

Legislative Analysis



FIRE-SAFE CIGARETTES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5110 as passed by the House
House Bill 5111 as passed by the House
Sponsor: Rep. Michael Sak
Committee: Regulatory Reform
First Analysis (7-16-08)

BRIEF SUMMARY: 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.

FISCAL IMPACT: The bills would result in an indeterminate cost to the state. A more detailed discussion of the bills' fiscal impact follows later in the analysis.

THE APPARENT PROBLEM:

Despite public service announcements to educate smokers about the dangers of unattended cigarettes, and efforts on the part of furniture manufacturers to use fire resistant fabrics, smoking materials remain the number one cause of fire deaths in the United States, with about 700 to 900 deaths annually. Cigarette-related fires also injure many more and destroy or damage homes and businesses (property losses related to smoking materials total hundreds of millions of dollars each year).

Recently, technological advances have enabled cigarette manufacturers to make cigarettes that have a reduced propensity to burn when not being actively smoked. One method utilizes banded paper in which the bands act as "speed bumps". When the cigarette is not being actively smoked, it generally goes out on its own, thus reducing the likelihood of an accidental fire. Since 2004, the state of New York has required that only fire-safe cigarettes be sold within the state. Within the first few months after the new law was enacted, cigarette fires declined dramatically.

Following New York's lead, 13 states, the District of Columbia, and Canada have already implemented legislation restricting sales of cigarettes to only fire-safe ones, twenty-three other states have passed legislation that will take effect between August 1, 2008 and January 1, 2010, and bills to require fire-safe cigarettes are pending in seven more. Many believe that Michigan should enact similar legislation.

THE CONTENT OF THE BILLS:

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—540 days after enactment—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 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 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. 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, 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).
- 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.
- 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 205.429). The bill would apply provisions of the act relating to seizures by Department of Treasury officials 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 540 days after enactment. The bill would also:

- Make tobacco products that were not marked as required under Section 11 of the Fire Safety Standard and Firefighter Protection Act held, owned, possessed, transported, or in control of a person or a vending machine, vehicle, or other tangible personal property containing a tobacco product that was not marked as required under Section 11 subject to the seizure provisions of the Tobacco Products Tax Act for contraband. Notice of the seizure and an inventory of any cigarettes seized because of an allegation that the cigarettes violated the provisions of House Bill 5110 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 because they were not marked as required, the department would have to provide a manufacturer that certified the cigarettes an opportunity to inspect the cigarettes.

FISCAL INFORMATION:

House Bill 5110 would impose a \$1,250 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 the Tobacco Products Tax Act, it is presumed to mean the general brand name, encompassing all varieties (e.g. Marlboro, Camel, Kool, etc).¹

¹ The California Revenue and Taxation Code, 30165.1(a)(2) 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," "kings," and "100s" and includes any brand name, alone 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.

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 121 brands of cigarettes (e.g. Marlboro, all varieties) that could potentially be certified under the bill by manufacturers as being a "fire-safe" cigarette. The certification fee, then, would generate approximately \$151,250 in revenue annually, depending on the number of brands certified.²

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 Department of Labor and Economic Growth estimates that it would require an additional 3.0 FTE positions, costing approximately \$252,000 in salaries, benefits and other costs, to carry out the responsibilities required of it 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.

ARGUMENTS:

For:

Legislation to enact a nationwide requirement for fire-safe cigarettes has stalled at the federal level; therefore, states are taking the initiative. Over half of the states have already enacted or passed legislation similar to the law adopted in the state of New York (considered to be the model act), and legislation is pending in all but six remaining states. Fire-safe cigarettes would not prevent all cigarette-related fires from happening, but laws

² The list of fire safe cigarettes certified by the New York Office of Fire Prevention Control is updated periodically and available on-line at <http://www.dos.state.ny.us/fire/cigarette.htm/> Similarly, the state Department of Treasury tax website - <http://www.michigan.gov/taxes> - contains a listing of participating and non-participating manufacturers.

restricting sales to only fire-safe cigarettes have already been saving lives by reducing house fires in the enacting states.

Manufacturing standards for fire-safe cigarettes already have been developed, cigarette manufacturers are already making compliant products, and tests have shown no differences in taste or toxicity between fire-safe and regular cigarettes. Manufacturers are supportive of the measure, as evidenced by the R.J. Reynolds Tobacco Company's decision to only manufacture fire-safe cigarettes by 2009. Further, uniform laws across the nation and Canada would make it easier for manufacturers and distributors as only one type of product would have to be made (and states adopting the New York model would have similar labeling requirements).

State inspectors may have some additional duties added by the bills, but states which have similar laws already in place report few if any violations on the part of vendors and retailers.

The bills are good public policy; they neither support nor discourage smoking - they just require a safer product.

For:

According to the Coalition for Fire-Safe Cigarettes, at least one-quarter of the annual deaths from cigarette-related fires are the children of the smoker (34 percent of non-smoker deaths), followed by friends or neighbors (25 percent), spouses or partners (14 percent), and parents (13 percent). Almost half of the victims were asleep at the time; one-third died while attempting to escape, fight the fire, or rescue others. In the mid-1980s, research conducted by the National Fire Protection Association (NFPA) predicted that fire-safe cigarettes could prevent three out of four cigarette fire deaths. Had manufacturers switched to producing only fire-safe cigarettes then, over 17,000 lives could have been saved. Joining the other states and jurisdictions that have already adopted fire-safe cigarette restrictions would prevent the deaths of many who otherwise could perish in cigarette-related fires.

Against:

By adding a seizure requirement to the Tobacco Product Tax Act, the Department of Treasury would be charged with a task better suited for the Fire Marshal, since it would be that office to which violations or suspected violations would be referred.

POSITIONS:

A representative of the Office of State Fire Marshal testified in support of the bills. (4-29-08)

A representative of the Michigan Fire Inspectors Society testified in support of the bills. (1-15-08)

A representative of Children's Hospital of Michigan testified in support of the bills. (1-15-08)

A representative of the Phoenix Society for Burn Survivors testified in support of the bills. (1-15-08)

A representative of the Kalamazoo Township Fire Department and State Fire Safety Board indicated support for the bills. (4-29-08)

Latria Client Services indicated support for the bills. (4-29-08)

Great Lakes Burn Camp indicated support for the bills. (1-15-08)

The Department of Labor and Economic Growth indicated support for House Bill 5110. (1-15-08)

The Department of Treasury opposes House Bill 5111. (7-16-08)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf

■ 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.