

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 361

(Senator Lenett, *et al.*)

Finance

Economic Matters

Cigarette Fire Safety Performance Standard and Firefighter Protection Act

This bill prohibits cigarettes from being manufactured, sold, or offered for sale in Maryland unless the cigarettes have been tested and meet the performance standard specified in the bill and the manufacturer has filed written certification with the Comptroller that each cigarette has been tested. Civil penalties for violating the bill are established.

The bill takes effect July 1, 2008, and remains effective until a federal reduced cigarette ignition propensity standard is adopted and becomes effective.

Fiscal Summary

State Effect: Comptroller special fund revenues would increase by at least \$1,500 in FY 2009 to reflect the fee assessed on cigarette brands. Potential increase in special fund revenue for the Senator William H. Amoss Fire, Rescue, and Ambulance Fund from civil penalty provisions. Potential increase in general fund revenue for the one civil penalty that is not targeted to a specific fund. Comptroller special fund expenditures would increase and general fund expenditures could potentially increase to cover administrative expenses. Future years reflect triennial certification.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
GF Revenue	-	-	-	-	-
SF Revenue	1,500	-	-	1,500	-
GF Expenditure	-	-	-	-	-
SF Expenditure	1,500	0	0	1,500	0
Net Effect	\$0	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in grants from the Senator William H. Amoss Fire, Rescue, and Ambulance Fund.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill must be implemented in accordance with the implementation and substance of the New York Fire Safety Standard for Cigarettes. Cigarette testing must be conducted according to the American Society of Testing and Materials (ASTM) Standard E2187-04 “Standard Test Method for Measuring the Ignition Strength of Cigarettes.” The Comptroller, consulting with the State Fire Prevention Commission, may adopt a subsequent ASTM standard test method as long as the subsequent test method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the ASTM Standard E2187-04 and the bill’s performance standard. The bill specifies further testing requirements.

If the Comptroller determines that a cigarette cannot be tested according to the bill’s required testing method, the cigarette manufacturer must propose a test method and performance standard for that cigarette. The Comptroller, consulting with the commission, may approve a test method and performance standard the Comptroller determines is equivalent to the bill’s requirements, and the cigarette manufacturer may use that standard for certification. This does not require additional testing for cigarettes that are tested in a manner consistent with the requirements of the bill for any other purpose.

Each manufacturer must retain all cigarette testing data for three years. The manufacturer must provide that data on request to the Comptroller, commission, or the Attorney General within 60 days of receiving the request to ensure compliance.

Each manufacturer must submit to the Comptroller written certification attesting that each cigarette has been tested in accordance with and has met the performance standard. A certification may not list more than 50 cigarettes. The certification must be made available to the Attorney General, the Comptroller, and the commission. Cigarettes must be recertified every three years. Additionally, the bill establishes marking requirements for certified cigarettes.

The manufacturer must provide: a copy of each certification to each wholesaler to which the manufacturer sells cigarettes; and sufficient copies of an illustration of the packaging

marking approved and used by the manufacturer for each retailer, subwholesaler, and vending machine operator that purchases cigarettes from the wholesaler. The wholesaler must provide a copy of the illustration to each retailer, subwholesaler, and vending machine operator to which the wholesaler sells cigarettes. Each retailer, subwholesaler, vending machine operator, and wholesaler must allow the Comptroller to inspect the markings at any time.

Any cigarettes offered for sale in Maryland that do not comply with the fire safety standard established under the bill are deemed to be contraband.

The Comptroller may adopt regulations to implement the bill and may establish a \$250 fee for each in certification required to cover the expenses of administering the bill.

Civil Penalties

A manufacturer or other person that knowingly sells or offers for sale cigarettes other than by retail sale that have not been tested and met the performance standard is subject to a maximum civil penalty of \$100 for each package of cigarettes sold or offered for sale. The total amount of civil penalties imposed on a manufacturer or other person for this offence may not exceed \$100,000 during any 30-day period.

