

REDUCED CIGARETTE IGNITION

PROPENSITY

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ed Mayne

House Sponsor: Todd E. Kiser

LONG TITLE

General Description:

This bill enacts The Reduced Cigarette Ignition Propensity and Firefighters Protection Act within the Utah Fire Prevention and Safety Act of the Public Safety Code.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates test methods and performance standards for cigarettes;
- ▶ requires certification and product marking to ensure compliance with the act;
- ▶ creates a Reduced Cigarette Ignition Propensity and Firefighter Protection Enforcement restricted account within the General Fund;
- ▶ requires marking of cigarette packages;
- ▶ establishes penalties for violations of the act;
- ▶ gives the state fire marshal and the State Tax Commission enforcement powers;
- ▶ gives the attorney general and the state fire marshal the power to inspect records;
- ▶ clarifies application to sales outside of the state;
- ▶ establishes state preemption of local ordinances; and
- ▶ provides that the state law is preempted by any subsequent federal law that may preempt state law.

Monies Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 This bill takes effect on July 1, 2008.

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **53-7-401**, Utah Code Annotated 1953

34 **53-7-402**, Utah Code Annotated 1953

35 **53-7-403**, Utah Code Annotated 1953

36 **53-7-404**, Utah Code Annotated 1953

37 **53-7-405**, Utah Code Annotated 1953

38 **53-7-406**, Utah Code Annotated 1953

39 **53-7-407**, Utah Code Annotated 1953

40 **53-7-408**, Utah Code Annotated 1953

41 **53-7-409**, Utah Code Annotated 1953

42 **53-7-410**, Utah Code Annotated 1953

43 **53-7-411**, Utah Code Annotated 1953



44
45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **53-7-401** is enacted to read:

47 **Part 4. The Reduced Cigarette Ignition Propensity and Firefighter Protection Act**

48 **53-7-401. Title.**

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

51 Section 2. Section **53-7-402** is enacted to read:

52 **53-7-402. Definitions.**

53 As used in this part:

54 (1) "Agent" means any person authorized by the State Tax Commission to purchase
55 and affix stamps on packages of cigarettes.

56 (2) "Cigarette" means any roll for smoking made wholly or in part of tobacco,
57 irrespective of size or shape, and whether or not such tobacco is flavored, adulterated, or mixed
58 with any other ingredient, the wrapper or cover of which is made of paper or any other

59 substance or material except tobacco.

60 (3) "Manufacturer" means:

61 (a) any entity which:

62 (i) manufactures or otherwise produces cigarettes to be sold in the state;

63 (ii) causes cigarettes to be manufactured or produced anywhere with the intent to sell in
64 the state; or

65 (iii) manufactures or otherwise produces cigarettes or cause cigarettes to be
66 manufactured or produced with the intent to sell in the United States through an importer;

67 (b) the first purchaser anywhere that intends to resell in the United States cigarettes
68 manufactured anywhere that the original manufacturer or maker does not intend to be sold in
69 the United States; or

70 (c) any entity that becomes a successor of an entity described in Subsection (3)(a) or
71 (3)(b).

72 (4) "Quality control and quality assurance program" means the laboratory procedures
73 implemented to ensure that operator bias, systematic, and nonsystematic methodological errors,
74 and equipment related problems do not affect the results of the testing. Such a program ensures
75 that the testing repeatability remains within the required repeatability values stated in
76 Subsection 53-7-403(2)(f) for all test trials used to certify cigarettes in accordance with this
77 part.

78 (5) "Repeatability" means the range of values within which the repeat results of
79 cigarette test trials from a single laboratory will fall 95% of the time.

80 (6) "Retail dealer" means any person, other than a manufacturer or wholesale dealer,
81 engaged in selling cigarettes or tobacco products.

