
**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Richard Roth, Chair
2021 - 2022 Regular

Bill No: AB 1742
Author: Robert Rivas
Version: May 31, 2022
Urgency: No
Consultant: Elissa Silva

Hearing Date: June 20, 2022

Fiscal: Yes

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

SUMMARY: Transfers the administration of the California Fire Safety and Firefighter Protection Act (Act) from the Office of the State Fire Marshall (SFM) to the Attorney General (AG) and increases the oversight authority for the AG to maintain the California Tobacco Directory as well compliance with escrow provisions of the Master Settlement Agreement (MSA).

NOTE: Double-referral to Senate Committee on Judiciary, second.

Existing law:

- 1) Establishes the Act under the SFM. (Health and Safety Code (HSC) § 14950)
- 2) Establishes burn safety criteria for cigarettes under the Act. (HSC §§ 14950 – 14960)
- 3) Prohibits a person from selling, offering, or possessing cigarettes for sale that are not in compliance with the following requirements:
 - a) The cigarettes are tested by the manufacturer in accordance with specified provisions.
 - b) The cigarettes meet specified performance standards.
 - c) The cigarettes meet specified marking requirements, including font size; have product code, text stating the cigarettes meet California standards, among others.
 - d) A written certification is filed by the manufacturer with the SFM. (HSC § 14951)
- 4) Requires testing of cigarettes to be conducted in accordance with the American Society of Testing Materials (ASTM) Standard E2187-04 “Standard Test Method for Measuring the Ignition Strength of Cigarettes”; as specified, and allows for a subsequent ASTM method to be adopted if specified conditions are met. (HSC § 14952)

- 5) Requires each manufacturer to submit a written certification to the SFM attesting that each cigarette listed in the certification, has been tested in accordance with the required testing provisions, and meets the specified performance standards. (HSC § 14953)
- 6) Defines “brand family” to mean all styles of cigarettes sold under the same trademark and differentiated from another by means of additional modifiers, including, but not limited to “menthol”, “lights,” “kings”, and “100s”, and includes any brand name, alone or in conjunction with any word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical to, or similar to, or identifiable with a previously known brand of cigarettes. (Revenue and Taxation Code (RTC) § 30165.1(a)(2))
- 7) Requires every tobacco product manufacturer who cigarettes are sold in California, whether directly or through a distributor, retailer or similar intermediary to execute and deliver on a specified form, a certification to the AG by April 30th of each year, that as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer that has made all payments calculated by the independent auditor to be due under the MSA, except to the extent the participating manufacturer is disputing any of the payments, or is in full compliance, including all installment payments required and any regulations, as specified, or is a nonparticipating manufacturer in compliance with specified escrow requirements. (RTC § 30165.1(b))
- 8) Requires that specified information to be included in the certification in 7) above depending if they are a participating manufacturer and for a nonparticipating manufacturer. (RTC § 30165.1(b)(1)(2))
- 9) Requires the AG to develop and publish a directory on its website listing all tobacco product manufacturers that have provided current, timely, and accurate certifications conforming to the AG’s certification requirements and all brand families that are listed in the certification, unless exempt. (RTC § 30165(c))
- 10) Requires the AG to update the directory, as necessary, in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to the directory in conformity with required provisions, and the AG must promptly provide distributors and wholesalers with written notice of each tobacco product manufacturer and brand family that the AG has added, excluded or removed from the list. (RTC § 30165(c)(3))
- 11) Prohibits the sales of cigarettes or tobacco products in California unless the brand family of the cigarettes or tobacco product, and the tobacco product manufacturer that makes or sells the cigarettes or tobacco product, are included on the California Tobacco Directory. (Revenue and Taxation Code Section 30465.1 (e).)
- 12) 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. (HSC § 104556 (e).)

- 13) Provides that any tobacco product manufacturer selling cigarettes to consumers within California, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall do one of the following:
- a) Become a participating manufacturer as that term is defined in Section II (jj) of the Master Settlement Agreement and generally perform its financial obligations under the Master Settlement Agreement; or
 - b) Place into a qualified escrow specified sums of money based on the number of units sold in California in a specified year. (HSC § 104557 (a).)

