

Part 4

The Reduced Cigarette Ignition Propensity and Firefighter Protection Act

53-7-401 Title.

This part is known as the "The Reduced Cigarette Ignition Propensity and Firefighter Protection Act."

Enacted by Chapter 362, 2007 General Session

53-7-402 Definitions.

As used in this part:

- (1) "Agent" means any person authorized by the State Tax Commission to purchase and affix stamps on packages of cigarettes.
- (2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.
- (3) "Manufacturer" means:
 - (a) any entity which:
 - (i) manufactures or otherwise produces cigarettes to be sold in the state;
 - (ii) causes cigarettes to be manufactured or produced anywhere with the intent to sell in the state; or
 - (iii) manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced with the intent to sell in the United States through an importer;
 - (b) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or
 - (c) any entity that becomes a successor of an entity described in Subsection (3)(a) or (3)(b).
- (4) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic, and nonsystematic methodological errors, and equipment related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in Subsection 53-7-403(2)(f) for all test trials used to certify cigarettes in accordance with this part.
- (5) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.
- (6) "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.
- (7) "Sale":
 - (a) means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefore; and
 - (b) includes, in addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money.
- (8) "Sell" means to sell, or to offer or agree to sell.
- (9) "Wholesale dealer" means:
 - (a) any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale; and

- (b) any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

Enacted by Chapter 362, 2007 General Session

53-7-403 Test method and performance standard.

- (1) Except as provided in Subsection (8), no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless:
 - (a) the cigarettes have been tested in accordance with the test method required by this section;
 - (b) the cigarettes meet the performance standard specified in this section;
 - (c) a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 53-7-404; and
 - (d) the cigarettes have been marked in accordance with Section 53-7-405.
- (2)
 - (a) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials ("ASTM") standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."
 - (b) Testing shall be conducted on 10 layers of filter paper.
 - (c) No more than 25% of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.
 - (d) The performance standard required by this section shall only be applied to a complete test trial.
 - (e) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization ("ISO"), or other comparable accreditation standard required by the state fire marshal.
 - (f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.
 - (g) This section does not require additional testing if cigarettes are tested consistent with this part for any other purpose.
 - (h) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.
- (3) Each cigarette listed in a certification submitted pursuant to Section 53-7-404 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.
- (4) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in Subsection (2)(a) shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in

Subsection (2)(c), the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to Section 53-7-404. If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this part, and the state fire marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the state fire marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under this part. All other applicable requirements of this section shall apply to the manufacturer.

- (5) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request shall be subject to a civil penalty not to exceed \$10,000 for each day after the sixtieth day that the manufacturer does not make the copies available.
- (6) The state fire marshal may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in Subsection (2)(c).
- (7) The state fire marshal shall review the effectiveness of this section and report every three years to the Legislature the state fire marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations shall be submitted no later than November 1, 2011 and every November 1 of each three-year period thereafter.
- (8) The requirements of Subsection (1) shall not prohibit wholesale or retail dealers from selling their existing inventory of cigarettes on or after July 1, 2008 if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to July 1, 2008, and if the wholesale or retail dealer can establish that the inventory was purchased prior to July 1, 2008 in comparable quantity to the inventory purchased during the same period of the prior year.
- (9) This part shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.

Enacted by Chapter 362, 2007 General Session

53-7-404 Certification and product change -- Restricted account created.

- (1) Each manufacturer shall submit to the state fire marshal a written certification attesting that:
 - (a) each cigarette listed in the certification has been tested in accordance with Section 53-7-403; and
 - (b) each cigarette listed in the certification meets the performance standard set forth in Subsection 53-7-403(2)(c).
- (2) Each cigarette listed in the certification shall be described with the following information:
 - (a) brand, or trade name on the package;
 - (b) style, such as light or ultra light;
 - (c) length in millimeters;

- (d) circumference in millimeters;
 - (e) flavor, such as menthol or chocolate, if applicable;
 - (f) filter or nonfilter;
 - (g) package description, such as soft pack or box;
 - (h) marking approved in accordance with Section 53-7-405;
 - (i) the name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
 - (j) the date that the testing occurred.
- (3) The certifications shall be made available to the attorney general for purposes consistent with this part and the State Tax Commission for the purposes of ensuring compliance with this section.
- (4) Each cigarette certified under this section shall be recertified every three years.
- (5) For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a \$250 fee. The state fire marshal is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this part.
- (6)
- (a) Beginning July 1, 2008, there is created a restricted account within the General Fund called the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Account."
 - (b) The account created in Subsection (6)(a) shall consist of all certification fees submitted by manufacturers.
 - (c)
 - (i) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.
 - (ii) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.
 - (d) Upon appropriations from the Legislature, money from the account created in Subsection (6) (a) shall be used by the state fire marshal solely to support processing, testing, enforcement, and oversight activities under this part.
- (7)
- (a) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to the certified cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this part, that cigarette shall not be sold or offered for sale in this state until the manufacturer:
 - (i) retests the cigarette in accordance with the testing standards set forth in Section 53-7-403; and
 - (ii) maintains records of that retesting as required by Section 53-7-403.
 - (b) Any altered cigarette which does not meet the performance standard set forth in Section 53-7-403 may not be sold in this state.

