

Date of Hearing: June 28, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

SB 1408 (Pan) – As Amended April 12, 2018

SENATE VOTE: 35-2

SUBJECT: Cigarettes: seizure

SUMMARY: Revises the legal characterization of cigarettes found to be in violation of the California Cigarette Fire Safety and Firefighter Protection Act (Act). Specifically, **this bill:**

- 1) Deletes the exemption authorizing a person or entity to manufacture or sell cigarettes that do not meet California fire safety standards if the cigarettes are or will be stamped or metered for sale in another state, or are packaged for sale outside the United States.
- 2) Revises the definition of cigarettes in violation of the Act as contraband per se.
- 3) Authorizes California Department of Tax and Fee Administration (CDTFA) or law enforcement to dispose of cigarettes discovered to be in violation of the Act.
- 4) Makes technical changes.

EXISTING LAW:

- 1) Establishes the CDTFA within the Government Operations Agency as a successor to the Board of Equalization (BOE), as specified.
- 2) Requires, with certain exceptions, any reference to BOE with respect to any of the functions transferred to CDTFA be deemed to refer to CDTFA.
- 3) Establishes burn safety criteria for cigarettes under the Act.
- 4) Allows a person or entity to manufacture or sell cigarettes that do not meet California fire safety standards if the cigarettes are or will be stamped or metered for sale in another state, or are packaged for sale outside the United States.
- 5) Authorizes CDTFA or a law enforcement agency to seize cigarettes that any person offers or possesses for sale, or has made a sale of, that are in violation of the Act, as specified.
- 6) Deems cigarettes in violation of the Act standards to be contraband.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

Purpose of the bill: This bill is sponsored by the Office of the Attorney General. According to the author's office, "Since the 2005 passage of the California Cigarette Fire Safety and Firefighter Protection Act, cigarettes sold in our state have been required to meet certain ignition

standards. Cigarettes meeting these standards, known as reduced ignition strength or “fire safe” cigarettes are designed to extinguish when not being actively smoked. The passage of state laws prohibiting non-fire safe cigarettes is believed to be one of the principal reasons for the 30% decline in smoking-related fire deaths we saw nationwide from 2003-2011. However, two loopholes have remained which have hindered our ability to keep non-fire safe cigarettes from being distributed in California. SB 1408 will make a technical change by deeming non-fire safe cigarettes as “contraband per se.” This change will allow law enforcement officials to immediately seize these unsafe products when they are brought into the state. SB 1408 will also eliminate an exception that currently exists in the law which allowed non-fire safe cigarettes into California just so long as the manufacturer claimed they were intended for sale in another state. This provision might have made sense when many states still allowed the sale of these products. Now that these products are banned across the country, we can eliminate this loophole that allowed manufacturers to introduce their unsafe products into California.”

Background: The California Cigarette Fire Safety and Firefighter Protection Act, which became effective January 1, 2007, provides industry regulation by requiring cigarette manufacturers to certify that a cigarette variety has been tested and meets the fire safety standard as having reduced ignition propensity. The law is designed to save lives by reducing the risk that cigarettes will ignite upholstered furniture, mattresses, household furnishings and other combustible material. According to the nationwide statistics from the National Fire Protection Association, roughly one in four fire-related deaths are caused by smoking materials.

According to the Office of the State Fire Marshall (OSFM), under the Act, cigarettes sold in California must meet the following criteria:

- The cigarettes must satisfy American Society of Testing and Materials (ASTM) Standard, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."
- The cigarettes must be sold in packaging marked with the letters "FSC" for Fire Standards Compliant" and approved by the State Fire Marshal.
- A certification must be submitted by the manufacturer to the OSFM certifying that each cigarette listed was tested and satisfies the performance requirements of ASTM.

As noted above, the Act allows a person or entity to manufacture or sell cigarettes that do not meet California fire safety standards if the cigarettes are for sale in another state, or are packaged for sale outside the United States. This bill eliminates this exemption. The Author and sponsor note that all states have adopted cigarette fire safety standards similar to California's, so this bill merely eliminates the exemption for cigarettes packaged for sale outside the United States.

Contraband vs. Contraband Per Se: This bill replaces the characterization of cigarettes that are in violation of certain provisions of the Act to be “contraband per se,” instead merely “contraband.” According to US Legal, a legal information site, “contraband” refers to property that is illegal to possess or transport, but is not intrinsically unlawful – a court must determine whether it is unlawful because of its use in an unlawful activity or manner, or the circumstances of the person who acquires or possesses it. Adding “per se” characterizes the cigarettes as inherently illegal, and thus a notice and hearing are not necessary in order for the CDTFE or law enforcement to seize or dispose of them.

Support: The Attorney General's office writes in support, “The Fire Safety Act, as written, did not give law enforcement authorities the power to seize and destroy non-compliant cigarettes,

without first providing notice and hearing, because the Act did not classify these products as contraband per se. This bill modifies the Health and Safety Code section by making non-compliant cigarettes inherently illegal; in other words, classifying these cigarettes as contraband per se. This change will allow law enforcement authorities to constitutionally seize and destroy non-compliant cigarettes that sold, offered for sale, or possessed for sale in California.”

Prior/Related Legislation: AB 178 (Koretz), Chapter 633, Statutes of 2005. Established the Act, which prohibited the sale of cigarettes that do not meet specified fire safety standards beginning January 1, 2007, established fire safety certification requirements, and establishes new civil penalties for violations.

REGISTERED SUPPORT / OPPOSITION:

Support

Xavier Becerra, Attorney General, State of California (Sponsor)
California Professional Firefighters

Opposition

None on file

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