

SENATE BILL REPORT

SB 5642

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 26, 2007
Ways & Means, January 28, 2008

Title: An act relating to reduced cigarette ignition propensity.

Brief Description: Addressing cigarette ignition propensity.

Sponsors: Senators Kohl-Welles, Rockefeller, Franklin and Tom.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 2/19/07, 2/26/07 [DPS-WM].

Ways & Means: 1/22/08, 1/28/08 [DP2S].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Staff: Ingrid Mungia (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5642 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Brandland, Carrell, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Regala, Rockefeller, Schoesler and Tom.

Staff: Richard Ramsey (786-7412)

Background: Cigarettes sold in Washington do not meet fire safety standards of having a lower ignition strength. Other states, including California, New York, and Vermont have passed legislation requiring that only reduced ignition strength cigarettes may be sold.

Summary of Bill (Recommended Second Substitute): Beginning August 1, 2009, only reduced ignition strength cigarettes may be sold in Washington. The determination of reduced ignition strength is made by conducting propensity strength testing in accordance with the standards developed by the American Society of Testing and Materials (ASTM).

The testing of cigarettes must be conducted on ten layers of filter paper. A cigarette meets the ignition propensity strength testing if not more than 25 percent of the cigarettes tested exhibit full-length burns. Forty replicate tests comprise a complete test trial for each cigarette tested.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A manufacturer of a cigarette that the State Director of Fire Protection (Director) determines cannot be tested by the ASTM method must propose a test method and performance standard that is approved by the Director. The manufacturer may employ that test method and performance standard to certify the cigarette.

If the Director determines that another state has enacted reduced cigarette ignition propensity standards and the Director finds that the test method and performance standard are the same as those in this chapter, then the Director can authorize the manufacturer to certify that cigarette for sale in this state.

Each manufacturer must maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and must make copies of these reports available to the Director and the Attorney General upon request. Any manufacturer who fails to make copies of these reports within 60 days of receiving a written request is subject to a civil penalty not to exceed \$10,000 for each day after the sixtieth day that the manufacturer does not make the copies available.

The Director may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes if the method does not result in a change in the percentage of full-length burns.

Beginning in 2012, the Director must review the effectiveness of this test method and performance standard application. The Director must report every three years, no later than July 1, to the Legislature the findings and any recommendations, if appropriate, for improvement.

Wholesale or retail dealers are not prohibited from selling their existing inventory of cigarettes on or after August 1, 2009, if the dealer can establish that state tax stamps were affixed to the cigarettes prior to August 1, 2009, and can establish that the inventory was purchased in a comparable quantity to the inventory purchased during the same period of the previous year.

Each manufacturer must submit to the Director a written certification for each cigarette. Each cigarette must be recertified every three years. A manufacturer must pay to the Director a fee of \$250 for each cigarette listed in a certification. The Director is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this chapter.

If a manufacturer makes any changes to a cigarette that has been certified, that cigarette may not be sold or offered for sale in this state until the manufacturer retests the cigarette according to the testing standards set in this chapter.

Cigarettes that are certified must be marked to indicate compliance with the testing and performance standard requirements. A manufacturer must present its proposed marking to the Director for approval. A manufacturer can use only one marking and it must be applied uniformly on all packages.

Civil penalties are established for violations of this act.

The Attorney General and the Director are authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where

cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises.

The reduced cigarette ignition propensity account is created in the State Treasurer. All receipts from the payment of certification fees and from the imposition of civil penalties must be deposited to the account. Expenditures from the account may be used only for fire safety, enforcement, and prevention programs. Only the Director or their designee may authorize expenditures from the account.

This bill does not prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements if the cigarettes are or will be stamped for sale in another state, if that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in this state.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): The effective date is delayed by one year from August 1, 2008 to August 1, 2009; associated technical corrections are made.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE, RESEARCH & DEVELOPMENT COMMITTEE (Recommended First Substitute): Language is revised to require the implementation and substance of the New York Fire Safety Standards for cigarettes, New York Executive Law section 156-C, Fire Safety Standards for Cigarettes, to be the persuasive authority in the implementation of this act.

Language is revised to require that prior to certification of any cigarette, the State Director of Fire Protection give preference to any packaging marking in use and approved for that cigarette in New York pursuant to New York Executive Law section 156-C, Fire Safety Standards for Cigarettes, unless the State Director of Fire Protection demonstrates a reasonable basis why that marking should not be approved under this chapter.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on August 1, 2008.

Staff Summary of Public Testimony on Original Bill (Labor, Commerce, Research & Development): PRO: This bill is not about anti-tobacco, it is about fire safety, fire prevention, and saving lives and property. For the last seven years, the number one fire fatality in the state of Washington is caused by smoking cigarettes. One-fourth of the people who die in these fires are not the smoker. There is a significant loss of lives and money relating to fires caused by smoking; this bill will reduce these losses. This bill not only reduces tobacco-related deaths it may even reduce the need for flame retardant materials. A federal standard for cigarette ignition propensity would be preferred; however, this bill follows the New York standard and is model legislation.

CON: This is a competitive issue. It is more difficult to comply with the standards set in this legislation because of the supply of trademark paper. This is a problem for the cigarette

distributors who cover multiple states and have to adjust their inventory according to the different laws applied to each state. Uniformity is the key. The effective date may need to be moved for a later implementation.

Persons Testifying (Labor, Commerce, Research & Development): PRO: Mike Brown, Washington Fire Chiefs; Andrew McGuire, National Fire Protection Association; Chris Covert-Bowlds, Washington State Medical Association; Joe Daniels, Phillip Morris USA; Nick Federici, American Lung Association of Washington, Washington Toxics Coalition.

CON: T.K. Bentler, Washington Association of Neighborhood Stores, R.J. Reynolds.

Staff Summary of Public Testimony on Second Substitute: PRO: Twenty states have now adopted requirement for self-extinguishing cigarettes, including 15 states in the last year. Unattended cigarettes are the largest cause of fire fatalities; 700 to 900 people die each year in the U.S.; many are children. Under these new requirements cigarettes will self extinguish if not actively puffed. Over 50 percent of the U.S. population is now subject to these requirements. New York reports that since enacting the self-extinguishing requirement, there's been no loss in cigarette tax revenue and there's been a reduction in fire deaths by one-third. In Washington this requirement will save lives, reduce injuries, and reduce property damage.

The state fire marshall will absorb costs to administer the program that exceeds the revenue generated. If these cigarettes become the norm, the costs to administer this program will decline.

Persons Testifying (Ways & Means): PRO: Senator Kohl-Welles, prime sponsor; Gordon Walgren, Al Church, Washington Fire Chiefs Association; Ray Bizal, National Fire Protection Association; Mike Matlick, Washington State Fire Marshall.