

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 697 of the Regular Session

As Engrossed: H2/24/09 S3/19/09

A Bill

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009

HOUSE BILL 1402

4  
5 By: Representative Harrelson  
6  
7

8 **For An Act To Be Entitled**

9 AN ACT TO CREATE THE ARKANSAS CIGARETTE FIRE  
10 SAFETY STANDARD ACT; CONCERNING THE REDUCED  
11 IGNITION PROPENSITY STANDARDS FOR CIGARETTES SOLD  
12 IN THE STATE OF ARKANSAS; TO CREATE THE CIGARETTE  
13 FIRE SAFETY STANDARD FUND; AND FOR OTHER  
14 PURPOSES.

15  
16 **Subtitle**

17 AN ACT TO CREATE THE ARKANSAS CIGARETTE  
18 FIRE SAFETY STANDARD ACT; AND TO CREATE  
19 THE CIGARETTE FIRE SAFETY STANDARD FUND.  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code Title 19, Chapter 6, Subchapter 8 is amended  
25 to add an additional section to read as follows:

26 19-6-811. Cigarette Fire Safety Standard Fund.

27 (a) There is created on the books of the Treasurer of State, the  
28 Auditor of State, and the Chief Fiscal Officer of the State a special revenue  
29 fund to be known as the "Cigarette Fire Safety Standard Fund".

30 (b) The fund shall consist of:

31 (1) All certification fees paid under § 20-27-2105;

32 (2) All moneys recovered as civil penalties under § 20-27-2107;

33 and

34 (3) Any other revenues as may be authorized by law.

35 (c) The fund shall be used by the Director of the Arkansas Tobacco



1 Control Board to support fire safety and prevention programs.

2  
3 SECTION 2. Arkansas Code Title 20, Chapter 27 is amended to add an  
4 additional subchapter to read as follows:

5 Subchapter 21 – Arkansas Cigarette Fire Safety Standard Act  
6 20-27-2101. Title.

7 This subchapter shall be known and may be cited as the "Arkansas  
8 Cigarette Fire Safety Standard Act".

9  
10 20-27-2102. Purpose.

11 The purpose of this subchapter is to make the laws of this state with  
12 regard to cigarette fire safety uniform with the laws of those states that  
13 have enacted reduced cigarette ignition propensity laws as of the effective  
14 date of this subchapter.

15  
16 20-27-2103. Definitions.

17 As used in this subchapter:

18 (1) "Cigarette" means:

19 (A) A roll of tobacco wrapped in paper or in a substance  
20 not containing tobacco; or

21 (B) A roll of tobacco wrapped in a substance containing  
22 tobacco that because of its appearance, the type of tobacco used in the  
23 filler, or its packaging and labeling is likely to be offered to or purchased  
24 by consumers as a cigarette as defined in subdivision (1)(A) of this section;

25 (2) "Manufacturer" means:

26 (A) An entity that manufactures or otherwise produces  
27 cigarettes or causes cigarettes to be manufactured or produced anywhere that  
28 the manufacturer intends to be sold in this state, including cigarettes  
29 intended to be sold in the United States through an importer; or

30 (B) An entity that is a successor of an entity defined in  
31 subdivision (2)(A) of this section;

32 (3)(A) "Quality control and quality assurance program" means the  
33 laboratory procedures implemented to ensure that operator bias, systematic  
34 and nonsystematic methodological errors, and equipment-related problems do  
35 not affect the results of the testing.

36 (B) A "quality control and quality assurance program"

1 ensures that the testing repeatability remains within the required  
2 repeatability values stated in § 20-27-2104(b)(6) for all test trials used to  
3 certify cigarettes under this subchapter;

4 (4) "Repeatability" means the range of values within which the  
5 repeat results of cigarette test trials from a single laboratory will fall  
6 ninety-five percent (95%) of the time;

7 (5) "Retailer" means a person who purchases tobacco products  
8 from a licensed wholesaler for the purpose of selling them over the counter  
9 at retail to consumers;

10 (6)(A) "Sale" means a transfer of title or possession or both,  
11 exchange or barter, conditional or otherwise, in any manner or by any means  
12 or any agreement for sale.

