

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. H.B. 500** DATE: **December 16, 2008**

STATUS: **As Reported by Senate Insurance, Commerce and Labor** SPONSOR: **Rep. Hughes**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Establishes reduced ignition propensity standards for cigarettes and establishes a New African Immigrants Commission**

State Fiscal Highlights

STATE FUND	FY 2009	FY 2010	FUTURE YEARS
Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund (New Fund)			
Revenues	- 0 -	Potential gain of \$75,000 to \$162,000 or more from certification fees	Potential gain of \$75,000 to \$162,000 or more in certification fees in FY 2013 and every three years thereafter
Expenditures	- 0 -	Potential increase for program operation	Potential increase for program operation
Fire Prevention and Public Safety Fund (New Fund)			
Revenues	- 0 -	Potential gain from civil penalties	Potential gain from civil penalties
Expenditures	- 0 -	Potential increase for fire safety and prevention programs and certain Department of Taxation expenses	Potential increase for fire safety and prevention programs and certain Department of Taxation expenses
Cigarette Tax Enforcement Fund (Fund 6390) – Department of Taxation			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Certification fee revenue.** There have been between 75 and 162 cigarette "brand families" certified in other states. If the number of Ohio certifications were to fall within this range, the proceeds of the \$1,000 certification fee for each brand family certified would result in somewhere between \$75,000 to \$162,000 in revenue beginning in FY 2010 and every three years thereafter, assuming the certification fee remains the same. This fee amount may be adjusted annually to ensure it is sufficient to defray the actual costs of processing, testing, and enforcement activities, but may not exceed \$2,500.
- **Certification program expenses.** Program expenses would be paid for out of the Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund, which the bill creates. Based on other states' experience, the State Fire Marshal might require one or more additional clerical and/or compliance



employees to handle certification documentation and fire standards marking enforcement. Wages and fringe benefit costs would be in the \$40,000 to \$50,000 range for each of these employees. There might also be some costs for cigarette testing.

- **Inspections.** The bill authorizes the Tax Commissioner to inspect any cigarette packaging to determine if the package contains the required fire standards compliant mark required by the bill. There would likely be only a minimal fiscal effect, if any, on the Department of Taxation's Cigarette Tax Enforcement Fund (Fund 6390) from having to conduct this additional step during inspections.
- **Civil penalties.** Civil penalties assessed on manufacturers and retailers that fail to comply with the bill would be deposited into the new Fire Prevention and Public Safety Fund and used to support fire safety and prevention programs and certain Department of Taxation expenses regarding the storage and destruction of noncompliant product. The volume and amount of these penalties, and thus the funds available for these purposes, would be difficult to predict.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
County Courts of Common Pleas			
Revenues	- 0 -	Potential minimal gain from court cost revenue	Potential minimal gain from court cost and fine revenue
Expenditures	- 0 -	Potential minimal increase for adjudication costs	Potential minimal increase for adjudication costs

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Civil justice costs.** Either the State Fire Marshal or Attorney General may file an action in the court of common pleas in the county where a violation of the bill occurs. While there may be a small increase in county courts of common pleas caseload, court cost revenue would likely offset some or all of any new costs.

Detailed Fiscal Analysis

Overview

The bill prohibits the sale of cigarettes in Ohio unless certain new reduced ignition propensity (RIP) requirements are met. To meet the requirements in the bill, manufacturers are required to (1) test cigarettes through a laboratory or an alternative test method to ensure the cigarettes meet ignition strength performance standards, (2) mark the packaging of cigarettes as meeting fire safety standards, and (3) file written certification with the Office of the State Fire Marshal that each type of cigarette tested meets the performance standards. Recertification must occur every three years.

Cigarettes passing the ignition strength standards are not as likely to set fire to certain types of fabrics, such as upholstered furniture or mattresses. So-called "fire-safe cigarette" laws are in effect in 17 states, and an additional 20 states have passed such laws that are not yet in effect. Due to the bill's delayed effective date, the certification program in this bill would not begin until FY 2010.

Certification fee revenue

Each manufacturer must submit written certification that each type of cigarette that has been tested meets the ignition strength performance standards specified in the bill. The manufacturer must submit certain information for each type of cigarette, and must recertify each type of cigarette every three years. In addition, copies of these certifications must be provided to each wholesale dealer and agent to which the manufacturer sells.

To offset the costs the State Fire Marshal will incur in administering the cigarette certification program, the bill requires manufacturers to pay a \$1,000 fee for each type of brand family certified as meeting RIP standards. The fee for each type of brand family includes any new cigarette certified within that brand family during the three-year certification period. This fee amount may be adjusted annually to ensure it is sufficient to defray the actual costs of processing, testing, and enforcement activities, but may not exceed \$2,500 for each brand family. Proceeds from the fee are deposited into the Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund, which the bill creates.

Based on a review of the brand families certified in states where similar legislation is in effect, there is wide variety in the number of cigarettes certified. It appears that the states have certified between 75 and 162 brand families. The average number of certifications is approximately 118. Assuming the fee amount remains \$1,000 in future years and the number of Ohio certifications were to fall within the range of brand families certified in other states, the proceeds from the certification fee in Ohio could range anywhere from \$75,000 to \$162,000 beginning in FY 2010 and every three years thereafter. The table below lists the number of fire standards compliant (FSC) certifications for each of the 13 states where such information is readily accessible.

