

Legislative Analysis



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FIRE-SAFE CIGARETTES

Senate Bill 264 as passed by the Senate
Sponsor: Sen. Tupac Hunter
House Committee: Regulatory Reform
Senate Committee: Commerce and Tourism

First Analysis (6-8-09)

BRIEF SUMMARY: The bill would create the Fire Safety Standard and Firefighter Protection Act, which would restrict sales of cigarettes to only those meeting the standard for self-extinguishing cigarettes.

FISCAL IMPACT: The bill would result in an indeterminate cost to the state. A more detailed discussion of the bills' fiscal impact follows later in the analysis.

THE APPARENT PROBLEM:

Despite public service announcements to educate smokers about the dangers of unattended cigarettes, and efforts on the part of furniture manufacturers to use fire resistant fabrics, smoking materials remain the number one cause of fire deaths in the United States, with about 700 to 900 deaths annually. Cigarette-related fires also injure many more and destroy or damage homes and businesses (property losses related to smoking materials total hundreds of millions of dollars each year).

Recently, technological advances have enabled cigarette manufacturers to make cigarettes that have a reduced propensity to burn when not being actively smoked. One method utilizes banded paper in which the bands act as "speed bumps." When the cigarette is not being actively smoked, it generally goes out on its own, thus reducing the likelihood of an accidental fire. Since 2004, the state of New York has required that only fire-safe cigarettes be sold within the state. Within the first few months after the new law was enacted, cigarette fires declined dramatically.

Following New York's lead, 23 states, the District of Columbia, and Canada have already implemented legislation restricting sales of cigarettes to only fire-safe ones, and 22 other states have passed legislation that will take effect between August 1, 2008 and July 10, 2010. Only Michigan, North Dakota, Wyoming, Missouri, and Alabama have yet to pass legislation.

THE CONTENT OF THE BILL:

The bill would create the Fire Safety Standard and Firefighter Protection Act, which would restrict sales of cigarettes to only those meeting the standard for self-extinguishing cigarettes.

Senate Bill 264 would create the Fire Safety Standard and Firefighter Protection Act, which is substantially similar to the statute adopted by the State of New York (considered to be a "model" act). As of the bill's proposed effective date—January 1, 2010—only cigarettes meeting the standard for self-extinguishing cigarettes, or Reduced Ignition Propensity (RIP) cigarettes, as they are known, could be sold in the state or to a person located in the state. RIP cigarettes use lowered permeability bands in the cigarette paper that act as "speed bumps," so to speak. The bands cause the cigarette burn to slow; the cigarette will then self-extinguish unless it is being actively smoked.

In addition, the RIP cigarettes would have to be tested according to the bill's specifications, the manufacturer would have to file a written certification and pay the appropriate certification fee, and the manufacturer would have to mark the cigarettes as required by the bill. The bill would also do the following:

- Exempt the manufacture or sale of non-RIP cigarettes intended for sale in other states or outside the U.S. from regulation under the bill.
- Establish civil fine penalties for various violations of the bill.
- Adopt the testing requirements contained in the New York model legislation, including the requirement that no more than 25 percent of the cigarettes tested in a test trial exhibit full-length burns.
- Allow, in certain circumstances, a manufacturer to use an alternative testing method.
- Require manufacturers to retain testing records for at least three years and make copies of the reports available to the Department of Energy, Labor, and Economic Growth (DELEG) and the Attorney General upon written request. Failure to make the copies available for inspection would subject a manufacturer to a civil fine of not more than \$10,000 for each day after the 60th day that the copies were not made available.
- Require DELEG to review the proposed act's effectiveness regarding the testing provisions and require the department to report the findings every three years to the Legislature, along with any appropriate recommendations for legislation to improve the act's effectiveness. The report and recommendations would have to be submitted to the Legislature no later than the first June 30 following the conclusion of each three-year period.
- Discourage wholesalers and retailers from stockpiling non-RIP cigarettes by allowing them to sell their pre-bill inventory of cigarettes only if those cigarettes had been stamped with the state tax stamps before the bill's effective date and that inventory had been purchased before the bill's effective date in comparable quantity to the inventory purchased during the same period in the preceding year.

