

FIRE-SAFE CIGARETTES

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House Bills 5110 and 5111

Sponsor: Rep. Michael Sak

Committee: Regulatory Reform

Complete to 1-14-08

A SUMMARY OF HOUSE BILL 5110 (PROPOSED SUBSTITUTE H-1) AND HOUSE BILL 5111 AS INTRODUCED 8-21-07

House Bill 5110 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, and House Bill 5111 would apply several provisions of the Tobacco Products Tax Act to cigarettes regulated under the proposed Fire Safety Standard and Firefighter Protection Act. The bills are tie-barred to each other, meaning that neither could take effect unless both are enacted. A more detailed summary of each bill follows.

House Bill 5110

The bill 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, 2009—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 take effect January 1, 2009. 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.
- 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 Labor and Economic Growth (DLEG) 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 DLEG 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 cigarettes at a cost of \$1,000 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. DLEG 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. DLEG 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, DLEG, their authorized representatives, 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).
- Require the Department of Treasury to establish and administer the Fire Safety Standard and Firefighter Protection Act Enforcement Fund as a restricted account for the administration and enforcement of the bill. Money could only be spent to support processing, testing, enforcement, and oversight activities.
- Require the Department of Treasury to also establish and administer the Cigarette Fire Safety Standard and Firefighter Protection Act Fund as a restricted fund; money from the fund could only be used by DLEG to support fire safety and prevention programs.
- Establish civil fine penalties for various violations of the bill.

- Allow DLEG 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 DLEG 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 Bill 5111

The bill would amend the Tobacco Products Tax Act (MCL 205.426a and 205.429). The bill would apply various provisions of the act relating to inspections by Department of Treasury officials and seizures of tobacco products and personal property connected to violations of the act to provisions of the Fire Safety Standard and Firefighter Protection Act proposed by House Bill 5110. The bill would take effect one year after enactment. The bill would also:

- Require inspections of the operations of secondary wholesalers, vending machine operators, or retailers to also ascertain that all cigarettes were marked as required under Section 11 of House Bill 5110. The department would have to notify the Department of Labor and Economic Growth of any cigarettes found not to be marked as required.
- Make tobacco products held, owned, possessed, transported, or in control of a person in violation of House Bill 5110 or a vending machine, vehicle, or other tangible personal property containing a tobacco product in violation of House Bill 5110 subject to the act's seizure provisions for contraband. Notice of the seizure and an inventory of the cigarettes seized would have to be provided to the manufacturer that certified that brand of cigarettes.
- Currently, the Department of Treasury is required to destroy all cigarettes forfeited to the state. The bill would require that before destroying cigarettes forfeited for a violation of House Bill 5110, the department would have to provide a manufacturer that certified the cigarettes an opportunity to inspect the cigarettes.

FISCAL IMPACT:

House Bill 5110 (H-1) would impose a \$1,000 certification fee on cigarette manufacturers for each "brand family" (a term not defined in the bill or the Tobacco Products Tax Act) certified as complying with the fire safety standards established under the bill. 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 of Labor and Economic Growth for processing, testing, enforcement, and oversight of the fire safety standards. Unexpended funds remaining in the fund at the close of a fiscal year would remain in the fund, rather than lapse to the General Fund.

The amount of revenue generated by the certification fee is indeterminate. It is not entirely clear what the fee would be applied to. Brand family could be construed to mean the general brand name, such as Marlboro, which includes more than 30 varieties (Menthol Lights, Ultra Lights, etc). Alternatively, brand family could be construed to mean the manufacturer, such as Philip Morris USA, which sells cigarettes under more than 20 brand names (Marlboro, Benson & Hedges, Virginia Slims, etc). Comparing the list of cigarettes authorized for sale in Michigan manufactured by participating manufacturers under the Master Settlement Agreement and non-participating manufacturers that pay the equity assessment under the Tobacco Products Tax Act and the listing of cigarettes certified by the New York Department of State, Office of Fire Prevention Control yields a listing of 132 cigarette brands (e.g. Marlboro, all varieties) that could potentially be certified under the bill by manufacturers as being a "fire safe" cigarette.¹ This, then, would result in approximately \$132,000 in certification fee revenue credited to the Fire Safety Standard and Firefighter Protection Act Enforcement Fund during the three-year certification period.

The Department of Treasury and the Department of Labor and Economic Growth estimate that they would each require an additional 3.0 FTE positions, costing approximately \$252,000 for each department in salaries, benefits and other costs, to carry out the responsibilities required of them under the bills. The anticipated revenue generated by the certification fees would not be sufficient to cover the activities of DLEG.

Additionally, the bills direct civil fine revenue generated from various violations to the new Cigarette Fire Safety Standard and Firefighter Protection Act Fund, which would be used by DLEG to fund fire safety and prevention programs. Money in the fund at the close of the fiscal year would remain in the fund rather than lapse to the General Fund. The amount of revenue generated by violations of the bills is indeterminate. There appears to be no data compiled in other states on violations of their fire safe cigarette legislation upon which an estimate could be based.

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.

¹ The New York list of certified cigarettes includes more than 300 brands, 140 brand families, and 1,300 varieties. The list is available on line at <http://www.dos.state.ny.us/fire/pdfs/cigaretteweblist1007.pdf>