agreement (MSA).

Major Provisions

- 1) Reassigns authority to administer the Act from the SFM to the AG. Requires cigarette manufacturers to provide certification to the 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 AG 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 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.

COMMENTS

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 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, Statutes of 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.

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.

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.

According to the Author

According to the author's office, "this bill 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 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. Additionally, AB 1742 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. 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."

Arguments in Support

The Office of the Attorney General, this bill's sponsor, point to their role in enforcing the laws and regulations relating to the state's obligations under the MSA as the basis for the proposed changes:

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. These changes will help strengthen and clarify the law in order to aid the AG in California's tobacco enforcement efforts.

Second, AB 1742 improves government efficiency and helps protect Californians against fires caused by unsafe cigarettes by shifting the authority to review fire-safe-cigarettes to the AG's Office, ensuring that cigarettes sold in California meet current fire safety requirements.

Arguments in Opposition

None on file

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Minor and absorbable costs to the 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.

VOTES**ASM GOVERNMENTAL ORGANIZATION: 14-5-3**

YES: Santiago, Aguiar-Curry, Berman, Bryan, Cooper, Daly, Gipson, Jones-Sawyer, Low, Quirk-Silva, Ramos, Robert Rivas, Blanca Rubio, Salas

NO: Megan Dahle, Davies, Lackey, Mathis, Smith

ABS, ABST OR NV: Choi, Cooley, Eduardo Garcia

ASM JUDICIARY: 7-1-2

YES: Stone, Kalra, Maienschein, Reyes, Robert Rivas, Friedman, Bloom

NO: Davies

ABS, ABST OR NV: Cunningham, Kiley

ASM APPROPRIATIONS: 12-4-0

YES: Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Jones-Sawyer, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

VERSION: March 24, 2022

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FN: 0002398