

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

House Bill 1300

(Delegate Moe, *et al.*)

Economic Matters

Finance

Maryland Cigarette Fire Safety 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 January 1, 2007.

Fiscal Summary

State Effect: Potential increase in special fund revenue from civil penalty provisions. Enforcement could be handled with existing resources.

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: 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 data from cigarette testing for three years. The manufacturer must provide that data to the Comptroller, commission, and the Attorney General on request to ensure compliance.

On request, 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. On request, 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.

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 \$10,000 for each sale.

A retailer, subwholesaler, or wholesaler that knowingly sells cigarettes that have not been certified by the Comptroller is subject to a maximum civil penalty of \$500 for each sale in which less than 50 packages of cigarettes are sold or \$1,000 for each sale in which 50 or more packages of cigarettes are sold.

Except as otherwise provided, a person that knowingly sells cigarettes that have not been certified by the Comptroller is subject to a maximum civil penalty of \$1,000 for each violation.

A manufacturer that knowingly makes a false certification is subject to a maximum civil penalty of \$10,000 for each false certification.

The Attorney General may bring an action to enjoin any acts that violate the bill and to recover civil penalties. Money collected from civil penalties must be distributed to the Senator William H. Amoss Fire, Rescue, and Ambulance Fund.

Cigarette Sales Prior to January 1, 2007

The bill does not prohibit the sale of existing cigarette inventories on or after January 1, 2007, if it can be established that tax stamps were affixed to the cigarettes before January 1, 2007 and the inventories were purchased in 2006 in a quantity comparable to the inventories purchased during 2005. 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.

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 the publication of a notice of seizure. If a person files a claim for the return of seized property, the Comptroller or Comptroller's designee must promptly act on the request and hold an informal hearing, direct the return of the cigarettes unless the Comptroller or Comptroller's designee has 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 if the Comptroller or Comptroller's designee has satisfactory proof the conveyance's owner was not willfully evading provisions related to the tobacco tax at the time of seizure. The Comptroller or Comptroller's 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 American Society of Testing and Materials 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.

Tobacco companies in testimony before the House Economic Matters Committee have stated that they already produce more than 800 brands of cigarettes that meet these standards and are ready to meet demand if Maryland adopts New York's standards.

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. The center further advises that New York's fire safety standards for cigarettes sold in the state have been used as the core of similar bills that passed in California and Vermont in 2005.

State Fiscal Effect: The Governor's fiscal 2007 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 revenue collected would be deposited into the fund. Although the actual increase in special fund revenue 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.

Additional Information

Prior Introductions: 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: None.

Information Source(s): Comptroller's Office; Department of State Police; Office of the Attorney General; University of Maryland School of Law's Center for Tobacco Regulation, Litigation, and Advocacy; Department of Legislative Services

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