

Assembly Bill No. 178

CHAPTER 633

An act to add Part 8 (commencing with Section 14950) to Division 12 of the Health and Safety Code, relating to cigarettes.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 178, Koretz. California Cigarette Fire Safety and Firefighter Protection Act.

Existing law requires the State Fire Marshal to adopt regulations that specify standards for the special design of cigarette lighters with respect to safety features that prevent operation of the lighters by children 5 years of age or younger.

This bill would prohibit the sale of cigarettes unless the manufacturer of those cigarettes certifies to the State Fire Marshal that the cigarettes have been tested by the manufacturer in accordance with standards established by the American Society of Testing and Materials and no more than 25% of the cigarettes it manufactures exhibit full-length burns when tested. The bill would require cigarette manufacturers to mark packages of cigarettes to be sold in California to show compliance with these provisions and would require manufacturers, distributors, wholesalers, and retailers to permit an employee of the State Board of Equalization to inspect these markings. Failure or refusal to allow an inspection would subject a person to a civil penalty not to exceed \$1,000.

The bill would impose specified civil penalties on manufacturers, distributors, wholesalers, retailers, and others who knowingly sell or offer to sell cigarettes in violation of these provisions and on manufacturers that knowingly make false certifications in violation of these provisions. The bill would require these civil penalties to be deposited in the Cigarette Fire Safety and Firefighter Protection Fund, which the bill would create in the State Treasury, and would make moneys in the fund, upon appropriation by the Legislature, available to the State Board of Equalization to offset costs for inspecting, seizing, and disposing of cigarettes and to the State Fire Marshal to offset costs for implementation and reporting.

The bill would become inapplicable if federal fire safety standards that preempt these provisions are enacted and the State Fire Marshal so notifies the Secretary of State.

The bill would become operative on January 1, 2007.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares as follows:

(1) Cigarettes are the leading cause of fire deaths in the United States each year, claiming 1,000 lives and causing nearly 2,000 injuries and nearly four hundred million dollars (\$400,000,000) in direct property damage.

(2) Technology exists to significantly reduce the number of fires caused by cigarettes.

(3) The State of New York enacted a cigarette fire safety regulation effective June 28, 2004, that requires cigarettes sold in that state to meet a fire safety performance standard. Canada is scheduled to implement the New York State fire safety standard in the fall of 2005.

(4) New York State's cigarette fire safety standard is based upon decades of research by the National Institute of Standards and Technology, congressional research groups, and private industry.

(5) Cigarettes meeting fire safety standards have been found not to increase the costs to consumers.

(6) It is the intent of the Legislature to adopt the cigarette fire safety standard that is in effect in New York State to reduce the likelihood that cigarettes will cause fires, which result in deaths, injuries, and property damage. It is further the intent of the Legislature to adopt this cigarette fire safety standard with a minimum of cost to the state.

(b) The Legislature hereby determines that it is within the police powers of the state to protect the health and safety of the people of the state by establishing fire safety standards for cigarettes sold in this state.

SEC. 2. Part 8 (commencing with Section 14950) is added to Division 12 of the Health and Safety Code, to read:

PART 8. CIGARETTES

14950. (a) This part shall be known and may be cited as the California Cigarette Fire Safety and Firefighter Protection Act.

(b) As used in this part, the following terms have the following meanings:

(1) "Board" means the State Board of Equalization.

(2) "Cigarette" means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

(3) "Distributor" means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

(4) "Manufacturer" means any of the following:

(A) An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in the state, including cigarettes intended to be sold in the United States through an importer.

(B) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States.

(C) An entity that becomes a successor of an entity described in subparagraph (A) or (B).

(5) “Offer to sell” means to offer or agree to sell.

(6) “Package” means package as defined in Section 30015 of the Revenue and Taxation Code.

(7) “Quality control and quality assurance program” means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. This program ensures that the testing repeatability remains within the required repeatability values stated in paragraph (5) of subdivision (a) of Section 14952 for all test trials used to certify cigarettes in accordance with this part.

(8) “Repeatability” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(9) “Retailer” means a person who engages in the sale of cigarettes, but not for the purpose of resale.

(10) “Sale” or “sell” means any transfer, exchange, or barter, in any manner or by any means whatever, or any agreement for these purposes. The giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money are considered sales.

