

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.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

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

# A Bill

HOUSE BILL 1402

5 By: Representative Harrelson  
6  
7

## 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.

## Subtitle

15  
16 AN ACT TO CREATE THE ARKANSAS CIGARETTE  
17 FIRE SAFETY STANDARD ACT; AND TO CREATE  
18 THE CIGARETTE FIRE SAFETY STANDARD FUND.  
19  
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  
36 Control Board to support fire safety and prevention programs.



1  
2 SECTION 2. Arkansas Code Title 20, Chapter 27 is amended to add an  
3 additional subchapter to read as follows:

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

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

8  
9 20-27-2102. Purpose.

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

14  
15 20-27-2103. Definitions.

16 As used in this subchapter:

17 (1) "Cigarette" means:

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

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

24 (2) "Manufacturer" means:

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

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

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

35 (B) A "quality control and quality assurance program"  
36 ensures that the testing repeatability remains within the required

1 repeatability values stated in § 20-27-2104(b)(6) for all test trials used to  
2 certify cigarettes under this subchapter;

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

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

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

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

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

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

22  
23 20-27-2104. Test method and performance standard.

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

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

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

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

34 (b)(1) Testing of cigarettes shall be conducted in accordance with the  
35 American Society of Testing and Materials standard E2187-04, "Standard Test  
36 Method for Measuring the Ignition Strength of Cigarettes".

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

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

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

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

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

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

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

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

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

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

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

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

35           (d)(1) A manufacturer of a cigarette that the director determines  
36 cannot be tested by the test method under subdivision (b)(1) of this section

1 shall propose a test method and performance standard for the cigarette to the  
2 director.

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

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

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

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

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

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

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

33 (f) The director may adopt a subsequent American Society of Testing  
34 and Materials Standard Test Method for Measuring the Ignition Strength of  
35 Cigarettes upon a finding that the subsequent method does not result in a  
36 change in the percentage of full-length burns exhibited by a tested cigarette

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

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

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

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

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

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

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

28  
29 20-27-2105. Certification and product change.

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

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

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

35 (b) A cigarette listed in the certification shall be described with  
36 the following information:

- 1 (1) Brand or trade name on the package;
- 2 (2) Style, such as light or ultra light;
- 3 (3) Length in millimeters;
- 4 (4) Circumference in millimeters;
- 5 (5) Flavor, such as menthol or chocolate, if applicable;
- 6 (6) Filter or non-filter;
- 7 (7) Package description, such as soft pack or box;
- 8 (8) Marking under § 20-27-2106;
- 9 (9) The name, address, and telephone number of the laboratory if  
10 different than the manufacturer that conducted the test; and
- 11 (10) The date that the testing occurred.

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

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

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

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

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

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

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

35  
36 20-27-2106. Marking of cigarette packaging.

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

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

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

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

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

18  
19       20-27-2107. Penalties.

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

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

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

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

34       (c) In addition to any penalty prescribed by law, a corporation,  
35 partnership, sole proprietor, limited partnership, or association engaged in  
36 the manufacture of cigarettes that knowingly makes a false certification

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

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

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

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

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

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

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

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

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

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

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

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

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

5  
6           20-27-2108. Implementation.

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

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

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

20  
21           20-27-2109. Inspection.

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

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

35  
36           20-27-2110. Sale outside of Arkansas.