82 (7) "Sale":

83 (a) means any transfer of title or possession or both, exchange or barter, conditional or
84 otherwise, in any manner or by any means whatever or any agreement therefore; and

85 (b) includes, in addition to cash and credit sales, the giving of cigarettes as samples,
86 prizes, or gifts, and the exchanging of cigarettes for any consideration other than money.

87 (8) "Sell" means to sell, or to offer or agree to sell.

88 (9) "Wholesale dealer" means:

89 (a) any person who sells cigarettes or tobacco products to retail dealers or other persons

90 for purposes of resale; and

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

93 Section 3. Section **53-7-403** is enacted to read:

94 **53-7-403. Test method and performance standard.**

95 (1) Except as provided in Subsection (8), no cigarettes may be sold or offered for sale
96 in this state or offered for sale or sold to persons located in this state unless:

97 (a) the cigarettes have been tested in accordance with the test method required by this
98 section;

99 (b) the cigarettes meet the performance standard specified in this section;

100 (c) a written certification has been filed by the manufacturer with the state fire marshal
101 in accordance with Section 53-7-404; and

102 (d) the cigarettes have been marked in accordance with Section 53-7-405.

103 (2) (a) Testing of cigarettes shall be conducted in accordance with the American
104 Society of Testing and Materials ("ASTM") standard E2187-04, "Standard Test Method for
105 Measuring the Ignition Strength of Cigarettes."

106 (b) Testing shall be conducted on ten layers of filter paper.

107 (c) No more than 25% of the cigarettes tested in a test trial in accordance with this
108 section shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial
109 for each cigarette tested.

110 (d) The performance standard required by this section shall only be applied to a
111 complete test trial.

112 (e) Written certifications shall be based upon testing conducted by a laboratory that has
113 been accredited pursuant to standard ISO/IEC 17025 of the International Organization for
114 Standardization ("ISO"), or other comparable accreditation standard required by the state fire
115 marshal.

116 (f) Laboratories conducting testing in accordance with this section shall implement a
117 quality control and quality assurance program that includes a procedure that will determine the
118 repeatability of the testing results. The repeatability value shall be no greater than 0.19.

119 (g) This section does not require additional testing if cigarettes are tested consistent
120 with this part for any other purpose.

121 (h) Testing performed or sponsored by the state fire marshal to determine a cigarette's
122 compliance with the performance standard required shall be conducted in accordance with this
123 section.

124 (3) Each cigarette listed in a certification submitted pursuant to Section 53-7-404 that
125 uses lowered permeability bands in the cigarette paper to achieve compliance with the
126 performance standard set forth in this section shall have at least two nominally identical bands
127 on the paper surrounding the tobacco column. At least one complete band shall be located at
128 least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands
129 are positioned by design, there shall be at least two bands fully located at least 15 millimeters
130 from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10
131 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

132 (4) A manufacturer of a cigarette that the state fire marshal determines cannot be tested
133 in accordance with the test method prescribed in Subsection (2)(a) shall propose a test method
134 and performance standard for the cigarette to the state fire marshal. Upon approval of the
135 proposed test method and a determination by the state fire marshal that the performance
136 standard proposed by the manufacturer is equivalent to the performance standard prescribed in
137 Subsection (2)(c), the manufacturer may employ such test method and performance standard to
138 certify such cigarette pursuant to Section 53-7-404. If the state fire marshal determines that
139 another state has enacted reduced cigarette ignition propensity standards that include a test
140 method and performance standard that are the same as those contained in this part, and the state
141 fire marshal finds that the officials responsible for implementing those requirements have
142 approved the proposed alternative test method and performance standard for a particular
143 cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or
144 regulation under a legal provision comparable to this section, then the state fire marshal shall
145 authorize that manufacturer to employ the alternative test method and performance standard to
146 certify that cigarette for sale in this state, unless the state fire marshal demonstrates a
147 reasonable basis why the alternative test should not be accepted under this part. All other
148 applicable requirements of this section shall apply to the manufacturer.