(11) “Stamp and meter impression” means stamp and meter impression as defined in Section 30018 of the Revenue and Taxation Code.

(12) “Wholesaler” means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

14951. (a) A person shall not sell, offer, or possess for sale in this state cigarettes not in compliance with the following requirements:

(1) The cigarettes are tested by the manufacturer in accordance with the test method prescribed in subdivision (a) of Section 14952.

(2) The cigarettes meet the performance standard specified in subdivision (b) of Section 14952.

(3) The cigarettes meet the marking requirement of Section 14954.

(4) A written certification is filed by the manufacturer with the State Fire Marshal in accordance with Section 14953.

(b) This section does not prohibit distributors, wholesalers, or retailers from selling their inventory of cigarettes existing on January 1, 2007, if both of the following conditions are met:

(1) The distributors, wholesalers, or retailers can establish that California tax stamps or meter impressions were affixed to the cigarettes pursuant to Section 30163 of the Revenue and Taxation Code before January 31, 2007.

(2) The distributors, wholesalers, or retailers can establish that the inventory was purchased before January 1, 2007, in comparable quantity to the inventory purchased during the same period of 2005.

(c) This section does not prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of subdivision (a) if the cigarettes are or will be stamped or metered for sale in another state or are packaged for sale outside the United States.

14952. (a) (1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) Standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes." However, a subsequent ASTM Standard Test Method may be adopted upon finding that the subsequent 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 that the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the testing requirements in paragraphs (2) to (5), inclusive, and the performance standard specified in subdivision (b).

(2) Testing shall be conducted on 10 layers of filter paper.

(3) Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(4) The performance standard required by subdivision (b) shall only be applied to a complete test trial.

(5) Laboratories conducting testing in accordance with this subdivision shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19 pursuant to subdivision (b).

(b) When tested in accordance with subdivision (a), no more than 25 percent of the cigarettes tested in a test trial shall exhibit full-length burns.

(c) Each cigarette listed in a certification submitted pursuant to Section 14953 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in subdivision (b) shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for a nonfiltered cigarette.

(d) The manufacturer or manufacturers of a cigarette that cannot be tested in accordance with the test method prescribed in subdivision (a) may employ a test method and performance standard for that cigarette that is equivalent to the performance standard prescribed in subdivision (b). The manufacturer or manufacturers may employ that test method and performance standard to certify that cigarette pursuant to Section 14953. All other applicable requirements of this part shall apply to the manufacturer or manufacturers of that cigarette.

(e) This section does not require additional testing if cigarettes are tested consistent with this section for any other purpose.

(f) In order to ensure compliance with the performance standard specified in subdivision (b), data from testing conducted by manufacturers to comply with this performance standard shall be kept on file by these manufacturers for a period of three years after the initial date of certification and for a period of three years after each recertification required by subdivision (c) of Section 14953 and shall be sent to the State Fire Marshal and the Attorney General upon his or her request.

(g) This section shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes that are effective on June 28, 2004.

14953. (a) Each manufacturer shall submit a written certification to the State Fire Marshal attesting that each cigarette listed in the certification has been tested in accordance with subdivision (a) of Section 14952 and meets the performance standard set forth in subdivision (b) of that section.

(b) Each cigarette listed in the certification shall be described with the following information:

- (1) Brand.
- (2) Style (for example, light, ultra light).
- (3) Length in millimeters.
- (4) Circumference in millimeters.
- (5) Flavor (for example, menthol, chocolate) if applicable.
- (6) Filter or nonfilter.
- (7) Package description (for example, soft pack, box).
- (8) Marking approved in accordance with Section 14954.

(c) Each cigarette certified under this section shall be recertified every three years.

(d) Manufacturers certifying cigarettes in accordance with this section shall provide a copy of the certifications to all distributors and wholesalers to which they sell cigarettes and shall also provide sufficient copies of an illustration of the cigarette packaging marking utilized by the manufacturer pursuant to Section 14954 for each retailer to which the distributors and wholesalers sell cigarettes. Distributors and wholesalers shall provide a copy of these cigarette packaging markings received from manufacturers to all retailers to which they sell cigarettes.

14954. (a) Cigarettes that are certified by a manufacturer in accordance with Section 14953 shall be marked on the packaging and case to indicate compliance with the requirements of this part. Marking shall be in 8-point type or larger and consist of one of the following:

(1) Modification of the universal product code to include a visible mark printed at or around the area of that code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed or printed in conjunction with the universal product code.