Except as otherwise provided, a retailer, subwholesaler, wholesaler, or other person that knowingly sells cigarettes that have not been certified by the Comptroller is subject to a maximum civil penalty of \$100 for each package of cigarettes sold. The total amount of civil penalties imposed on a retailer for this offence may not exceed \$25,000 during any 30-day period. The total amount of civil penalties imposed on a subwholesaler, wholesaler, or other person for this offence may not exceed \$100,000 during any 30-day period.

A manufacturer that knowingly makes a false certification is subject to a civil penalty of at least \$75,000 but not more than \$250,000 for each false certification.

The Attorney General may bring an action to enjoin any acts that violate the bill and to recover civil penalties. The Attorney General or the Comptroller may examine the books, papers, invoices, and records of a person in possession, control, or occupancy of a building, structure, or land where cigarettes are placed, stored, sold, or offered for sale. Money collected from civil penalties must be distributed to the Senator William H. Amoss Fire, Rescue, and Ambulance Fund.

A cigarette manufacturer that does not provide cigarette testing data requested by the Comptroller, the State Fire Prevention Commission, or the Attorney General within

60 days of the request is subject to a maximum civil penalty of \$10,000 for each day after that deadline that the violation continues. As this penalty is not directed to a special fund under the bill, it would be deposited in the general fund.

Cigarette Sales Prior to July 1, 2008

The bill does not prohibit the sale of existing cigarette inventories on or after July 1, 2008, if it can be established that tax stamps were affixed to the cigarettes before July 1, 2008, and the inventories were purchased during fiscal 2008 in a quantity comparable to the inventories purchased during fiscal 2007. This may not be construed to prohibit a person from selling or offering for sale cigarettes that have not been certified if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside of the United States.

Cigarette Seizures

A police officer or other authorized personnel specified under regulations may seize cigarettes in the possession of a retailer, subwholesaler, vending machine operator, or wholesaler without the required markings that the cigarette has been tested. Seized cigarettes must be destroyed. However, prior to the destruction, the true holder of the trademark rights in the cigarette brand must be provided the opportunity to inspect the seized cigarettes.

Preemption

This bill preempts any conflicting local law, ordinance, or regulation.

Current Law: There are no cigarette fire safety standards in Maryland.

The Senator William H. Amoss Fire, Rescue, and Ambulance Fund promotes: (1) the delivery of effective and high quality fire protection, rescue, and ambulance services in Maryland; (2) increased financial support for fire, rescue, and ambulance companies by counties; and (3) the continued financial viability of volunteer fire, rescue, and ambulance companies given the greatly increased costs of equipment.

If contraband tobacco products are seized, the Comptroller or police officer must give notice of the seizure to the person from whom the property is seized at the time of the seizure. If a police officer seizes contraband tobacco products or conveyances used to transport them, the officer must deliver the products and conveyance to the Comptroller.

The owner of the seized property may file a claim for the return of the property with the Comptroller within 30 days after the seizure or notice of seizure. If a person files a claim for the return of seized property, the Comptroller or his designee must promptly act on the request and hold an informal hearing, direct the return of the cigarettes (absent satisfactory proof that the person was not in compliance with any provisions related to the tobacco tax at the time of the seizure), and direct the return of the conveyance given satisfactory proof the owner was not willfully evading provisions related to the tobacco tax at the time of seizure. The Comptroller or his designee must grant or deny the application for the return of seized cigarettes or a conveyance by mailing the person a notice of final determination.

Background: On December 31, 2003, the State of New York adopted fire safety standards for cigarettes sold in the state. The standards became effective June 28, 2004. Any cigarette sold in New York has to be certified as low-ignition strength, which means that it has a greater capacity for self-extinguishment if left unattended. The standards require that all cigarette brands sold in New York be tested to determine that at least 75% of the cigarettes self-extinguish before burning the full length of the tobacco column. The tests are conducted according to ASTM standards. The tests must be redone at least every three years. Penalty provisions similar to the ones in this bill are included in the New York statute. Each manufacturer must mark its cigarettes signifying that they comply with the New York standards. Any symbols used for such marking must first be approved by the New York Office of Fire Prevention and Control.