149 (5) Each manufacturer shall maintain copies of the reports of all tests conducted on all
150 cigarettes offered for sale for a period of three years, and shall make copies of these reports
151 available to the state fire marshal and the attorney general upon written request. Any

152 manufacturer who fails to make copies of these reports available within 60 days of receiving a
153 written request shall be subject to a civil penalty not to exceed \$10,000 for each day after the
154 sixtieth day that the manufacturer does not make the copies available.

155 (6) The state fire marshal may adopt a subsequent ASTM Standard Test Method for
156 Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does
157 not result in a change in the%age of full-length burns exhibited by any tested cigarette when
158 compared to the%age of full-length burns the same cigarette would exhibit when tested in
159 accordance with ASTM Standard E2187-04 and the performance standard in Subsection (2)(c).

160 (7) The state fire marshal shall review the effectiveness of this section and report every
161 three years to the Legislature the state fire marshal's findings and, if appropriate,
162 recommendations for legislation to improve the effectiveness of this section. The report and
163 legislative recommendations shall be submitted no later than November 1, 2011 and every
164 November 1 of each three-year period thereafter.

165 (8) The requirements of Subsection (1) shall not prohibit wholesale or retail dealers
166 from selling their existing inventory of cigarettes on or after the effective date of this part if the
167 wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior
168 to the effective date, and if the wholesale or retail dealer can establish that the inventory was
169 purchased prior to the effective date in comparable quantity to the inventory purchased during
170 the same period of the prior year.

171 (9) This part shall be implemented in accordance with the implementation and
172 substance of the New York Fire Safety Standards for Cigarettes.

173 Section 4. Section **53-7-404** is enacted to read:

174 **53-7-404. Certification and product change.**

175 (1) Each manufacturer shall submit to the state fire marshal a written certification
176 attesting that:

177 (a) each cigarette listed in the certification has been tested in accordance with Section
178 53-7-403; and

179 (b) each cigarette listed in the certification meets the performance standard set forth in
180 Subsection 53-7-403(2)(c).

181 (2) Each cigarette listed in the certification shall be described with the following
182 information:

- 183 (a) brand, or trade name on the package;
184 (b) style, such as light or ultra light;
185 (c) length in millimeters;
186 (d) circumference in millimeters;
187 (e) flavor, such as menthol or chocolate, if applicable;
188 (f) filter or nonfilter;
189 (g) package description, such as soft pack or box;
190 (h) marking approved in accordance with Section 53-7-405;
191 (i) the name, address, and telephone number of the laboratory, if different than the
192 manufacturer that conducted the test; and
193 (j) the date that the testing occurred.
194 (3) The certifications shall be made available to the attorney general for purposes
195 consistent with this part and the State Tax Commission for the purposes of ensuring
196 compliance with this section.
197 (4) Each cigarette certified under this section shall be recertified every three years.
198 (5) For each cigarette listed in a certification, a manufacturer shall pay to the state fire
199 marshal a \$250 fee. The state fire marshal is authorized to annually adjust this fee to ensure it
200 defrays the actual costs of the processing, testing, enforcement, and oversight activities
201 required by this part.
202 (6) (a) Beginning July 1, 2008, there is created a restricted account within the General
203 Fund called the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act
204 Enforcement Account."
205 (b) The account created in Subsection (6)(a) shall consist of:
206 (i) all certification fees submitted by manufacturers; and
207 (ii) interest on account monies.
208 (c) Upon appropriations from the Legislature, monies from the account created in
209 Subsection (6)(a) shall be used by the state fire marshal solely to support processing, testing,
210 enforcement, and oversight activities under this part.
211 (7) (a) If a manufacturer has certified a cigarette pursuant to this section, and thereafter
212 makes any change to the certified cigarette that is likely to alter its compliance with the reduced
213 cigarette ignition propensity standards required by this part, that cigarette shall not be sold or

214 offered for sale in this state until the manufacturer:

215 (i) retests the cigarette in accordance with the testing standards set forth in Section
216 53-7-403; and

217 (ii) maintains records of that retesting as required by Section 53-7-403.