- Require manufacturers to certify or recertify cigarettes at a cost of \$1,250 per brand family of cigarette listed in the certification. A certification would be valid for three years, at which time a new certification would have to be filed. A written certification would have to include specific information as required by the bill, the date the cigarette testing had been performed, and attestation that each cigarette listed in the certification met the required performance standard. DELEG would have to make the certifications available to the attorney general and Department of Treasury for the purpose of ensuring compliance with the bill.
- Require manufacturers to mark cigarettes certified under the bill. A manufacturer could choose from several marking options, but the same marking would have to be used on all brands marketed by that manufacturer and be used in a uniform manner on all packs, cartons, cases, and other packages of cigarettes. DELEG would have discretion to approve or disapprove the proposed marking, but would have to approve any marking that either included the acronym "FSC" or was in use and approved for sale in New York under that state's fire safety standards for cigarettes.
- For enforcement purposes, allow the Attorney General, Department of Treasury, DELEG, or their authorized representatives; the State Fire Marshal; the commanding officer, or authorized uniformed firefighter, of a municipal fire department; and law enforcement personnel to examine various documents of any person in possession, control, or occupancy where cigarettes were stored, placed, sold, or offered for sale (as well as examining the stock of cigarettes on the premises).
- Create the Fire Safety Standard and Firefighter Protection Act Enforcement Fund within the Department of Treasury. Money could only be spent, upon appropriation, to support processing, testing, enforcement, and oversight activities.
- Create the Cigarette Fire Safety Standard and Firefighter Protection Act Fund within the Department of Treasury; money from the fund could only be used, upon appropriation, by DELEG to support fire safety and prevention programs.
- Allow DELEG or the Attorney General to bring an action against a violator for injunctive or equitable relief, to recoup enforcement costs relating to the violation or for actual damages sustained by the state that had been caused by the violation, and/or to collect reasonable attorney fees and costs.
- Grant DELEG rule-making authority to implement the bill's provisions.
- Repeal the act if federal law adopted and enacted a reduced cigarette ignition propensity standard that preempted the bill.

HOUSE COMMITTEE ACTION:

The Committee on Regulatory Reform reported the Senate-passed version of the bill; that is, there were no amendments

BACKGROUND INFORMATION:

Senate Bill 264 is virtually identical to House Bill 5110 and Senate Bill 1621 of the 2007-2008 legislative session. Both bills were passed by their respective chambers. Each bill was tie-barred to a companion bill that would have applied several provisions of the Tobacco Products Tax Act to cigarettes regulated under the proposed Fire Safety Standard and Firefighter Protection Act; the companion bills, which also were identical, were opposed by the Department of Treasury. The department's opposition focused on a provision that would have added a seizure requirement to the Tobacco Product Tax Act that the department felt was a task better suited for the Fire Marshal since violations or suspected violations would have been referred to that office.

FISCAL INFORMATION:

The bill would impose a \$1,250 triennial certification fee on cigarette manufacturers for each "brand family" certified as being in compliance with the fire safety standards established under the bill. While "brand family" is not defined in the bill, or in the Tobacco Products Tax Act, it is presumed to mean the general brand name, encompassing all varieties (e.g. Marlboro, Camel, Kool, etc).¹

The Department of Energy, Labor, and Economic Growth (DELEG) estimates that about 100 brand families potentially would be certified under the bill as being "fire-safe." The certification fee, then, would generate approximately \$125,000 on a three-year basis.

Certification fee revenue would be credited to the new Fire Safety Standard and Firefighter Protection Act Enforcement Fund and, together with common cash earnings, would be expended by the department for processing, enforcement, and oversight activities under the bill. Any remaining unexpended fund balance at the close of the fiscal year would remain in the fund, rather lapse to the General Fund.

