

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

A Bill

HOUSE BILL 1402

4
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 21025 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 (60th) 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) For each cigarette listed in a certification, a manufacturer
 19 shall pay to the Director of the Arkansas Tobacco Control Board a fee of two
 20 hundred fifty dollars (\$250).

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

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

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

32
 33 20-27-2106. Marking of cigarette packaging.

34 (a)(1) Cigarettes that are certified by a manufacturer under § 20-27-
 35 2105 shall be marked to indicate compliance with the requirements of § 20-27-
 36 2104.

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

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

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

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

15
 16 20-27-2107. Penalties.

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

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

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

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

31 (c) In addition to any penalty prescribed by law, a corporation,
 32 partnership, sole proprietor, limited partnership, or association engaged in
 33 the manufacture of cigarettes that knowingly makes a false certification
 34 under § 20-27-2105 is subject to a civil penalty of at least seventy-five
 35 thousand dollars (\$75,000) and not to exceed two hundred fifty thousand
 36 dollars (\$250,000) for each false certification.

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

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

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

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

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

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

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

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

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

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

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

34 (3) Upon obtaining judgment for injunctive relief under this
 35 section, the Director of the Arkansas Tobacco Control Board or Attorney
 36 General shall provide a copy of the judgment to all wholesalers to which the

1 cigarette has been sold.

2
3 20-27-2108. Implementation.

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

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

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

17
18 20-27-2109. Inspection.

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

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

32
33 20-27-2110. Sale outside of Arkansas.

34 This subchapter does not prohibit a person or entity from manufacturing
35 or selling cigarettes that do not meet the requirements of § 20-27-2104 if:

36 (1) The cigarettes:

1 (A) Are or will be stamped for sale in another state; or
2 (B) Are packaged for sale outside the United States; and
3 (2) The person or entity has taken reasonable steps to ensure
4 that the cigarettes will not be sold or offered for sale in this state.

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