(2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette packaging or cellophane wrap.

(3) Printed, stamped, engraved, or embossed text on the cigarette packaging that indicates that the cigarettes meet California standards.

(b) Before a certified cigarette can be sold in the state, a manufacturer shall submit its proposed marking to the State Fire Marshal. The State Fire Marshal shall approve the marking upon a finding that it is compliant with the criteria outlined in subdivision (a). Proposed markings shall be deemed approved if the State Fire Marshal fails to act within 10 business days of receiving a proposed marking. A marking in use and approved for the sale of cigarettes in the State of New York shall be deemed approved.

(c) A manufacturer must use only one marking and must apply this marking uniformly for all packagings, including, but not limited to, packages, cartons, and cases, and brands marketed by that manufacturer.

(d) A manufacturer who modifies its marking shall notify the State Fire Marshal of this change and submit to the State Fire Marshal a copy of the new marking which shall comply with subdivisions (a) and (b).

14955. (a) Any manufacturer or any other person or entity that knowingly sells or offers to sell cigarettes other than through retail sale in violation of this part is subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each sale.

(b) Any retailer, distributor, or wholesaler that knowingly sells or offers to sell cigarettes in violation of this part shall be subject to the following:

(1) A civil penalty not to exceed five hundred dollars (\$500) for each sale or offer for sale in which the total number of cigarettes sold or offered for sale does not exceed 50 packages of cigarettes.

(2) A civil penalty not to exceed one thousand dollars (\$1,000) for each sale or offer for sale in which the total number of cigarettes sold or offered for sale exceeds 50 packages of cigarettes.

(c) The civil penalties imposed pursuant to subdivisions (a) and (b) of this section shall be deposited in the Cigarette Fire Safety and Firefighter Protection Fund.

(d) In addition to any other penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 14953 shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each false certification.

(e) Any person violating any other provision in this part shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000) for each violation. Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by Section 14952 shall be deemed contraband and subject to seizure and disposal by the board or a law enforcement agency.

(f) The Attorney General may bring an action on behalf of the people of the state to restrain further violations of this part and for any other relief that may be appropriate. In any action by the Attorney General to enforce this act, the Attorney General shall be entitled to recover costs of investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

(g) It shall be a defense in any action for civil penalties, that a distributor, wholesaler, retailer, or any person in the stream of commerce

relied in good faith on the manufacturer's certificate or marking that the cigarettes comply with the requirements of this part.

14956. (a) Inspections may be made at any place where cigarettes are sold, offered for sale, or stored or at any site where there is evidence of a violation of subdivision (a) of Section 14951.

(b) Manufacturers, distributors, wholesalers, and retailers shall permit an employee of the board, upon presentation of the appropriate identification and credentials, to enter into, and to conduct an inspection of, any building, facility, site, or place described in subdivision (a).

(c) Any person that refuses to allow an inspection authorized under this section is subject to the penalty imposed by Section 14958.

14957. Upon discovery by the board or a law enforcement agency that any person offers or possesses for sale, or has made a sale of, cigarettes in violation of subdivision (a) of Section 14951, the board or that law enforcement agency may seize those cigarettes possessed in violation of this part.

14958. Any person who knowingly fails or refuses to allow an inspection by the board, pursuant to Section 14956, is subject to a civil penalty not to exceed one thousand dollars (\$1,000) for each failure or refusal.

14959. This part shall cease to be applicable if federal fire safety standards for cigarettes that preempt this act are enacted and take effect subsequent to the effective date of this act and the State Fire Marshal so notifies the Secretary of State.

14960. This part shall become operative on January 1, 2007.

SEC. 3. (a) The Cigarette Fire Safety and Firefighter Protection Fund is hereby created in the State Treasury. Upon appropriation by the Legislature, moneys deposited into the fund shall be made available to both of the following:

(1) The State Board of Equalization to offset minor administrative costs for inspecting, seizing, and disposing of cigarettes.

(2) The State Fire Marshal to offset minor administrative costs to implement Part 8 (commencing with Section 14950) of Division 12 of the Health and Safety Code and to offset administrative costs to meet the fire safety reporting requirements established pursuant to Section 13110.5 of the Health and Safety Code.

(b) This section shall become operative on January 1, 2007.