

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 205

95TH GENERAL ASSEMBLY

0836S.10T

2009

AN ACT

To amend chapter 320, RSMo, by adding thereto nine new sections relating to reduced ignition propensity cigarettes, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 320, RSMo, is amended by adding thereto nine new sections, to be
2 known as sections 320.350, 320.353, 320.356, 320.359, 320.362, 320.365, 320.368, 320.371,
3 and 320.374, to read as follows:

320.350. 1. Sections 320.350 to 320.374 shall be known and may be cited as the
2 **"Fire Safety Standard and Firefighter Protection Act".**

3 **2. As used in sections 320.350 to 320.374, the following terms shall mean:**

4 **(1) "Cigarette", an item manufactured of tobacco or any substitute therefor,**
5 **wrapped in paper or any substitute therefor, weighing not to exceed three pounds per one**
6 **thousand cigarettes and which is commonly classified, labeled or advertised as a cigarette;**

7 **(2) "Department", the department of revenue;**

8 **(3) "Manufacturer", any person engaged in the manufacture or production of**
9 **cigarettes;**

10 **(4) "Quality control and quality assurance program", the laboratory procedures**
11 **implemented to ensure that operator bias, systematic and nonsystematic methodological**
12 **errors, and equipment-related problems do not affect the results of the testing. Such a**
13 **program shall ensure that the testing repeatability remains within the required**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 repeatability values stated in subdivision (6) of subsection 1 of section 320.353 for all test
15 trials used to certify cigarettes in accordance with sections 320.350 to 320.374;

16 (5) "Repeatability", the range of values within which the repeat results of cigarette
17 test trials from a single laboratory will fall ninety-five percent of the time;

18 (6) "Retailer", any person who sells to a consumer or to any person for any
19 purpose other than resale;

20 (7) "Sale", in this instance is defined to be and declared to include sales, barter,
21 exchanges and every other manner, method and form of transferring the ownership of
22 personal property from one person to another;

23 (8) "Sell", to sell, or offer or agree to do the same;

24 (9) "Wholesaler", any person, firm, or corporation organized and existing, or doing
25 business, primarily to sell cigarettes or tobacco products to, and render service to, retailers
26 in the territory the person, firm, or corporation chooses to serve; that purchases cigarettes
27 or tobacco products directly from the manufacturer; that carries at all times at his or its
28 principal place of business a representative stock of cigarettes or tobacco products for sale;
29 and that comes into the possession of cigarettes or tobacco products for the purpose of
30 selling them to retailers or to persons outside or within the state who might resell or retail
31 the cigarettes or tobacco products to consumers. This shall include any manufacturer,
32 jobber, broker, agent, or other person, whether or not enumerated in this chapter, who so
33 sells or so distributes cigarettes or tobacco products.

320.353. 1. Except as provided in subsection 7 of this section, no cigarettes shall be
2 sold or offered for sale in this state or offered for sale or sold to persons located in this state
3 unless the cigarettes have been tested in accordance with the test method and meet the
4 performance standard specified in this section, a written certification has been filed by the
5 manufacturer with the state fire marshal in accordance with section 320.356, and the
6 cigarettes have been marked in accordance with section 320.359. The following shall apply
7 to such testing:

8 (1) Testing of cigarettes shall be conducted in accordance with the American
9 Society of Testing and Materials (ASTM) standard E2187-04, "Standard Test Method for
10 Measuring the Ignition Strength of Cigarettes";

11 (2) Testing shall be conducted on ten layers of filter paper;

12 (3) No more than twenty-five percent of the cigarettes tested in a test trial in
13 accordance with this section shall exhibit full-length burns. Forty replicate tests shall
14 comprise a complete test trial for each cigarette tested;

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

17 **(5) Written certifications shall be based upon testing conducted by a laboratory**
18 **that has been accredited under standard ISO/IEC 17025 of the International Organization**
19 **for Standardization (ISO), or other comparable accreditation standard required by the**
20 **state fire marshal;**

21 **(6) Laboratories conducting testing in accordance with this section shall implement**
22 **a quality control and quality assurance program that includes a procedure that will**
23 **determine the repeatability of the testing results. The repeatability value shall be no**
24 **greater than nineteen one-hundredths;**

25 **(7) Nothing in this section shall be construed as requiring additional testing if**
26 **cigarettes are tested consistent with sections 320.350 to 320.374 for any other purpose;**

27 **(8) Testing performed or sponsored by the state fire marshal to determine a**
28 **cigarette's compliance with the performance standard required shall be conducted in**
29 **accordance with this section.**

30 **2. Each cigarette listed in a certification submitted under section 320.356 that uses**
31 **lowered permeability bands in the cigarette paper to achieve compliance with the**
32 **performance standard set forth in this section shall have at least two nominally identical**
33 **bands on the paper surrounding the tobacco column. At least one complete band shall be**
34 **located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on**
35 **which the bands are positioned by design, there shall be at least two bands fully located at**
36 **least fifteen millimeters from the lighting end and ten millimeters from the filter end of the**
37 **tobacco column, or ten millimeters from the labeled end of the tobacco column for**
38 **nonfiltered cigarettes.**