This bill:

- 1) Requires a cigarette manufacturer to file a written certification in compliance with existing laws with the AG instead of the SFM.
- 2) Requires each certification to be submitted in the form, manner, and detail required by the AG, as specified, and authorizes the AG to publish on its website the information required to be on the certification.
- 3) Authorizes the AG to adopt rules and regulations to implement the oversight and review authority of those required to submit certification of compliance, as specified.
- 4) Requires cigarette manufacturers to submit a proposed marking for product packaging to indicate compliance with fire safety and testing standards and to receive approval from the AG instead of the SFM prior to selling the product in California, and further provides that a proposed marking submission to the AG will be deemed approved if the AG fails to act within 30 business days instead of the current 10 day period.
- 5) Authorizes the AG to adopt rules and regulations regarding the submission and approval process for the proposed product markings.
- 6) Adds the following definitions:
 - a) “brand style” to mean any particular combination of trademark and modifiers within a brand family.
 - b) “directory” to mean the California Tobacco Directory developed by the AG and published on the AG’s website.
- 7) Requires the certification to also include a complete list of brand styles, makes conforming changes to include brand styles, and clarifies that listings expire on April 29 each year.
- 8) Replaces the current requirement for a nonparticipating manufacturer who 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 to instead require a nonparticipating manufacturer to certify that it fabricates all of the brand families of

the cigarettes it seeks to certify.

- 9) Prohibits the AG from including or retaining in the directory any brand style that has not been tested or marked in compliance with the Act, and further requires the AG to list the brand styles of cigarettes that are compliant with the annual certification and escrow requirements.
- 10) 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.
- 11) Establishes the California Tobacco Directory Fund, under the AG, and requires any fees received to be deposited into that fund, as specified, and further allows the AG to retain a listing for a tobacco product manufacturer on the Directory while the renewal for the certification is pending.
- 12) Adds the following conditions to the list of reasons that a manufacturer may be deemed to pose an elevated risk for noncompliance:
 - a) During any of the past three years, escrow and equity fee payments were made on less than 80 percent of the nonparticipating manufacturer's nationwide cigarette sales, as specified;
 - b) As of January 1, 2023 the nonparticipating manufacturers cigarettes are sold into the state by distributors that have not reported their last 12 months of in-state sales electronically and in a manner prescribed by both the Department of Tax and Fee Administration and the AG; and,
 - c) For a domestic manufacturer, the nonparticipating manufacturer's cigarettes are sold in the state through one or more distributors that do not purchase directly from the nonparticipating manufacturer. For a foreign manufacturer, the nonparticipating manufacturer's cigarettes are sold in the state through one or more distributors that do not purchase directly from an importer that has accepted joint and several liability, as specified.
- 13) Authorizes the AG or authorized representative to proceed against a nonparticipating manufacturer in the courts of this state, as specified.
- 14) 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. In addition, prohibits both the CDTFA and the AG from publicly disclosing personal information, except as necessary to carry out their functions and duties.
- 15) 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.

- 16) 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.
- 17) States that the Cigarette Fire Safety Fund and Firefighter Protection Fund is created in the State Treasury and upon appropriation of the Legislature, moneys deposited into the fund are to be made available to both of the CDTFA and the AG to offset administrative costs, as specified.
- 18) Deletes out of date code sections and makes other technical, clarifying and conforming changes.

FISCAL EFFECT: This bill is keyed “fiscal” by the Legislative Counsel. According to the Assembly Committee on Appropriations, analysis dated May 11, 2022, there will be minor and absorbable AG costs, no cost savings for the SFM, as the SFM never enforced the provisions of the Act, additional license fee revenues in the tens of thousands of dollars for the AG and minor and absorbable costs to CDTFA to share information.

