

SENATE BILL No. 178

AN ACT concerning reduced ignition propensity cigarettes.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) This act shall be known and may be cited as the fire safety standard and firefighter protection act.

(b) If any provision of the fire safety standard and firefighter protection act is held to be unconstitutional, such holding shall not affect the validity of any remaining portion of the act.

Sec. 2. As used in this act:

(a) "Agent" means any person authorized by the director to purchase and affix stamps on packages of cigarettes.

(b) "Cigarette" means any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and irrespective of tobacco or substance being flavored, adulterated or mixed with any other ingredient, if the wrapper is in greater part made of any material except tobacco.

(c) "Director," "retail dealer," "vending machine operator," "sale" and "wholesale dealer" shall have the meanings ascribed thereto in K.S.A. 79-3301, and amendments thereto.

(d) "Manufacturer" means:

(1) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer;

(2) 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

(3) any entity that becomes a successor of an entity described in paragraph (1) or (2).

(e) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and non-systematic 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 required by section 3, and amendments thereto, for all test trials used to certify cigarettes in accordance with this act.

(f) "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.

(g) "Sell" means to sell, or to offer or agree to do the same.

Sec. 3. (a) Except as provided in subsection (h), no cigarettes may be sold or offered for sale in this state or offered for sale or sold to any person located in this state unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the state fire marshal in accordance with section 4, and amendments thereto, and the cigarettes have been marked in accordance with section 5, and amendments thereto.

(b) (1) 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."

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

(3) 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.

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

(5) 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.

(6) 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.

(7) This section does not require additional testing if cigarettes are tested in a manner which is consistent with this act for any other purpose.

(8) 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.

(c) Each cigarette listed in a certification submitted pursuant to section 4, and amendments thereto, 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 non-filtered cigarettes.

(d) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in subsection (b) 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 (b)(3) of this section, the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to section 4, and amendments thereto. 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 act, 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 act. All other applicable requirements of this section shall apply to the manufacturer.

(e) 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 such copies available.

(f) The state fire marshal may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes upon a finding that such 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 (b)(3) of this section.

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

(h) The requirements of subsection (a) shall not prohibit: (1) A wholesale dealer, retail dealer or vending machine operator from selling their existing inventory of cigarettes on or after July 1, 2009, if the wholesale dealer, retail dealer or vending machine operator can establish that state tax stamps were affixed to such cigarettes prior to July 1, 2009, and if the wholesale dealer, retail dealer or vending machine operator can establish that the inventory was purchased prior to July 1, 2009, in comparable quantity to the inventory purchased during the same period of time in the prior year. In no event may a wholesale dealer, retail dealer or vending machine operator sell or offer for sale a cigarette in this state that does

not comply with this act after July 1, 2010; or (2) the sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term “consumer testing” means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

(i) The provisions of this section shall take effect and be in force from and after July 1, 2009.

Sec. 4. (a) Each manufacturer shall submit to the state fire marshal a written certification attesting that: (1) Each cigarette listed in the certification has been tested in accordance with section 3, and amendments thereto; and (2) each cigarette listed in the certification meets the performance standard set forth in section 3, and amendments thereto.

(b) Each cigarette listed in the certification shall be described with the following information:

- (1) Brand or trade name on the package;
- (2) style, such as lights, ultra lights, or low tar;
- (3) length in millimeters;
- (4) circumference in millimeters;
- (5) flavor, such as menthol, chocolate or other, if applicable;
- (6) filter or non-filter;
- (7) package description, such as soft pack, box or other;
- (8) the name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
- (9) the date that the testing was conducted.

(c) For the purpose of compliance with this section, the state fire marshal shall accept completed certifications and make the completed certifications available to the attorney general.

(d) Each cigarette certified under this section shall be recertified every three years. Initial cigarette certifications may be made at any time. Subsequent certifications shall be made before July 31 of the subsequent certification year.

(e) Every manufacturer shall certify cigarettes within the state before the manufacturer, retail dealer, wholesale dealer or vending machine operator legally may offer a manufacturer’s cigarette for sale within the state. In order to obtain and maintain a listing on the directory created under subsection (i), a manufacturer shall consent to the jurisdiction of the Kansas courts for the purpose of enforcement of this act and shall appoint a registered agent for service of process in this state and shall identify the agent to the secretary of state.

(f) For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a fee of \$250. The state fire marshal may adjust such fee annually, by rule and regulation, to ensure that such fee defrays the actual cost of processing, testing enforcement, administration and oversight activities required by law.

(g) There is hereby established in the state treasury a separate, non-lapsing fund to be known as the fire safety standard and firefighter protection act enforcement fund which shall be administered by the state fire marshal.

(h) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this act, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in section 3, and amendments thereto, and maintains records of that retesting as required by section 3, and amendments thereto. Any altered cigarette which does not meet the performance standard set forth in section 3, and amendments thereto, may not be sold in this state.

(i) Not later than July 31, 2009, the attorney general shall develop a directory of all certified cigarettes under this act. The directory shall be updated as necessary and shall be posted on the attorney general’s website. Unless a wholesale dealer, retail dealer or vending machine operator has actual knowledge that cigarettes do not comply with this act, the wholesale dealer, retail dealer or vending machine operator shall consider any cigarette listed on the directory posted on the website to be lawful

to sell in this state for the purpose of compliance with this act by such wholesale dealer, retail dealer or vending machine operator.

(j) The provisions of this section shall take effect and be in force from and after July 1, 2009.