218 (b) Any altered cigarette which does not meet the performance standard set forth in
219 Section 53-7-403 may not be sold in this state.

220 Section 5. Section **53-7-405** is enacted to read:

221 **53-7-405. Marking of cigarette packaging.**

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

225 (a) modification of the product UPC Code to include a visible mark printed at or
226 around the area of the UPC Code, which may include alphanumeric or symbolic characters
227 permanently stamped, engraved, embossed, or printed in conjunction with the UPC;

228 (b) any visible combination of alphanumeric or symbolic characters permanently
229 stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

230 (c) printed, stamped, engraved, or embossed text that indicates that the cigarettes meet
231 the standards of this part.

232 (2) A manufacturer shall use only one marking, and shall apply this marking uniformly
233 for all packages marketed by the manufacturer, including:

234 (a) packs;

235 (b) cartons;

236 (c) cases; and

237 (d) any brands marketed by that manufacturer.

238 (3) The manufacturer shall notify the state fire marshal of the marking that it has
239 selected in accordance with Subsection (2).

240 (4) Prior to the certification of any cigarette, a manufacturer shall present its proposed
241 marking to the state fire marshal for approval. Upon receipt of the request, the state fire
242 marshal shall approve or disapprove the marking offered, except that the state fire marshal shall
243 approve any marking in use and approved for sale in New York pursuant to the New York Fire
244 Safety Standards for Cigarettes. Proposed markings shall be considered approved if the state

245 fire marshal fails to act within ten business days of receiving a request for approval.

246 (5) No manufacturer shall modify its approved marking unless the modification has
247 been approved by the state fire marshal in accordance with this section.

248 (6) (a) Manufacturers certifying cigarettes in accordance with Section 53-7-404 shall
249 provide:

250 (i) a copy of the certifications to all wholesale dealers and agents to which they sell
251 cigarettes; and

252 (ii) sufficient copies of an illustration of the package marking utilized by the
253 manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or
254 agents sell cigarettes.

255 (b) Wholesale dealers and agents shall provide a copy of the package markings
256 received from manufacturers under Subsection (6)(a) to all retail dealers to which they sell
257 cigarettes.

258 (c) Wholesale dealers, agents, and retail dealers shall permit the state fire marshal, the
259 State Tax Commission, the attorney general, and their employees to inspect markings of
260 cigarette packaging marked in accordance with this section.

261 Section 6. Section **53-7-406** is enacted to read:

262 **53-7-406. Penalties.**

263 (1) (a) Except as provided in Subsection (1)(b), a manufacturer, wholesale dealer,
264 agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than
265 through retail sale, in violation of Section 53-7-403:

266 (i) for a first offense shall be liable for a civil penalty not to exceed \$10,000 per each
267 sale of cigarettes; and

268 (ii) for a subsequent offense shall be liable for a civil penalty not to exceed \$25,000 per
269 each sale of such cigarettes.

270 (b) A penalty imposed under Subsection (1)(a) may not exceed \$100,000 during any
271 30-day period against any one entity described in Subsection (1).

272 (2) (a) Except as provided in Subsection (2)(b), a retail dealer who knowingly sells
273 cigarettes in violation of Section 53-7-403 shall:

274 (i) for a first offense for each sale or offer for sale of cigarettes, if the total number of
275 cigarettes sold or offered for sale:

276 (A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$500
277 for each sale or offer of sale; and

278 (B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$1,000 for
279 each sale or offer of sale; and

280 (ii) for a subsequent offense, if the total number of cigarettes sold or offered for sale:

281 (A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$2,000
282 for each sale or offer of sale; and

283 (B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$5,000 for
284 each sale or offer of sale.

285 (b) A penalty imposed under Subsection (2)(a) against any retail dealer shall not
286 exceed \$25,000 during a 30-day period.