13 (B) "Sale" includes the giving of cigarettes as samples,  
14 prizes, or gifts, and the exchanging of cigarettes for any consideration  
15 other than money;

16 (7) "Sell" means to sell or to offer to do the same;

17 (8) "Wholesaler" means a person who is not a manufacturer or  
18 owned or operated by a manufacturer that does business in this state at or  
19 from an established place of business that purchases unstamped or untaxed  
20 cigarettes or other tobacco products directly from manufacturers that  
21 distribute tobacco products in Arkansas and that sells to properly licensed  
22 cigarette vendors or retailers.

23  
24 20-27-2104. Test method and performance standard.

25 (a) Except as provided in subsection (h) of this section, cigarettes  
26 shall not be offered for sale in this state or offered for sale or sold to  
27 persons located in this state unless:

28 (1) The cigarettes have been tested in accordance with the test  
29 method and meet the performance standard specified in this section;

30 (2) A written certification has been filed by the manufacturer  
31 with the Director of the Arkansas Tobacco Control Board under § 20-27-2105;  
32 and

33 (3) The cigarettes have been marked in accordance with § 20-27-  
34 2106.

35 (b)(1) Testing of cigarettes shall be conducted in accordance with the  
36 American Society of Testing and Materials standard E2187-04, "Standard Test

1 Method for Measuring the Ignition Strength of Cigarettes".

2 (2) Testing shall be conducted on ten (10) layers of filter  
3 paper.

4 (3)(A) No more than twenty-five percent (25%) of the cigarettes  
5 tested in a test trial under this section shall exhibit full-length burns.

6 (B) Forty (40) replicate tests shall comprise a complete  
7 test trial for each cigarette tested.

8 (4) The performance standard required by this section shall be  
9 applied only to a complete test trial.

10 (5) Written certifications shall be based on testing conducted  
11 by a laboratory that has been accredited under standard ISO/IEC 17025 of the  
12 International Organization for Standardization or other comparable  
13 accreditation standard required by the Director of the Arkansas Tobacco  
14 Control Board.

15 (6)(A) Laboratories conducting testing under this section shall  
16 implement a quality control and quality assurance program that includes a  
17 procedure that will determine the repeatability of the testing results.

18 (B) The repeatability value shall be no greater than 0.19.

19 (7) This section does not require additional testing if  
20 cigarettes are tested consistent with this subchapter for any other purposes.

21 (8) Testing performed or sponsored by the director to determine  
22 a cigarette's compliance with the performance standard required by this  
23 section shall be conducted in accordance with this section.

24 (c)(1) Each cigarette listed in a certification submitted under § 20-  
25 27-2105 that uses lowered permeability bands in the cigarette paper to  
26 achieve compliance with the performance standard under this section shall  
27 have at least two (2) nominally identical bands on the paper surrounding the  
28 tobacco column.

29 (2) At least one (1) complete band shall be located at least  
30 fifteen millimeters (15 mm) from the lighting end of the cigarette.

31 (3) For cigarettes on which the bands are positioned by design  
32 there shall be at least two (2) bands fully located at least fifteen  
33 millimeters (15 mm) from the lighting end and ten millimeters (10 mm) from  
34 the filter end of the tobacco column or ten millimeters (10 mm) from the  
35 labeled end of the tobacco column for non-filtered cigarettes.

36 (d)(1) A manufacturer of a cigarette that the director determines

1 cannot be tested by the test method under subdivision (b)(1) of this section  
2 shall propose a test method and performance standard for the cigarette to the  
3 director.

