

SESSION OF 2008

SUPPLEMENTAL NOTE ON SENATE BILL NO. 544

As Amended by Senate Committee on
Federal and State Affairs

Brief*

SB 544 as amended would create “flame retardant” cigarettes under the the Fire Safety Standard and Firefighter Protection Act.

The bill would require all cigarettes sold in the State of Kansas after July 1, 2009, to have been tested for ignition strength by the American Society of Testing and Materials prior to sale. Exemptions from the testing date would be allowed for sale of existing supplies of cigarettes if a state sales tax was affixed to the cigarettes prior to July 1, 2009, and if the wholesale dealer, retail dealer, or vending machine operator can establish that the inventory was purchased prior to July 1, 2009. This exemption would not apply after July 1, 2010, when all cigarettes must comply with testing and performance standards prior to sale.

Under the bill, no more than 25 percent of cigarettes tested could exhibit full length burn as laboratory tested, and cigarettes would be required to have lowered permeability bands in the cigarette paper to reduce the ignition strength of cigarettes.

The bill would require certified cigarettes to be marked with the letters “FSC,” which is defined in the bill as fire standards compliant.

In addition, the State Fire Marshal would have to propose equivalent test methods and performance standards for

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

cigarettes that cannot be made by the American Society for Testing and Materials. Alternate testing by another state that has enacted equivalent testing and performance standards to those standards in Kansas would be accepted.

Under the bill, manufacturers would be required to maintain copies of the test results for three years, and manufacturers could be liable for fines of \$10,000 each day written test reports are not available to the State Fire Marshal or the Attorney General's Office following 60 days after the request for such reports.

Manufacturers would be required to pay the State Fire Marshal a fee of \$250 to defray costs of processing, testing enforcement, administration, and oversight activities. Cigarettes must be re-certified every three years, or when a change to the cigarettes is made by the manufacturers.

Penalties for manufacturers' selling cigarettes that do not meet the performance standards would be subject to a penalty of up to \$500 for each pack of cigarettes sold; however, the penalty could not exceed \$100,000 in a thirty-day period.

The Attorney General's Office would be responsible for developing a directory of certified cigarettes to be posted on the Attorney General's website. Unless the wholesale dealer, retail dealer, or vending machine operator has knowledge that cigarettes do not comply with the Act, they shall assume any cigarette listed in the directory to be lawful to sell in the State.

A retail dealer or vending machine operator who sells cigarettes not listed in the directory and not marked would be subject to a penalty not to exceed \$500 per pack and not more than \$25,000 during a thirty day period.

Manufacturers who knowingly make false certification would be subject to a penalty not less than \$75,000 and not more than \$250,000 for each false certification. Cigarettes that do not comply to performance standards would be subject to forfeiture.

Monies from penalties would be deposited in the Fire Safety and Firefighter's Protection Act Fund to pay for administration of the provisions of the Act to support fire and safety prevention programs.

Background

Proponents of the bill included: the Kansas State Fire Marshal; the Kansas Department of Health & Environment; Sedgwick County Kansas Fire District #1; the City of Wichita, the Leavenworth, Kansas Fire Department; the Coalition for Fire-Safe Cigarettes; and Kansas Health Care Association. Written testimony supporting the bill was submitted by: Safe Kids Kansas; Wichita Surgical Specialists, P.A.; the Fire Education Association of Kansas; and the Kansas Licensed Beverage Association.

The Senate Committee made several amendments to the bill including the change that retailers and operators would be allowed to sell existing stock of cigarettes on or after July 1, 2009. In addition, the Committee amended the bill to require cigarettes to comply with the Act by July 1, 2010. The Committee also amended the bill to require cigarettes to be marked with "FSC" and a fee of \$250. The majority of the amendments were at the suggestion of the Attorney General.

The fiscal note indicates that one additional staff person at a salary of \$55,188 and operating expenses of \$8,000 would be required by the State Fire Marshal. The revenue source of the bill would support the distribution of the Act. In addition, the fiscal note stated there would be a potential for increased litigation because of the new penalties created in the bill, but it is not possible to predict the number of additional court cases created by the bill.