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THIRD READING

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Bill No: AB 1742  
Author: Robert Rivas (D)  
Amended: 5/31/22 in Senate  
Vote: 21

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SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 9-3, 6/20/22  
AYES: Roth, Becker, Dodd, Eggman, Hurtado, Leyva, Min, Newman, Pan  
NOES: Melendez, Jones, Ochoa Bogh  
NO VOTE RECORDED: Archuleta, Bates

SENATE JUDICIARY COMMITTEE: 9-1, 6/28/22  
AYES: Umberg, Caballero, Cortese, Durazo, Hertzberg, McGuire, Stern,  
Wieckowski, Wiener  
NOES: Jones  
NO VOTE RECORDED: Borgeas

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/11/22  
AYES: Portantino, Bradford, Laird, McGuire, Wieckowski  
NOES: Bates, Jones

ASSEMBLY FLOOR: 51-14, 5/16/22 - See last page for vote

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

**SOURCE:** State of California Attorney General

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**DIGEST:** This bill 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).

**ANALYSIS:**

## 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 specified requirements. (HSC § 14951)
- 4) 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)
- 5) Requires every tobacco product manufacturer whose 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 30<sup>th</sup> 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. (Revenue and Taxation Code (RTC) § 30165.1(b))
- 6) 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))
- 7) 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. (RTC § 30465.1 (e))

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.

## **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 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 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 or disapprove, the markings are automatically approved. 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.

*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. 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.

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.

This bill makes numerous clarifying changes to the requirements for the Directory and 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 AG 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.

**FISCAL EFFECT:** Appropriation: Yes Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, "This bill will result in unknown workload cost pressures on the courts to adjudicate charges that are brought under the provisions of this bill. 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. The State Fire Marshal and the California Department of Tax and Fee administration do not anticipate a fiscal impact from transferring administration of the program to the Attorney General (AG)."

**SUPPORT:** (Verified 8/11/22)

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

**OPPOSITION:** (Verified 8/11/22)

None received

**ARGUMENTS IN SUPPORT:** Supporters note that this bill will provide the AG with additional tools to strengthen California's tobacco enforcement efforts. Supporters further note that strong enforcement is critical to ensure counties receiving revenue from the MSA to mitigate the harmful effects of tobacco use throughout California communities.

ASSEMBLY FLOOR: 51-14, 5/16/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cooper, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Maienschein, McCarty, Medina, Mullin, O'Donnell, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Stone, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Chen, Megan Dahle, Davies, Fong, Gallagher, Kiley, Lackey, Mathis, Patterson, Seyarto, Smith, Voepel, Waldron

NO VOTE RECORDED: Choi, Cunningham, Flora, Gray, Low, Mayes, Muratsuchi, Nazarian, Nguyen, Quirk-Silva, Blanca Rubio, Ting, Valladares

Prepared by: Elissa Silva / B., P. & E.D. / 916-651-4104  
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