
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 1742 (Robert Rivas) - California Cigarette Fire Safety and Firefighter Protection Act: Tobacco Master Settlement Agreement

Version: May 31, 2022

Urgency: No

Hearing Date: August 1, 2022

Policy Vote: B., P. & E.D. 9 - 3, JUD. 9 - 1

Mandate: Yes

Consultant: Janelle Miyashiro

Bill Summary: AB 1742 transfers administration of the California Cigarette Fire Safety and Firefighter Protection Act from the State Fire Marshal to the Attorney General, as specified.

Fiscal Impact: Unknown workload cost pressures on the courts to adjudicate charges that are brought under the provisions of this bill (Trial Court Trust Fund, General Fund). See Staff Comments for additional detail.

The Department of Justice (DOJ) estimates a minor additional fiscal impact to administer the program, as the anticipated workload associated with managing the Directory and enforcing the provisions of the bill are closely related to existing enforcement workload the DOJ already performs. Additional costs associated with managing the Directory should be offset to some extent by annual fees from listing manufacturers.

The State Fire Marshal (SFM) and the California Department of Tax and Fee administration (CDTFA) do not anticipate a fiscal impact from transferring administration of the program to the Attorney General (AG).

Background: 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. 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.

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.

Proposed Law:

- Transfers administration of the California Cigarette Fire Safety and Firefighter Protection Act from the SFM to the AG. Specifically:

- Prohibits a person in this state from selling or possessing cigarettes unless, among other things, a written certification is filed by the manufacturer with the AG.
- At the AG's request, requires manufacturer's testing data to be provided to the AG to ensure compliance.
- Requires each manufacturer to submit a written certification to the AG attesting that each cigarette listed in the certification has been tested and meets the performance standard, as specified.
 - Requires each certification to be submitted in the form, manner, and detail required by the AG and include specified information.
- Authorizes the AG to publish information submitted by a manufacturer on its website.
- Authorizes the AG to adopt rules and regulations to implement the Act. Authorizes the AG to adopt initial emergency regulations necessary for the immediate preservation of the public peace, health, safety, or general welfare.
- Before a certified cigarette may be sold in the state, requires a manufacturer to submit its proposed marking to the AG, and requires the AG to approve the marking if found compliant with specified criteria. Provides that a marking is deemed approved if the AG fails to act within 30 business days of receiving a proposed marking.
- Requires the AG to develop and publish on its website, the California Tobacco Directory, which lists only the tobacco product manufacturers, brand families, and brand styles of cigarettes that are compliance with the Act and associated regulations, as specified.
 - Prohibits the AG from including or retaining in the Directory any brand style that has not been tested and marked in compliance with the Act.
 - Provides that all listings on the Directory expire on April 29 each year.
 - Beginning the 2023 calendar year, requires a manufacturer to renew its listing on the Directory by providing the annual certification and paying an annual fee of \$1,000 per tobacco product to the AG.
 - Requires fees received to be deposited into the California Tobacco Directory Fund, and provides that all amounts deposited into the Fund be continuously appropriated without regard to fiscal year to the AG to administer the Directory.
 - Authorizes the AG to retain a listing for a tobacco product manufacturer on the Directory while the certification renewal is pending, as specified.

- Adds and modifies definitions. Makes other technical and conforming changes.
- Expands the list of criteria that would deem a nonparticipating manufacturer to pose an elevated risk for noncompliance:
 - 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 measured by excise taxes collected by the federal government and, in the case of Puerto Rico, arbitrios de cigarrillos collected by the Puerto Rico taxing authority.
 - As of January 1, 2023, the nonparticipating manufacturer's cigarettes are sold in or into the state by distributors that have not reported their last 12 months of in-state sales electronically and in the manner prescribed by both the CDTFA and the AG.
 - 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.
- In addition to any other civil or criminal penalty, 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 that violates provisions of the Act. Requires a court, upon a finding of a violation, to impose a civil penalty to be paid to the General Fund.
 - Prohibits the civil penalty from exceeding the greater of either five times the retail value of the cigarettes or \$5,000.
 - A nonparticipating manufacturer that does not submit timely, complete, and accurate certification to the AG regarding its sale of cigarettes in the state, whether directly or through a distributor, retailers, or similar intermediaries, and tobacco escrow account compliance for its ongoing and previous sales. Authorizes the court, upon a finding of a violation, to do both of the following:
 - Impose a civil penalty up to \$1,000 for each day the nonparticipating manufacturer fails to timely, completely, and accurately certify to the AG, to be paid to the General Fund.
 - Issue an injunction prohibiting the nonparticipating manufacturer's cigarettes from being sold in or into the state until the failure to certify has been fully cured.
- Establishes the California Tobacco Directory Fund in the State Treasury. Upon appropriation by the Legislature, requires moneys deposited into the Fund to be made available to both of the following:

- The CDTFA to offset minor administrative costs for inspecting, seizing, and disposing of cigarettes.
- The AG to offset minor administrative costs and to the SFM to offset administrative costs to meet the fire safety reporting requirements.
- Repeals outdated code sections.

Staff Comments: The fiscal impact of this bill cannot be known with certainty, as the actual impact will be dependent on numerous factors, including, but not limited to, prosecutorial discretion and the specific facts unique to each case. This bill would expand the misdemeanor offense associated with the scope of information required to be on the certification. A misdemeanor carries the potential for incarceration, therefore certain defendants' rights are attached to the proceedings. These include the right to a jury trial and the right to counsel (at public expense if the defendants are unable to afford the costs of representation). The exercise of those rights generally leads to lengthier and more complex court proceedings. While it is not known how many charges ultimately would be brought under the expanded misdemeanor proposed by this bill, it generally costs about \$8,300 to operate a courtroom for one eight-hour day. Consequently, if prosecutors brought charges based on the expanded definitions proposed by this measure that would not have been brought under existing law, and combined, those additional charges take 50 or more hours of court involvement, the cost pressures of this measure to the courts would surpass the Suspense File threshold.

While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. By way of illustration, the Governor's proposed 2022-2023 budget would appropriate \$117.8 million from the General Fund to backfill the Trial Court Trust Fund for court operations due to continued reduction in fine and fee revenue.

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