

Article 10

Cigarette Ignition Propensity Standards

Section 8-17-270

Short title.

This article shall be known as the Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act.

(Act 2009-630, p. 1927, §1.)

Section 8-17-271

Definitions.

As used in this article, the following terms shall have the following meanings:

(1) AGENT. Any person authorized by the Department of Revenue to purchase and affix stamps on packages of cigarettes.

(2) CIGARETTE. Any of the following:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

b. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph a.

(3) MANUFACTURER. Any of the following:

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

b. Any entity that becomes a successor of an entity described in paragraph a.

(4) QUALITY CONTROL AND QUALITY ASSURANCE PROGRAM. 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. The program ensures that the testing repeatability remains within the required repeatability values stated in subdivision (6) of subsection (a) of Section 8-17-272 for all test trials used to certify cigarettes in accordance with this article.

(5) REPEATABILITY. The range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(6) RETAIL DEALER. Any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(7) SALE. 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 therefor. 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, are considered sales.

(8) SELL. To sell or to offer or agree to do the same.

(9) WHOLESALE DEALER. Any person, other than a manufacturer, who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and 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.

(Act 2009-630, p. 1927, §2.)

Section 8-17-272

Testing and certification of cigarettes.

(a) Except as provided in subsection (g), 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 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 8-17-273, and the cigarettes have been marked in accordance with Section 8-17-274.

(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 percent 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 only be applied 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 consistent with this article 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.

(b) Each cigarette listed in a certification submitted pursuant to Section 8-17-273 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.

(c) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test method prescribed in subdivision (1) of subsection (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 subdivision (3) of subsection (a), the manufacturer may employ the test method and performance standard to certify the cigarette pursuant to Section 8-17-273. 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 article, 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 reduced cigarette ignition propensity 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 article. All other applicable requirements of this section shall apply to the manufacturer.

(d) 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 ten thousand dollars (\$10,000) for each day after the 60th day that the manufacturer does not make the copies available.

(e) 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 subdivision (3) of subsection (a).

(f) 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 article. The report and legislative

recommendations shall be submitted no later than June 30th following the conclusion of each three-year period.

(g) The requirements of subsection (a) shall not prohibit any of the following:

(1) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2010, if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to January 1, 2010, and the wholesale or retail dealer can establish that the inventory was purchased prior to January 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year.

(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term consumer testing shall mean 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 the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for the assessment.

(h) This article shall be so interpreted and construed as to effectuate its general purpose to make uniform this article with the laws of those states that have enacted reduced cigarette ignition propensity laws as of January 1, 2010.

(Act 2009-630, p. 1927, §3.)

Section 8-17-273

Manufacturer to submit written certification; recertification; fee.

(a) Each manufacturer shall submit to the State Fire Marshal a written certification attesting to each of the following:

(1) Each cigarette listed in the certification has been tested in accordance with Section 8-17-272.

(2) Each cigarette listed in the certification meets the performance standard set forth in Section 8-17-272.

(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 light or ultra light.

(3) Length in millimeters.

(4) Circumference in millimeters.

(5) Flavor, such as menthol or chocolate, if applicable.

(6) Filter or non-filter.

(7) Package description, such as soft pack or box.

(8) Marking pursuant to Section 8-17-274.

(9) The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test.

(10) The date that the testing occurred.

(c) The State Fire Marshal shall make the certifications available to the Attorney General for purposes consistent with this article and the Department of Revenue for the purposes of ensuring compliance with this section.

(d) Each cigarette certified under this section shall be recertified every three years.

(e) At the time a manufacturer submits a written certification under this section, the manufacturer shall pay to the State Fire Marshal a fee of one thousand dollars (\$1,000) for each brand family of cigarettes identified in the certification. The fee paid shall apply to all cigarettes listed in the brand family identified in the certification and shall include any new cigarette certified within the brand family during the three-year certification period.

(f) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this article, 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 8-17-272 and maintains records of that retesting as required by Section 8-17-272. Any altered cigarette which does not meet the performance standard set forth in Section 8-17-272 may not be sold in this state.

(Act 2009-630, p. 1927, §4.)

Section 8-17-274

Fire Standards Compliant marking.