COMMENTS:

1. **Purpose.** The Attorney General is the sponsor of this bill. According to the author, “AB 1742 updates the Attorney General’s current administration and enforcement of existing state laws to address two pressing issues. First, the bill modernizes the tobacco directory statute in light of developments in the cigarette industry to preserve California’s ability to receive substantial annual payments under the tobacco MSA. Second, the bill would improve government efficiency by consolidating administration and enforcement of the fire-safe cigarette program with the Attorney General...The Attorney General’s Office has successfully prosecuted violations of the directory law’s prohibition against sales of off-Directory cigarettes. However, the existing law does not specifically provide for injunctive relief or civil penalties to deter and punish non-compliance. Instead, it provides that a violation of the Directory statute is unfair competition under Section 17200 of the Business and Professions Code. While the Attorney General has utilized the Unfair Competition Law (“UCL”), Business and Professions Code §§ 17200-17209, to seek and obtain injunctive relief and penalties, unlike Rev. & Tax. Code, § 30165, the UCL does not provide for the recovery of attorney’s fees. As a result courts have sometimes denied portions of the Attorney’s General’s requests that violators be held liable for the considerable time and cost of tobacco directory enforcement actions. AB 1742 amends the directory statute to independently provide for injunctive relief, appropriate civil penalties, and the recovery of investigative costs, expert witness fees, litigation costs, and reasonable attorney’s fees in enforcement actions.”

“AB 1742 would improve government efficiency by consolidating administration and enforcement of the fire-safe cigarette program within the Attorney General’s Office. The Fire Safety Act implements a national standard prohibiting sales of cigarettes unless a tobacco product manufacturer can certify that its products comply with

reduced ignition propensity standards and are marked to show compliance with those safety requirements. Fire-safe cigarettes are engineered to go out when not being actively smoked; non-fire safe cigarettes may stay lit when not in active use and thus present a serious fire risk.”

2. Background.

The Act. The California Cigarette Fire Safety and Firefighter Protection Act, which became effective January 1, 2007, provides industry regulation by requiring cigarette manufacturers to certify that a cigarette variety has been tested and meets the fire safety standards. The provisions of the Act are under the jurisdiction of the SFM, yet enforcement of the requirements of the Act are subject to the AG. This bill seeks to move the administrative operations of the Act under the jurisdiction of the AG’s office and completely remove the SFM from oversight of the Act and the approval process for reviewing cigarettes to ensure compliance with fire safety testing standards and marking approvals.

Under the provisions of 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) provide a certification submitted by the manufacturer to the SFM certifying that each cigarette listed was tested and satisfies the performance requirements of the ASTM.

Under existing law, (HSC 14954(a)) cigarettes that are certified by a manufacturer as required must be marked on the packaging and case to indicate compliance with the requirements. Before the product can be sold, the manufacturer must submit the markings indicating compliance with proposed safety standards to the SFM for approval. If the STF does not act within in 10 business days to approve/disapprove, the markings are automatically approved. As this bill proposes to transfer the oversight of the Act under the AG, this bill would also increase the time necessary for the AG to review certification requests from the current 10-business day window to 30 business days to ensure more time for compliance reviews.

In order for the AG to implement the provisions of this bill related to marking approval and ensuring testing compliance requirements of existing law, this bill grants the AG authority to adopt initial emergency regulations and further regulatory authority for continued regulatory changes as needed for oversight and implantation of the Act. As noted by the sponsor, in recent years, there has been limited administrative review of fire-safe-cigarette certifications, leading to default approvals of cigarettes by the state.”

Master Settlement Agreement (MSA). The MSA arose out of litigation in 1998 amongst individual states’ attorney generals and tobacco manufacturers. As part of the MSA, those participating 46 states released manufacturers who participated in the agreement from liability related to healthcare costs incurred by states associated with smoking-related illnesses and in return would provide annual settlement payments to the states and agreed to restrictions on marketing of products to consumers. Additionally, as part of the MSA, states agreed to impose similar settlement terms on those manufacturers that chose not to participate under

the MSA. As a result, California law requires a tobacco product retailer to either join the MSA or, for those that do not want to participate in the MSA place funds in a specified escrow for purposes of providing a comparable sum equivalent to the amount of settlement money paid by participating companies. The distinction between the two is often referred to as “participating manufacturers” and “nonparticipating manufacturers”.