287 (3) In addition to any penalty prescribed by law, any corporation, partnership, sole
288 proprietor, limited partnership, or association engaged in the manufacture of cigarettes that
289 knowingly makes a false certification pursuant to Section 53-7-404 shall, for each false
290 certification:

291 (a) for a first offense, be liable for a civil penalty of at least \$75,000; and

292 (b) for a subsequent offense, be liable for a civil penalty not to exceed \$250,000.

293 (4) Any person violating any other provision in this part shall be liable for a civil
294 penalty for each violation:

295 (a) for a first offense, not to exceed \$1,000; and

296 (b) for a subsequent offense, not to exceed \$5,000.

297 (5) Any cigarettes that have been sold or offered for sale that do not comply with the
298 performance standard required by Section 53-7-403 shall be subject to forfeiture under Title 24,
299 Chapter 1, Utah Uniform Forfeiture Procedures Act, and, upon being forfeited, shall be
300 destroyed, provided, however, that prior to the destruction of any cigarette seized pursuant to
301 this part, the true holder of the trademark rights in the cigarette brand shall be permitted to
302 inspect the cigarette.

303 (6) In addition to any other remedy provided by law, the state fire marshal or attorney
304 general may file an action in district court for a violation of this part, including petitioning for
305 injunctive relief or to recover any costs or damages suffered by the state because of a violation
306 of this part, including enforcement costs relating to the specific violation and attorney fees.

307 Each violation of this part or of rules or regulations adopted under this part constitutes a
308 separate civil violation for which the state fire marshal or attorney general may obtain relief.

309 Section 7. Section **53-7-407** is enacted to read:

310 **53-7-407. Implementation.**

311 (1) The state fire marshal may promulgate rules and regulations, pursuant to Title 63,
312 Chapter 46b, Utah Administrative Rulemaking Act, necessary to effectuate the purposes of this
313 part.

314 (2) The State Tax Commission in the regular course of conducting inspections of
315 wholesale dealers, agents, and retail dealers, as authorized under Title 59, Chapter 14, Cigarette
316 and Tobacco Tax and Licensing Act, may inspect cigarettes to determine if the cigarettes are
317 marked as required by Section 53-7-405. If the cigarettes are not marked as required, the State
318 Tax Commission shall notify the state fire marshal.

319 Section 8. Section **53-7-408** is enacted to read:

320 **53-7-408. Inspection.**

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

328 Section 9. Section **53-7-409** is enacted to read:

329 **53-7-409. Sale outside of Utah.**

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

335 Section 10. Section **53-7-410** is enacted to read:

336 **53-7-410. Preemption.**

337 This part shall be repealed if a federal reduced cigarette ignition propensity standard

338 that preempts this part is adopted and becomes effective.

339 Section 11. Section **53-7-411** is enacted to read:

340 **53-7-411. Local regulation.**

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

346 Section 12. **Effective date.**

347 This bill takes effect on July 1, 2008.

Legislative Review Note
as of 1-26-07 3:10 PM

Office of Legislative Research and General Counsel

S.B. 200 - Reduced Cigarette Ignition Propensity

**Revised
Fiscal Note**

2007 General Session
State of Utah

State Impact

Provisions of this bill creates a new General Fund restricted account with estimated revenues of \$66,700 beginning FY 2009, as the bill's effective date is July 1, 2008. The Department of Public Safety will require an ongoing appropriation of \$66,400 beginning FY 2009 from the new "General Fund Restricted Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Account," for staff and related expenses to implement provisions of this bill.

	<u>FY 2007 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>
General Fund Restricted	\$0	\$0	\$66,400	\$0	\$0	\$66,700
Total	\$0	\$0	\$66,400	\$0	\$0	\$66,700

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Cigarette manufactures distributing their products in the State would be required to pay the cost of a standardized test for extinguishing characteristics.