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SB-1408 Cigarettes: seizure. (2017-2018)

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Senate Bill No. 1408

CHAPTER 613

An act to amend Sections 14950, 14951, 14955, 14956, 14957, and 14958 of, and to repeal Section 14960 of, the Health and Safety Code, relating to cigarettes.

[Approved by Governor September 20, 2018. Filed with Secretary of State September 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1408, Pan. Cigarettes: seizure.

Existing law, the California Cigarette Fire Safety and Firefighter Protection Act, prohibits a person from selling, offering, or possessing for sale in this state cigarettes that are not in compliance with certain requirements, including the requirement that the cigarettes are tested by the manufacturer in accordance with prescribed testing methods. Existing law provides an exception to the above prohibition for a person or entity that manufactures or sells cigarettes if the cigarettes are or will be stamped or metered for sale in another state or are packaged for sale outside of the United States.

This bill would delete the above exception to the prohibition.

The act provides that any cigarettes that have been sold or offered for sale that do not comply with a certain performance standard shall be deemed contraband and subject to seizure and disposal by the California Department of Tax and Fee Administration or a law enforcement agency.

This bill would instead provide that any cigarettes that have been sold or offered for sale that do not comply with a certain performance standard shall be deemed contraband per se and subject to seizure and disposal by the department or a law enforcement agency.

The act provides that, upon discovery by the department or a law enforcement agency that a person offers or possesses for sale, or has made a sale of, cigarettes in violation of specified provisions of the act, the department or that law enforcement agency may seize those cigarettes.

This bill would instead provide that, upon discovery by the department or a law enforcement agency that a person offers or possesses for sale, or has made a sale of, cigarettes in violation of specified provisions of the act, the department or that law enforcement agency may seize and dispose of those cigarettes as contraband per se.

This bill would make various conforming and nonsubstantive changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 14950 of the Health and Safety Code is amended to read:

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) "Cigarette" means a cigarette as defined in Section 30003 of the Revenue and Taxation Code, but does not include a little cigar. "Little cigar" means any roll of tobacco wrapped in a leaf of tobacco or any substance containing tobacco and weighing not more than three pounds per thousand.

(2) "Department" means the California Department of Tax and Fee Administration.

(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.

SEC. 2. Section 14951 of the Health and Safety Code is amended to read:

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.

SEC. 3. Section 14955 of the Health and Safety Code is amended to read:

14955. (a) A 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) A 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) 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) A person who violates 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 per se and subject to seizure and disposal by the department 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 a person in the stream of commerce relied in good faith on the manufacturer's certificate or marking that the cigarettes comply with this part.

SEC. 4. Section 14956 of the Health and Safety Code is amended to read:

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 department, 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.

SEC. 5. Section 14957 of the Health and Safety Code is amended to read:

14957. Upon discovery by the department or a law enforcement agency that a person offers or possesses for sale, or has made a sale of, cigarettes in violation of subdivision (a) of Section 14951, the department or that law enforcement agency may seize and dispose of those cigarettes possessed in violation of this part as contraband per se.

SEC. 6. Section 14958 of the Health and Safety Code is amended to read:

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

SEC. 7. Section 14960 of the Health and Safety Code is repealed.