Philip Morris USA advises that five other states have enacted bills adopting the same fire safety standards for cigarettes as New York: California, Illinois, Massachusetts, New Hampshire, and Vermont. In addition to Maryland, another 13 states have introduced bills to adopt the same fire safety standards: Connecticut, Hawaii, Iowa, Kentucky, Maine, Montana, Nebraska, New Jersey, Oregon, Rhode Island, Texas, Utah, and Washington. Philip Morris further advises that cigarettes meeting the fire safety standards are less likely to put fire to bedding and upholstered furniture than cigarettes that do not meet these standards, but they are still capable of causing a fire.

Cigarette-caused fires are the leading cause of fire death in Maryland, responsible for an average of 20% of all civilian fire deaths in any given year, according to the University of Maryland School of Law's Center for Tobacco Regulation, Litigation, and Advocacy.

State Fiscal Effect: Comptroller special fund revenues would increase by at least \$1,500 in fiscal 2009 to reflect the \$250 additional fee for each required certification that is collected for the Comptroller's administrative costs. For the purposes of this analysis, it is assumed that the fee revenues would be special funds (similar to the cigarette licensing

fees the Comptroller collects). However, the bill does not specify a special fund into which the fees would be deposited.

The Comptroller advises that there are 254 brands approved to be sold in Maryland. Each certification may not list more than 50 cigarettes that have been tested and have met the required performance standard. The Comptroller could not reliably estimate at this time the number of variations each brand has. If each cigarette variation (such as each flavor of cigarette and size of cigarette) is required to be listed on a certification, special fund revenues could increase further.

This analysis assumes that all special fund fee revenues collected would be spent on the Comptroller's related administrative costs. If special fund revenues are not sufficient to pay for all of the administrative costs, general fund expenditures would increase to make up the difference. The bill's annual administrative costs cannot be reliably estimated at this time.

The bill does not specify whether the fee would be ongoing or a one-time fee. For the purposes of this analysis, the fee is assumed to be ongoing, payable every three years with initial certification and the triennial recertification.

The Governor's proposed fiscal 2008 budget includes \$10 million for the William H. Amoss Fire, Rescue, and Ambulance Fund. Special fund revenues could increase from the civil penalty provisions of the bill. Any revenues collected would be deposited into the fund. Although the actual increase in special fund revenues cannot be reliably estimated at this time, it is expected to be minimal. It is assumed that cigarette manufacturers would be able to comply with the fire safety standards established in Maryland as they are already required to comply with these standards for cigarettes sold in New York, California, and Vermont and, therefore, such violations would be held to a minimum.

The Comptroller advises that, depending on the amount of contraband product that is confiscated, there may be additional costs associated with the disposal of contraband cigarettes. The Comptroller could not reliably estimate at this time any related contraband disposal costs.

General fund revenues could increase minimally from the civil penalty provision for manufacturers who do not share State-requested data within 60 days of that request. As the bill does not specify where those civil penalties would be deposited, it is assumed for the purpose of this analysis that they would be deposited into the general fund.

Additional Information

Prior Introductions: A similar bill, HB 1300 of 2006, was amended and passed by the House and amended by the Senate Finance Committee but was not voted on by the full Senate. HB 1246 of 2005, which would have required the State Fire Prevention Commission to adopt regulations for cigarette fire safety standards, had a hearing in the House Economic Matters Committee and was withdrawn.

Cross File: Although HB 785 is designated as a cross file, it is not identical.

Information Source(s): Comptroller's Office, Department of State Police, Office of the Attorney General, Philip Morris USA, Department of Legislative Services

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