Amended by Chapter 216, 2008 General Session

53-7-405 Marking of cigarette packaging.

- (1) Cigarettes that are certified by a manufacturer in accordance with Section 53-7-404 shall be marked to indicate compliance with the requirements of Section 53-7-403. The marking shall be in eight-point type or larger and consist of:

- (a) modification of the product UPC code to include a visible mark printed at or around the area of the UPC code, which may include alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the UPC;
 - (b) any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or
 - (c) printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this part.
- (2) A manufacturer shall use only one marking, and shall apply this marking uniformly for all packages marketed by the manufacturer, including:
- (a) packs;
 - (b) cartons;
 - (c) cases; and
 - (d) any brands marketed by that manufacturer.
- (3) The manufacturer shall notify the state fire marshal of the marking that it has selected in accordance with Subsection (2).
- (4) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the state fire marshal for approval. Upon receipt of the request, the state fire marshal shall approve or disapprove the marking offered, except that the state fire marshal shall approve any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes. Proposed markings shall be considered approved if the state fire marshal fails to act within 10 business days of receiving a request for approval.
- (5) No manufacturer shall modify its approved marking unless the modification has been approved by the state fire marshal in accordance with this section.
- (6)
- (a) Manufacturers certifying cigarettes in accordance with Section 53-7-404 shall provide:
 - (i) a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes; and
 - (ii) sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes.
 - (b) Wholesale dealers and agents shall provide a copy of the package markings received from manufacturers under Subsection (6)(a) to all retail dealers to which they sell cigarettes.
 - (c) Wholesale dealers, agents, and retail dealers shall permit the state fire marshal, the State Tax Commission, the attorney general, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

Enacted by Chapter 362, 2007 General Session

53-7-406 Penalties.

- (1)
- (a) Except as provided in Subsection (1)(b), a manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Section 53-7-403:
 - (i) for a first offense shall be liable for a civil penalty not to exceed \$10,000 per each sale of cigarettes; and
 - (ii) for a subsequent offense shall be liable for a civil penalty not to exceed \$25,000 per each sale of such cigarettes.

- (b) A penalty imposed under Subsection (1)(a) may not exceed \$100,000 during any 30-day period against any one entity described in Subsection (1).
- (2)
 - (a) Except as provided in Subsection (2)(b), a retail dealer who knowingly sells cigarettes in violation of Section 53-7-403 shall:
 - (i) for a first offense for each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale:
 - (A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$500 for each sale or offer of sale; and
 - (B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$1,000 for each sale or offer of sale; and
 - (ii) for a subsequent offense, if the total number of cigarettes sold or offered for sale:
 - (A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$2,000 for each sale or offer of sale; and
 - (B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$5,000 for each sale or offer of sale.
 - (b) A penalty imposed under Subsection (2)(a) against any retail dealer shall not exceed \$25,000 during a 30-day period.
- (3) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 53-7-404 shall, for each false certification:
 - (a) for a first offense, be liable for a civil penalty of at least \$75,000; and
 - (b) for a subsequent offense, be liable for a civil penalty not to exceed \$250,000.
- (4) Any person violating any other provision in this part shall be liable for a civil penalty for each violation:
 - (a) for a first offense, not to exceed \$1,000; and
 - (b) for a subsequent offense, not to exceed \$5,000.
- (5) In addition to any other remedy provided by law, the state fire marshal or attorney general may file an action in district court for a violation of this part, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this part, including enforcement costs relating to the specific violation and attorney fees. Each violation of this part or of rules or regulations adopted under this part constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief.

Amended by Chapter 394, 2013 General Session

53-7-407 Implementation -- Effect of part on Model Tobacco Settlement Act and Tobacco Tax and Licensing Act.

- (1) The state fire marshal may promulgate rules and regulations, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to effectuate the purposes of this part.
- (2) The State Tax Commission in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act, may inspect cigarettes to determine if the cigarettes are marked as required by Section 53-7-405. If the cigarettes are not marked as required, the State Tax Commission shall notify the state fire marshal.
- (3) Nothing in this part shall affect an entity's obligations pursuant to:
 - (a) Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act; or
 - (b) Title 59, Chapter 22, Model Tobacco Settlement Act.

Amended by Chapter 382, 2008 General Session

53-7-408 Inspection.

To enforce the provisions of this part, the attorney general and the state fire marshal are hereby authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, is hereby directed and required to give the attorney general and the state fire marshal the means, facilities, and opportunity for the examinations authorized by this section.

Enacted by Chapter 362, 2007 General Session

53-7-409 Sale outside of Utah.

Nothing in this part shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 53-7-403 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state.

Enacted by Chapter 362, 2007 General Session

53-7-410 Preemption.

This part shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this part is adopted and becomes effective.

Enacted by Chapter 362, 2007 General Session

53-7-411 Local regulation.

Notwithstanding any other provision of law, a political subdivision of this state may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this part or with any policy of this state expressed by this part, whether that policy be expressed by inclusion of a provision in this part or by exclusion of that subject from this part.

Enacted by Chapter 362, 2007 General Session