

CONCURRENCE IN SENATE AMENDMENTS

AB 1742 (Robert Rivas)

As Amended May 31, 2022

Majority vote

SUMMARY

This bill revises the Cigarette and Tobacco Products Tax Law to provide the Attorney General and the Department of Justice (DOJ or Department) enhanced ability to enforce the Tobacco Master Settlement Agreement (MSA). The bill also provides that the California Cigarette Fire Safety and Firefighter Protection Act is to be administered by the Attorney General (AG) instead of the State Fire Marshal (SFM), and that proposed markings of cigarette manufacturers are deemed approved if the AG fails to act within 30 days instead of the existing requirement of 10 days.

Senate Amendments

- 1) Allow the AG to retain a listing for a tobacco product manufacturer on the California Tobacco Directory Fund while the renewal for the certification is pending, as defined.
- 2) Provide that a nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as herein required shall be deemed to have appointed the Secretary of State as its agent, as specified.
- 3) Defines the process for the AG or their authorized representative to proceed against a nonparticipating manufacturer in the courts of this state by service of process upon the Secretary of State.
- 4) Make technical and clarifying changes.

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 to 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 AG'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, AB 1742 strengthens California's ability to enforce both the Tobacco Master Settlement Agreement (MSA) and Fire Safety 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 Attorney General 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 Fire Safety Act to the Attorney General'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.

Arguments in Support

The League of California Cities writes, 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 AG's ability to enforce state tobacco laws.

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.

Arguments in Opposition

None received.

FISCAL COMMENTS

According to the Senate Appropriations Committee, "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 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 AG."

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

ASSEMBLY FLOOR: 51-14-13

YES: 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

NO: Bigelow, Chen, Megan Dahle, Davies, Fong, Gallagher, Kiley, Lackey, Mathis, Patterson, Seyarto, Smith, Voepel, Waldron

ABS, ABST OR NV: Choi, Cunningham, Flora, Gray, Low, Mayes, Muratsuchi, Nazarian, Nguyen, Quirk-Silva, Blanca Rubio, Ting, Valladares

SENATE FLOOR: 31-9-0

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

UPDATED

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