FSC Brand Families Certified by State	
State	Certified Brand Families
California	162
New York	157
Illinois	155
Oregon	155
New Hampshire	132
Kentucky	129
Vermont	106
Connecticut	100
Maryland	95
Montana	91
Massachusetts	87
Utah	86
Alaska	75

Civil penalty revenue

The bill imposes a number of civil penalties on manufacturers and retailers for failing to comply with various aspects of the bill's provisions. The specific penalties may be found in the LSC bill analysis. Proceeds from most of the civil penalties are to be deposited into the Fire Prevention and Public Safety Fund, which the bill creates, and are to be used to support fire safety and prevention programs. Any new penalty proceeds would be difficult to estimate. When implemented in Oregon, officials in that state noted that many retailers were still selling noncompliant product, and attributed this to suppliers failing to notify retailers about the new requirements. To improve compliance, the state notified retailers of the new requirements and instituted a six-week grace period to allow them to get rid of noncompliant stock.

Program expenses

The State Fire Marshal would undertake a number of responsibilities in carrying out the requirements of the bill. If the cigarette certification program were folded into existing State Fire Marshal operations, it would likely be housed in the Testing and Registration Bureau, currently staffed by nine employees.

Personnel and equipment

Based on the experience of other states that have implemented or considered such a cigarette certification program and responded to LSC's inquiries, the number of new personnel needed for the certification program appears to vary. For instance, Oregon and New Hampshire, which began their programs in 2007, use existing clerical staff to carry out the certification program. Massachusetts created one program coordinator and two compliance officer positions for their certification program. In conversations with LSC, the program coordinator in Massachusetts indicated that the job duties of the certification program personnel either already include or will include duties for other programs.

If the State Fire Marshal were to need a full-time clerical employee to track certifications, costs for this person, if classified as an Administrative Assistant 1 or Certification/Licensure Examiner 1, would start at approximately \$40,000 for wages and fringe benefits. While it may be that existing tax enforcement agents conduct the checks for fire standards compliance during routine tax compliance inspections, if the State Fire Marshal were to require one or more compliance officers to conduct inspections, the personnel and fringe benefit costs for each such employee would range from \$46,500 to \$50,600 annually, based on the beginning pay rates of other compliance officer positions across the state. Costs for the employee(s) may also include an administrative assessment on the person's payroll that funds the Department's Division of Administration via the Division of Administration Fund (Fund 1630). As noted above, if revenue received from the \$1,000 certification fee is not sufficient to defray necessary program expenses, the bill authorizes the State Fire Marshal to adjust this fee annually up to a maximum of \$2,500.

There may also be some office equipment costs if an additional computer or other such items are needed. It may be that the State Fire Marshal would also require software to keep track of the cigarettes that have been tested and certified; however, some states, like New Hampshire and Oregon, use existing spreadsheet or database software, developed by programmers on staff, for this purpose. If this were the case in Ohio, there would be little or no additional cost.

Cigarette testing

The bill allows the State Fire Marshal or a designee to test cigarettes certified by a manufacturer to determine whether the manufacturer complied with the bill's standards. This testing is to be conducted in accordance with American Society of Testing and Materials (ASTM) standards, just as the initial laboratory testing the manufacturer would need for certification. Based on LSC's review of cost analyses for similar proposed legislation in other states, it appears that each cigarette test costs between \$500 and \$800. Some states, like Oregon and New Hampshire, have indicated they do not conduct or plan to conduct cigarette testing. If the testing is conducted, it would likely be contracted out to an accredited laboratory.

Tax Commissioner inspections

The bill requires manufacturers to place a marking on each package of cigarettes that are certified by the State Fire Marshal. This marking would show that the cigarettes are in compliance with the reduced ignition propensity standards required by the bill. If existing Department of Taxation personnel would check for fire standards compliance during tax compliance inspections, there would likely be a minimal fiscal effect, if any, on the Department of Taxation's Cigarette Tax Enforcement Fund (Fund 6390) for conducting this additional step.

Inspectors are to notify the State Fire Marshal if noncompliant product is being sold. If this circumstance occurs, the State Fire Marshal is to seize and take possession of the contraband and provide that product to the Tax Commissioner, who is to destroy the cigarettes after the true holder of trademark rights in the applicable cigarette brand has been permitted to inspect the product. In addition to supporting fire safety and prevention programs, the Fire Prevention and Public Safety Fund may also be used to compensate the Department of Taxation for any expenses it incurs related to noncompliant cigarette storage and destruction.

Report

The bill also requires the State Fire Marshal to submit a report on the first day of the 49th month (four years and seven months) after the effective date of the bill to the General Assembly concerning the effectiveness of the cigarette certification program. The report is to be submitted every three years thereafter. Preparing the report would likely involve only negligible administrative costs, if any.

Local civil justice costs

If the State Fire Marshal or Attorney General determines that reasonable evidence exists that a violation of the bill has occurred, the bill gives either of these officials the option to file an action in the court of common pleas in the county where the alleged violation took place in order to seek preliminary or permanent injunctive relief or recover any costs incurred in investigating a violation, including enforcement costs and attorneys fees. While there may be a small increase in court caseloads as a result, court cost revenue would likely offset some or all of any of these additional costs.

New African Immigrants Commission

The bill creates the 11-member New African Immigrants Commission to advocate for the development and implementation of policies and programs to address the needs of the state's sub-Saharan African population. This would be accomplished by a number of duties specified in the bill. Commission members are not to be compensated.

LSC fiscal staff: Jason Phillips, Budget Analyst

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