Sec. 5. (a) Cigarettes that are certified by a manufacturer in accordance with section 4, and amendments thereto, shall be marked with the letters “FSC”, which signifies fire standards compliant, appearing in eight-point type or larger and permanently printed, stamped, engraved or embossed on the package at or near the UPC code. A manufacturer certifying cigarettes in accordance with section 4, and amendments thereto, shall provide a copy of the certifications to any wholesale dealer and its agents to which the manufacturer sells cigarettes. Any wholesale dealer, agent, retail dealer or vending machine operator shall permit the state fire marshal, the director, the attorney general, and employees thereof, to inspect cigarette packaging marked in accordance with this section.

(b) The provisions of this section shall take effect and be in force from and after July 1, 2009.

Sec. 6. (a) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, that do not meet the performance standard of section 3, and amendments thereto, are not listed on the directory as required by section 4, and amendments thereto, or are not marked in accordance with section 5, and amendments thereto, shall be subject to a civil penalty not to exceed \$500 for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any such person or entity exceed \$100,000 during any thirty-day period.

(b) A retail dealer or vending machine operator who knowingly sells or offers to sell cigarettes that are not listed on the directory as required by section 4, and amendments thereto, or are not marked in accordance with section 5, and amendments thereto, shall be subject to a civil penalty not to exceed \$500 for each pack of such cigarettes sold or offered for sale, provided that in no case shall the penalty against any retail dealer or vending machine operator exceed \$25,000 for sales or offers to sell during any thirty-day period.

(c) 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 4, and amendments thereto, shall be subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

(d) Any person violating any other provision in this act shall be subject to a civil penalty for a first offense not to exceed \$1,000, and for a subsequent offense subject to a civil penalty not to exceed \$5,000 for each such violation.

(e) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by section 3, and amendments thereto, shall be considered contraband and subject to forfeiture. Cigarettes forfeited pursuant to this section shall be destroyed. Prior to the destruction of any cigarette forfeited pursuant to this subsection, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(f) In addition to any other remedy provided by law, the state fire marshal or attorney general may file an action in the district court for a violation of this act, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this act, including enforcement costs relating to the specific violation and attorney’s fees. Each violation of this act or of rules or regulations adopted under this act constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief.

(g) Whenever any law enforcement personnel or duly authorized representative of the state fire marshal, director, or attorney general shall discover any cigarettes that have not been marked in the manner required by section 5, and amendments thereto, or for which a certification has not been filed as required by section 4, and amendments thereto, such personnel are hereby authorized and empowered to seize and take possession of such cigarettes with or without process or warrant. Such ciga-

rettes shall be turned over to the division of taxation, and shall be subject to forfeiture proceedings. Cigarettes seized pursuant to this section shall be destroyed. Prior to the destruction of any cigarette seized pursuant to this subsection, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

(h) Any action taken pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(i) The provisions of this section shall take effect and be in force from and after July 1, 2009.

Sec. 7. (a) The director, in the regular course of conducting inspections of wholesale dealers, agents, retail dealers or vending machine operators, as authorized under the Kansas cigarette and tobacco products act or other state statutes, rules, or regulations, may inspect such cigarettes to determine if the cigarettes are marked as required by section 5, and amendments thereto. If the cigarettes are not marked as required, the director may seize such contraband with or without process or warrant and shall notify the state fire marshal.

(b) The provisions of this section shall take effect and be in force from and after July 1, 2009.

Sec. 8. (a) To enforce the provisions of this act, the attorney general, the director and the state fire marshal, their duly authorized representatives and other law enforcement personnel 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 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, stored or offered for sale, is hereby directed and required to give the attorney general, the director and the state fire marshal, their duly authorized representatives and other law enforcement personnel the means, facilities and opportunity for the examinations authorized by this section.

(b) The provisions of this section shall take effect and be in force from and after July 1, 2009.

Sec. 9. (a) There is hereby established in the state treasury a separate, nonlapsing fund to be known as the cigarette fire safety standard and firefighter protection act fund which shall be administered by the state fire marshal. The fund shall consist of all moneys recovered as penalties under section 6, and amendments thereto. The moneys shall be deposited to the credit of the fund and in addition to any other money made available for such purpose, shall be made available to the state entity responsible for administering the provisions of this act to support fire safety and prevention programs.

(b) The provisions of this section shall take effect and be in force from and after July 1, 2009.

Sec. 10. (a) Nothing in this act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section 3, and amendments thereto, 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.

(b) The provisions of this section shall take effect and be in force from and after July 1, 2009.

Sec. 11. Prior to July 1, 2009, the state fire marshal may promulgate rules and regulations necessary to effectuate the purposes of this act. Such rules and regulations shall not become effective until July 1, 2009. The state fire marshal, director and attorney general may take any other action deemed necessary to prepare for the implementation and enforcement of the fire safety standard and firefighter protection act.

Sec. 12. Notwithstanding any other provision of law, a city or county shall not enact nor enforce any ordinance, resolution or other regulation conflicting with, or preempted by, any provision of this act or with any policy of this state expressed by this act, whether that policy be expressed by inclusion of a provision in this act or by exclusion of that subject from this act.

Sec. 13. The provisions of the fire safety and firefighter protection act shall become null and void if a federal reduced cigarette ignition propensity standard that preempts such act is adopted and becomes effective.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

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SENATE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE

as amended \_\_\_\_\_

HOUSE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*