The department estimates that it would require one full-time equivalent (FTE) position, costing approximately \$80,000 on an annual basis in salaries, benefits, and related costs. The department would incur additional costs related to any necessary testing and investigation activities that it would undertake. In any event, the anticipated revenue generated from the triennial certification fee wouldn't be sufficient to meet the anticipated administrative costs of the department over the three-year period.

¹ The California Revenue and Taxation Code, for example, defines "brand family" to mean all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, "menthol", "lights", and "100s" and includes any brand name, along or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

Additionally, the bill would create the Cigarette Fire Safety Standard and Firefighter Protection Act Fund, to be used by the department to pay for fire safety and prevention programs. (The bill doesn't specify what these "fire safety and prevention programs" would be.) The bill provides that the fund would consist of revenue generated by fines imposed for violations of the bill. Any remaining unexpended fund balance at the close of the fiscal year would remain in the fund, rather than lapse to the General Fund. The amount of revenue that would potentially be credited to the fund is at present indeterminate, as there appears to be no data compiled in other states on violations of their fire-safe cigarette legislation to provide a basis for an estimate.

The limited amount of research on the impact of fire-safe cigarette laws in other states indicates that these laws have no significant impact on cigarette prices or consumption.

ARGUMENTS:

For:

Fire-safe cigarettes would not prevent all cigarette-related fires from happening, but laws restricting sales to only fire-safe cigarettes have already been saving lives by reducing house fires in the enacting states. Legislation to enact a nationwide requirement for fire-safe cigarettes has stalled at the federal level; therefore, states are taking the initiative. Almost all states have already enacted or passed legislation similar to the law adopted in the state of New York (considered to be the model act), and legislation is pending in the remaining states.

Manufacturing standards for fire-safe cigarettes already have been developed, cigarette manufacturers are already making compliant products, and tests have shown no differences in taste or toxicity between fire-safe and regular cigarettes. Manufacturers are supportive of the measure, as evidenced by the R.J. Reynolds Tobacco Company's decision to manufacture only fire-safe cigarettes as of 2009. Further, uniform laws across the nation and Canada would make it easier for manufacturers and distributors as only one type of product would have to be made (and states adopting the New York model would have similar labeling requirements).

State inspectors may have some additional duties added by the bill, but states which have similar laws already in place report few if any violations on the part of vendors and retailers.

The bill is good public policy; it neither supports nor discourages smoking—it just requires a safer product.

For:

According to the Coalition for Fire-Safe Cigarettes, at least one-quarter of the annual deaths from cigarette-related fires are the children of the smoker (34 percent of non-smoker deaths), followed by friends or neighbors (25 percent), spouses or partners (14 percent), and parents (13 percent). Almost half of the victims were asleep at the time; one-third died while attempting to escape, fight the fire, or rescue others. In the mid-

1980s, research conducted by the National Fire Protection Association (NFPA) predicted that fire-safe cigarettes could prevent three out of four cigarette fire deaths. Had manufacturers switched to producing only fire-safe cigarettes then, over 17,000 lives could have been saved. Joining the other states and jurisdictions that have already adopted fire-safe cigarette restrictions would prevent the deaths of many who otherwise could perish in cigarette-related fires.

POSITIONS:

A representative of the State Office of Fire Marshal, within the Department of Energy, Labor, and Economic Growth, testified in support of the bill. (6-3-09)

A representative of Altria testified in support of the bill. (6-3-09)

The Chaldean Chamber of Commerce indicated support for the bill. (6-3-09)

HRC Hotels indicated support for the bills. (6-3-09)

The Michigan Association of Convenience Stores indicated support for the bill. (6-3-09)

The Michigan Truck Stop Operators Association indicated support for the bill. (6-3-09)

Last session, the following entities indicated or testified in support of virtually identical legislation:

Michigan Fire Inspectors Society
Children's Hospital of Michigan
Phoenix Society for Burn Survivors
Kalamazoo Township Fire Department and State Fire Safety Board
Latria Client Services
Great Lakes Burn Camp

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.