4 (2) Upon approval of the proposed test method and determination  
5 by the director that the performance standard proposed by the manufacturer is  
6 equivalent to the performance standard under subdivision (b)(3) of this  
7 section, the manufacturer may employ the test method and performance standard  
8 to certify the cigarette under § 20-27-2105.

9 (3) Unless the director demonstrates a reasonable basis why a  
10 proposed alternative test should not be accepted under this subchapter, the  
11 director shall authorize a manufacturer to employ an alternative test method  
12 and performance standard to certify a cigarette for sale in this state if the  
13 director:

14 (A) Determines that another state has enacted reduced  
15 cigarette ignition propensity standards that include a test method and  
16 performance standard that are the same as those contained in this subchapter;  
17 and

18 (B) Finds that the officials responsible for implementing  
19 those requirements have approved the proposed alternative test method and  
20 performance standard for a particular cigarette proposed by a manufacturer as  
21 meeting the fire safety standards of that state's law or regulation under a  
22 legal provision comparable to this section.

23 (4) All other applicable requirements of this section shall  
24 apply to the manufacturer.

25 (e)(1) Each manufacturer shall maintain copies of the reports of all  
26 tests conducted on all cigarettes offered for sale for a period of three (3)  
27 years and shall make copies of these reports available to the director and  
28 the Attorney General upon written request.

29 (2) A manufacturer who fails to make copies of these reports  
30 available within sixty (60) days of receiving a written request shall be  
31 subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for  
32 each day after the sixtieth (60<sup>th</sup>) day that the manufacturer does not make the  
33 copies available.

34 (f) The director may adopt a subsequent American Society of Testing  
35 and Materials Standard Test Method for Measuring the Ignition Strength of  
36 Cigarettes upon a finding that the subsequent method does not result in a

1 change in the percentage of full-length burns exhibited by a tested cigarette  
2 when compared to the percentage of full-length burns the same cigarette would  
3 exhibit when tested in accordance with American Society of Testing and  
4 Materials Standard E2187-04 and the performance standard in subdivision  
5 (b)(3) of this section.

6 (g)(1) The director shall review the effectiveness of this section and  
7 report every three (3) years his or her findings and recommendations to the  
8 Speaker of the House of Representatives and the President Pro Tempore of the  
9 Senate for legislation to improve the effectiveness of this subchapter.

10 (2) The report and legislative recommendations shall be  
11 submitted no later than June 30 following the conclusion of each three-year  
12 period.

13 (h) The requirement of subsections (a) and (b) of this section shall  
14 not prohibit:

15 (1) A wholesaler or retailer from selling their existing  
16 inventory of cigarettes on or after the effective date of this subchapter if  
17 the wholesaler or retailer can establish that the inventory was in its  
18 possession before the effective date of this subchapter and the wholesaler or  
19 retailer can establish that the inventory was purchased before the effective  
20 date in comparable quantity to the inventory purchased during the same period  
21 of the prior year; or

22 (2)(A) The sale of cigarettes solely for the purpose of consumer  
23 testing.

24 (B) For purposes of this subsection, the term "consumer  
25 testing" means an assessment of cigarettes that is conducted by a  
26 manufacturer or under the control and direction of a manufacturer for the  
27 purpose of evaluating consumer acceptance of the cigarettes, utilizing only  
28 the quantity of cigarettes that is reasonably necessary for assessment.

29  
30 20-27-2105. Certification and product change.

31 (a) A manufacturer shall submit to the Director of the Arkansas  
32 Tobacco Control Board a written certification attesting that each cigarette  
33 listed in the certification:

34 (1) Has been tested in accordance with § 20-27-2104; and

35 (2) Meets the performance standard under § 20-27-2104.

36 (b) A cigarette listed in the certification shall be described with

1 the following information:

2 (1) Brand or trade name on the package;

3 (2) Style, such as light or ultra light;

4 (3) Length in millimeters;

5 (4) Circumference in millimeters;

6 (5) Flavor, such as menthol or chocolate, if applicable;

7 (6) Filter or non-filter;

8 (7) Package description, such as soft pack or box;

9 (8) Marking under § 20-27-2106;

10 (9) The name, address, and telephone number of the laboratory if  
11 different than the manufacturer that conducted the test; and

12 (10) The date that the testing occurred.