Current law requires every tobacco product manufacturer whose cigarettes are sold in California to deliver a certification to the AG, every year by April 30, that they are either a participating or a nonparticipating manufacturer, and that they have met all of the monetary requirements under the MSA. In addition, as part of the certification requirements, participating manufacturers are required to include specified information on the certification detailing the list of brand families and other information related to the cigarette products. For those who are nonparticipating manufactures, current law requires additional information be included in their certifications.

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. This bill makes numerous clarifying changes to the requirements for the Directory by modernizing the requirements for the directory. This bill clarifies that Directory listings expire on April 29, to help ensure proper submission of annual certification forms. This bill also establishes, beginning with the 2023 calendar year, a tobacco product manufacturer to renew its listing on the Directory by providing the annual certification along with the remittance of an annual fee of \$1,000 payable to the office of the AG.

Under current law, if the AG believes that a manufacturer (who is a nonparticipating manufacturer) poses an elevated risk of not complying with escrow statutes, the AG can require the manufacturer to obtain a surety bond to cover potential liabilities. This bill would expand the criteria for when a nonparticipating manufacturer may be deemed to pose an elevated risk for requiring a surety bond including when 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.

To ensure that manufacturers properly comply with all aspects of the California Tobacco Directory program, this bill proposes authorizing the Attorney General to impose civil penalties on manufacturers that fail to follow disclosure rules, or fail to file disclosures in a timely manner. In addition, this bill updates current statute to incorporate information sharing between the CDTFA and the AG for purposes of compliance with the tax laws and the MSA requirements for noncompliant manufacturers, and prohibits both the CDTFA and the AG from publicly disclosing

confidential information unless necessary to carry out their respective functions and duties with respect to oversight.

Prior Efforts. In 2019, the author of this bill introduced both AB 1626 and 1627, which aimed to address the same issues as contained in this bill, but in separate measures. AB 1626 would have moved enforcement of the Act under the jurisdiction of the AG, while AB 1627 would have revised requirements for the directory and the escrow requirements for the MSA. Both of those bill ultimately died in the Senate Committee on Judiciary, due to the COVID-19 pandemic and the truncated legislative session. This bill includes both changes to the oversight of the Act, and the directory requirements under the MSA in one measure.

3. **Related Legislation.** AB 1626 (Robert Rivas of 2019) transfers the authority to administer the California Fire Safety and Firefighter Protection Act (Fire Safety Act) from the Office of the State Fire Marshal (SFM) to the Attorney General. This bill also authorizes the Attorney General's office to develop rules and regulations to enforce the Fire Safety Act. (Status: *This bill died in the Senate Committee on Judiciary*)

AB 1627 (Robert Rivas of 2020) provides the Department of Justice) provides the AG with additional authority over maintaining the California Tobacco Directory and ensuring compliance with the escrow statutes of the MSA. (Status: *This bill died in the Senate Committee on Judiciary*)

SB 1408 (Pan), Chapter 613, Statutes of 2018. Revised the legal characterization of cigarettes found to be in violation of the Fire Safety 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 establishes new civil penalties for violations.

4. **Arguments in Support.** The Attorney General writes in support, “The Attorney General enforces the fire-safe-cigarette laws throughout the state and default approval has impaired the Attorney General’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 State Fire Marshal to the Attorney General and increase the review period to 30 days. This would ensure cigarettes receive the necessary review by the state. Moreover, AB 1742 promotes government efficiency, as the AGO already receives fire-safe-cigarette certification information as part of its tobacco enforcement work.”

The California State Association of Counties writes in support, “AB 1742 provides the Attorney General with additional tools to deter non-participating manufacturers (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 Attorney General in California’s tobacco enforcement efforts. Strong enforcement is critical to ensure

counties continue receiving revenues from the MSA to mitigate the harmful effects of tobacco use in our communities.”

League of California Cities writes in support and notes, “Cal Cities continues to support legislation that strengthens smoking and tobacco standards in California and ensures the equitable distribution of funding received from the MSA. AB 1742 would be a step in the right direction, strengthening the Attorney General’s ability to enforce state tobacco laws.”

SUPPORT AND OPPOSITION:Support:

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

Opposition:

None received.

-- END --