

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 653

(Chair, Economic Matters Committee)(By Request -
Departmental - Comptroller)

Economic Matters

Finance

**Fire Safety Performance Standard for Cigarettes - Sale or Distribution for
Consumer Testing Under Controlled Settings**

This departmental bill allows cigarettes to be sold or distributed for the purpose of consumer testing in a controlled setting without meeting fire safety certification requirements. Cigarettes used for consumer testing in an uncontrolled setting must continue to meet the requirements.

The bill allows manufacturers to submit descriptions of cigarettes to the Comptroller as “confidential under seal” in order to protect proprietary information. Descriptions must include brand, style, length, circumference, flavor, and package information.

The bill takes effect October 1, 2009, and remains in effect until a federal reduced cigarette ignition propensity standard is adopted and becomes effective.

Fiscal Summary

State Effect: Any change in State activities does not materially affect State finances.

Local Effect: None.

Small Business Effect: The Comptroller’s Office has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: Chapter 497 of 2007 established that 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 performance standard included in statute.

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. Packages of cigarettes must also be marked to indicate certification.

Any cigarettes offered for sale in Maryland that do not comply with the fire safety standard established under Chapter 497 are deemed to be contraband. The Attorney General may bring an action to enjoin any acts that violate the law and to recover the civil penalties specified for various violations. 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.

Background: Chapter 497 of 2007 did not include a definition of “sell” or “consumer testing.” The Comptroller advises that “these definitions are necessary for determining applicability of the statute, and for requiring certification of cigarettes used for consumer testing in a non-controlled setting.”

According to the Comptroller’s Office, the tobacco industry expressed concern about public release of proprietary information. The “confidential under seal” provision assures the industry that product information will not be made public. This confidential information may not be disclosed under State law or in civil litigation and can only be

used by the Comptroller and Attorney General for purposes of enforcement of the cigarette statute.

In 2003, the State of New York adopted fire safety standards for cigarettes sold in the state. 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 Chapter 497 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.

According to the Coalition for Fire-Safe Cigarettes, 37 states and the District of Columbia have enacted or passed legislation adopting the same fire safety standards for cigarettes as New York. Another nine states have introduced bills to adopt the same fire safety standards. Philip Morris USA 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2009
ncs/mwc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Fire Safety Performance Standard for Cigarettes – Sale or Distribution for
Consumer Testing Under Controlled Settings

BILL NUMBER: HB 653

PREPARED BY: Comptroller of Maryland

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.