(a) Cigarettes that are certified by a manufacturer in accordance with Section 8-17-273 shall be marked to indicate compliance with the requirements of Section 8-17-272. The marking shall be in eight point type or larger and consist of the letters FSC, which signifies Fire Standards Compliant, permanently printed, stamped, engraved, or embossed on the package at or near the UPC Code.

(b) A manufacturer shall use only one marking, and shall apply this marking uniformly for all packages including, but not limited to, packs, cartons, cases, and brands marketed by that manufacturer.

(c) Manufacturers certifying cigarettes in accordance with Section 8-17-273 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the State Fire Marshal, the Department of Revenue, the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

(Act 2009-630, p. 1927, §5.)

Section 8-17-275

Violations.

(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, in violation of Section 8-17-272, shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold or offered for sale provided that in no case shall the penalty against a person or entity for that violation exceed one hundred thousand dollars (\$100,000) during any 30-day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of Section 8-17-272 shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold or offered for sale, provided that in no case shall the penalty against any retail dealer exceed twenty-five thousand dollars (\$25,000) for sales or offers to sell during any 30-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 8-17-273 shall be subject to a civil penalty of at least seventy-five thousand dollars (\$75,000) and not to exceed two hundred fifty thousand dollars (\$250,000) for each false certification.

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

(e) Whenever any law enforcement personnel or duly authorized representative of the State Fire Marshal shall discover any cigarettes for which no certification has been filed as required by Section 8-17-273, or that have not been marked in the manner required by Section 8-17-274, such personnel is hereby authorized and empowered to seize and take possession of the cigarettes. Cigarettes seized pursuant to this section shall be destroyed, provided, however, that prior to the destruction of any cigarette seized pursuant to these provisions, 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 Attorney General may file an action in circuit court for a violation of this article, including petitioning for preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or any other person or entity to enjoin such entity from selling, offering to sell, or affixing tax stamps to any cigarette that does not comply with the requirements of this article, or to recover any costs or damages suffered by the state because of a violation of this article, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this article or rules adopted under this article constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief. Upon obtaining judgment for injunctive relief under this section, the State Fire Marshal or Attorney General shall provide a copy of the judgment to all wholesale dealers and agents to which the cigarette has been sold.

(Act 2009-630, p. 1927, §6.)

Section 8-17-276

Promulgation of rules; inspections.

(a) The State Fire Marshal may promulgate rules pursuant to the Alabama Administrative Procedure Act necessary to effectuate the purposes of this article.

(b) The Department of Revenue in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under Section 40-2-11, may inspect the cigarettes to determine if the cigarettes are marked as required by Section 8-17-274. If the cigarettes are not marked as required, the Department of Revenue shall notify the State Fire Marshal.

(Act 2009-630, p. 1927, §7.)

Section 8-17-277

Enforcement.

To enforce this article, the Attorney General, the Department of Revenue, 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, 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, the Department of Revenue, 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.

(Act 2009-630, p. 1927, §8.)

Section 8-17-278

Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Fund.

There is hereby established in the State Treasury a special fund to be known as the Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Fund. The fund shall consist of all certification fees paid under Section 8-17-273 and monies recovered as penalties under Section 8-17-275. The monies shall be deposited to the credit of the fund and shall, in addition to any other monies made available for that purpose, be made available to the State Fire Marshal to support fire safety and prevention programs. All payments from the Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Fund shall be made on the audit and warrant of the state Comptroller on vouchers certified and submitted by the State Fire Marshal.

(Act 2009-630, p. 1927, §9.)

Section 8-17-279

Cigarettes for sale outside state.

Nothing in this article shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 8-17-272 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 the cigarettes will not be sold or offered for sale to persons located in this state.

(Act 2009-630, p. 1927, §10.)

Section 8-17-280

Federal preemption.

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

(Act 2009-630, p. 1927, §11.)

Section 8-17-281

Relation to local provisions.

This article preempts any local law, ordinance, or regulation that conflicts with any provision of this article or any policy of the state implemented in accordance with this article and, notwithstanding any other provision of law, a governmental unit of this state may not enact or enforce an ordinance, local law, or rule conflicting with or preempted by this article.

(Act 2009-630, p. 1927, §12.)