

California AB 2200
Memorandum in Opposition

AB 2200 (as recently amended) would require the Bureau of Home Furnishings and Thermal Insulation ("Bureau") to develop and adopt by July 1, 1999, cigarette fire safety performance standards that would apply to all cigarettes sold in California beginning on January 1, 2000. Under AB 2200, the Bureau would be required to employ the National Institute of Standards and Technology's ("NIST") "Cigarette Extinction Test Method".

AB 2200 should be opposed for the following reasons:

1. The test method that the Bureau would be required to employ does not accurately predict cigarette ignition under real-world conditions. For example, the test materials are not representative of commercially available fabrics, and the test method does not properly account for real-world variables such as humidity and airflow. Research has shown that tests, such as the NIST test referred to in AB 2200, that fail to take real-world materials and conditions to account can produce inaccurate results. *includi*
2. The Consumer Products Safety Commission ("CPSC") said in its 1993 report to Congress that it is unclear whether the NIST tests would have any effect on reducing the number of fires caused by cigarettes. In particular, the "Cigarette Extinction Test Method", which AB 2200 would require the Bureau to adopt, was determined by the CPSC to be the least suitable approach identified by the federal studies as possible bases for future research on a cigarette fire performance standard. *and misleading*
3. Cigarettes must be lit and burned to be used. As a result, no standards for cigarette "fire safety" can replace the need for the exercise of basic common sense and individual responsibility. Cigarettes cannot be handled carelessly without the risk of fire. All cigarettes should be handled with care and disposed of properly.
4. Assuming that a commercially viable cigarette can be produced that meets any fire safety performance standards the Bureau may adopt, the time frames set out in the bill for compliance - 6 months between adoption of standard (July 1, 1999) and compliance (January 1, 2000) -- are unrealistic. As a result, the consequence of AB 2200 may be to prohibit the sale in California of popular brands, with the inevitable consequence being a diversion of cigarette sales revenue from law-abiding Californian retailers to Mexico and neighboring states, an increase in California's already severe cigarette smuggling problem, and a potentially catastrophic loss of state excise tax revenue.
5. Cigarette ignition propensity standards should be considered at the federal level.
 - First, the development of such a standard - assuming an acceptable test method on which to base the standard exists - requires significant expertise and funding. Developing the standard at the national level would avoid duplication and waste, and would provide uniformity of application.
 - Second, cigarettes are marketed and sold nationally. State by state regulation would impose needless costs on manufacturers, and on the state agencies that

would be required to police their state borders to keep out cigarettes not meeting a state standard.

- Third, there already exists at the federal level bodies with expertise and experience in this area. For example, the CPSC, the Department of Health and Human Services ("DHHS") and NIST have all studied this issue.
- In addition, there is an American Society for Testing and Materials ("ASTM") committee inquiring into the issue. That committee includes representatives of the tobacco industry, CPSC, NIST, manufacturers of fabric, upholstery, floor coverings and foam, and fire marshals.

It would be shortsighted and wasteful for the State of California to pre-empt the work being done at the national level in preference for a State standard.

6. In 1993, the CPSC, after six years of federal studies that included the CPSC, DHHS and NIST, reported to Congress that significant further work ought to be pursued before adoption of a cigarette fire safety performance standard. In particular, the CPSC report to Congress included the following:

- Whether a cigarette fire performance standard would actually reduce the number of real world fires caused by careless smoking is questionable.
- Whether the benefits of a standard would outweigh the costs -- or vice versa -- had not been determined.
- It is unclear whether the NIST tests would have any effect on reducing the number of fires caused by cigarettes.
- Whether a standard would produce cigarettes that smokers will accept had not been determined -- "uncertainty about the commercial feasibility of lower ignition propensity remains."
- Comprehensive health studies of redesigned cigarettes would be essential, since "even a small increase in the risk of an adverse health effect could result in a great increase in human and economic costs."
- The health studies that are ^{considered by the CPSC to be} essential would require development of a multi-tier and multi-year program of chemical analyses, toxicological assays and human and animal experiments, including studies which were impractical because of the costs or length of time involved or for which adequate test methodology was non-existent.

No recommendation was made by the CPSC that Congress authorize or fund further studies into developing a cigarette fire performance standard.

AB 2200 gives no indication how the Bureau would even begin to address these critical concerns, or acquire the technical expertise in toxicology and smoking and health research that the federal studies have warned is critical. Where clear warnings have been given that failure to address these concerns can result in a standard that does more harm than good, it would be unrealistic -- if not dangerous -- to place this responsibility on the Bureau or any other state agency.

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7. AB 2200 raises serious constitutional concerns and arguably violates the commerce clause of the US Constitution.
8. It would cost the State millions of dollars to develop and enforce a cigarette fire safety performance standard.
9. The State Fire Marshall, and not the Bureau, is the appropriate agency to consider this issue.

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