13 (c) The Director of the Arkansas Tobacco Control Board shall make the  
14 certifications available to the Attorney General and the Director of the  
15 Department of Finance and Administration for purposes consistent with this  
16 subchapter.

17 (d) A cigarette certified under this section shall be re-certified  
18 every three (3) years.

19 (e)(1)(A) For each brand family of cigarettes listed for  
20 certification, a manufacturer shall pay a fee of one thousand dollars  
21 (\$1,000) to the Director of the Arkansas Tobacco Control Board.

22 (B) The fee shall be applied to all cigarettes within the  
23 certified brand family and shall include any new cigarette certified within  
24 the brand family during the three-year certification period.

25 (2) The Director of the Arkansas Tobacco Control Board may  
26 adjust annually this fee to ensure it defrays the actual costs of processing,  
27 enforcement, and oversight activities required by this subchapter.

28 (f)(1) If a manufacturer has certified a cigarette under this section  
29 and subsequently makes a change to the cigarette that is likely to alter its  
30 compliance with the reduced cigarette ignition propensity standards required  
31 by this subchapter, the cigarette shall not be sold or offered for sale in  
32 this state until the manufacturer retests the cigarette in accordance with  
33 the testing standards under § 20-27-2104.

34 (2) An altered cigarette that does not meet the performance  
35 standard in § 20-27-2104 shall not be sold in this state.

36

1           20-27-2106. Marking of cigarette packaging.

2           (a)(1) Cigarettes that are certified by a manufacturer under § 20-27-  
3 2105 shall be marked to indicate compliance with the requirements of § 20-27-  
4 2104.

5           (2) The marking shall be in eight point (8 pt.) type or  
6 larger and consist of the letters "FSC", which signifies Fire Standard  
7 Compliant, permanently printed, stamped, engraved, or embossed on the package  
8 at or near the UPC code.

9           (b) A manufacturer shall use only one (1) marking and shall apply the  
10 marking uniformly for all packages, including without limitation to packs,  
11 cartons, and cases, and brands marketed by the manufacturer.

12           (c)(1) Manufacturers certifying cigarettes under § 20-27-2105 shall  
13 provide a copy of the certifications to all wholesalers to which they sell  
14 cigarettes.

15           (2) Wholesalers and retailers shall permit the Director of the  
16 Arkansas Tobacco Control Board, the Director of the Department of Finance and  
17 Administration, the Attorney General, and their employees to inspect markings  
18 of cigarette packaging marked in accordance with this section.

19  
20           20-27-2107. Penalties.

21           (a)(1) A manufacturer, wholesaler, or any other person or entity that  
22 knowingly sells or offers to sell cigarettes, other than through retail sale,  
23 in violation of § 20-27-2104 is subject to a civil penalty in an amount not  
24 to exceed one hundred dollars (\$100) for each pack of such cigarettes sold or  
25 offered for sale.

26           (2) The penalty against a person or entity shall not exceed one  
27 hundred thousand dollars (\$100,000) during any thirty-day period.

28           (b)(1) A retailer that knowingly sells or offers to sell cigarettes in  
29 violation of § 20-27-2104 is subject to a civil penalty in an amount not to  
30 exceed one hundred dollars (\$100) for each pack of such cigarettes sold or  
31 offered for sale.

32           (2) The penalty against a retailer shall not exceed twenty-five  
33 thousand dollars (\$25,000) for sales or offers to sell during any thirty-day  
34 period.

35           (c) In addition to any penalty prescribed by law, a corporation,  
36 partnership, sole proprietor, limited partnership, or association engaged in



1 the manufacture of cigarettes that knowingly makes a false certification  
2 under § 20-27-2105 is subject to a civil penalty of at least seventy-five  
3 thousand dollars (\$75,000) and not to exceed two hundred fifty thousand  
4 dollars (\$250,000) for each false certification.

