

FIRE-SAFE CIGARETTES

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Senate Bill 264

Sponsor: Sen. Tupac Hunter

House Committee: Regulatory Reform

Senate Committee: Commerce and Tourism

Complete to 6-3-09

A SUMMARY OF SENATE BILL 264 AS PASSED BY THE SENATE 5-14-09

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. The bill 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.

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.

FISCAL IMPACT:

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.

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■ 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.