5 (d) A person who violates any other provision of this subchapter is  
6 subject to a civil penalty for a first offense in an amount not to exceed one  
7 thousand dollars (\$1,000) and for a subsequent offense in an amount not to  
8 exceed five thousand dollars (\$5,000) for each violation.

9 (e) It is a defense in an action for civil penalties that a  
10 wholesaler, retailer, or a person in the stream of commerce relied in good  
11 faith on a manufacturer's certificate or marking that the cigarette complies  
12 with this subchapter.

13 (f)(1) An authorized representative of the Director of the Department  
14 of Finance and Administration or the Director of the Arkansas Tobacco Control  
15 Board may seize and take possession of cigarettes:

16 (A) For which no certification has been filed as required  
17 by § 20-27-2105; or

18 (B) That have not been marked as required by § 20-27-2106.

19 (2)(A) Cigarettes seized under this section shall be destroyed.

20 (B) Before the destruction of a cigarette seized under  
21 this section, the true holder of the trademark rights in the cigarette brand  
22 shall be permitted to inspect the cigarette.

23 (g)(1) In addition to any other remedy provided by law, the Attorney  
24 General may file an action in circuit court for a violation of this  
25 subchapter including petitioning:

26 (A) For preliminary or permanent injunctive relief against  
27 a manufacturer, importer, wholesaler, retailer, or any other person or entity  
28 to enjoin the person or entity from selling, offering to sell, or affixing  
29 tax stamps to a cigarette that does not comply with the requirements of this  
30 subchapter; or

31 (B) To recover costs or damages suffered by the state  
32 because of a violation of this subchapter including enforcement costs  
33 relating to the specific violation and attorney's fees.

34 (2) Each violation of this subchapter or of the rules adopted  
35 under this subchapter constitutes a separate civil violation for which the  
36 Director of the Arkansas Tobacco Control Board or Attorney General may obtain

1 relief.

2 (3) Upon obtaining judgment for injunctive relief under this  
3 section, the Director of the Arkansas Tobacco Control Board or Attorney  
4 General shall provide a copy of the judgment to all wholesalers to which the  
5 cigarette has been sold.

6  
7 20-27-2108. Implementation.

8 (a) The Director of the Arkansas Tobacco Control Board may promulgate  
9 rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.,  
10 necessary to effectuate the purposes of this subchapter.

11 (b)(1) The Director of the Department of Finance and Administration,  
12 the Director of the Arkansas Tobacco Control Board, and their employees, in  
13 the regular course of conducting inspections of wholesalers and retailers, as  
14 authorized under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201  
15 et seq., may inspect cigarettes to determine if the cigarettes are marked as  
16 required by § 20-27-2106.

17 (2) If the Director of the Department of Finance and  
18 Administration discovers cigarettes that are not marked as required, the  
19 Director of the Department of Finance and Administration shall notify the  
20 Director of the Arkansas Tobacco Control Board.

21  
22 20-27-2109. Inspection.

23 (a) To enforce the provisions of this subchapter, the Attorney  
24 General, the Director of the Department of Finance and Administration, the  
25 Director of the Arkansas Tobacco Control Board, and their authorized  
26 representatives may examine the books, papers, invoices, and other records of  
27 a person in possession, control, or occupancy of premises where cigarettes  
28 are placed, stored, sold, or offered for sale, as well as the stock of  
29 cigarettes on the premises.

30 (b) Every person in possession, control, or occupancy of premises  
31 where cigarettes are placed, stored, sold, or offered for sale shall give the  
32 Attorney General, the Director of the Department of Finance and  
33 Administration, the Director of the Arkansas Tobacco Control Board, and their  
34 authorized representatives the means, facilities, and opportunity for the  
35 examinations authorized by this section.

36