39 **3. A manufacturer of a cigarette that the state fire marshal determines cannot be**
40 **tested in accordance with the test method described in subdivision (1) of subsection 1 of**
41 **this section shall propose a test method and performance standard for the cigarette to the**
42 **state fire marshal. Upon approval of the proposed test method and a determination by the**
43 **state fire marshal that the performance standard proposed by the manufacturer is**
44 **equivalent to the performance standard prescribed in subdivision (3) of subsection 1 of this**
45 **section, the manufacturer may employ such test method and performance standard to**
46 **certify such cigarette under section 320.356. If the state fire marshal determines that**
47 **another state has enacted reduced cigarette ignition propensity standards that include a**
48 **test method and performance standard that are the same as those contained in sections**
49 **320.350 to 320.374, and the state fire marshal finds that the officials responsible for**
50 **implementing such requirements have approved the proposed alternative test method and**
51 **performance standard for a particular cigarette proposed by a manufacturer as meeting**
52 **the fire safety standards of that state's law or regulation under a legal provision**

53 comparable to this section, the state fire marshal shall authorize such manufacturer to
54 employ the alternative test method and performance standard to certify that cigarette for
55 sale in this state, unless the state fire marshal demonstrates a reasonable basis why the
56 alternative test should not be accepted under sections 320.350 to 320.374. All other
57 applicable requirements of this section shall apply to the manufacturer.

58 **4. Each manufacturer shall maintain copies of the reports of all tests conducted on**
59 **all cigarettes offered for sale for a period of three years, and shall make copies of such**
60 **reports available to the state fire marshal and the state attorney general upon written**
61 **request. Any manufacturer who fails to make copies of such reports available within sixty**
62 **days of receiving a written request shall be subject to a civil penalty not to exceed ten**
63 **thousand dollars for each day after the sixtieth day that the manufacturer does not make**
64 **such copies available.**

65 **5. The state fire marshal may adopt a subsequent ASTM Standard Test Method**
66 **for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent**
67 **method does not result in a change in the percentage of full-length burns exhibited by any**
68 **tested cigarette when compared to the percentage of full-length burns the same cigarette**
69 **would exhibit when tested in accordance with ASTM Standard E2187-04 and the**
70 **performance standard in subdivision (3) of subsection 1 of this section.**

71 **6. The state fire marshal shall review the effectiveness of this section and report**
72 **every three years to the general assembly the state fire marshal's findings and, if**
73 **appropriate, recommendations for legislation to improve the effectiveness of sections**
74 **320.350 to 320.374. The report and legislative recommendations shall be submitted by**
75 **June thirtieth following the conclusion of each three-year period.**

76 **7. The requirements of this section shall not prohibit:**

77 **(1) Wholesalers or retailers from selling their existing inventory of cigarettes on or**
78 **after the effective date of sections 320.350 to 320.374 if the wholesaler or retailer can**
79 **establish that state tax stamps were affixed to the cigarettes prior to such effective date and**
80 **the wholesaler or retailer can establish that the inventory was purchased prior to such**
81 **effective date; or**

82 **(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes**
83 **of this subdivision, "consumer testing" means an assessment of cigarettes that is conducted**
84 **by a manufacturer, or under the control and direction of a manufacturer, for the purpose**
85 **of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of**
86 **cigarettes that is reasonably necessary for such assessment.**

87 **8. The cigarette testing, performance standard, and packaging provisions in**
88 **sections 320.350 to 320.374 shall be implemented in a manner to obtain uniformity with the**

89 laws of those states that have enacted reduced cigarette ignition propensity standards as
90 of January 1, 2011.

2 **320.356. 1. Each manufacturer shall submit to the state fire marshal a written**
3 **certification attesting that each cigarette listed in the certification has been tested in**
4 **accordance with and meets the performance standard set forth in section 320.353.**

5 **2. Each cigarette listed in the certification shall be described with the following**
6 **information:**

- 7 (1) Brand or trade name on the package;
- 8 (2) Style, such as light or ultra light;
- 9 (3) Length in millimeters;
- 10 (4) Circumference in millimeters;
- 11 (5) Flavor, such as menthol or chocolate, if applicable;
- 12 (6) Filter or nonfilter;
- 13 (7) Package description, such as soft pack or box;
- 14 (8) Marking under section 320.359;
- 15 (9) The name, address, and telephone number of the laboratory, if different than
16 the manufacturer that conducted the test; and
- 17 (10) The date that the testing occurred.

18 **3. The state fire marshal shall make the certifications available to the state attorney**
19 **general and the department for purposes consistent with sections 320.350 to 320.374. Not**
20 **later than January 31, 2011, the department shall develop, maintain, and update in a**
21 **timely manner a directory listing all cigarette manufacturers and brand styles for which**
22 **a certificate required under section 320.356 has been filed with the state fire marshal. The**
23 **directory shall be for informational purposes only and shall be continuously and**
24 **conspicuously posted on the department's web site for public inspection. Wholesalers and**
25 **retailers may lawfully purchase and sell any and all brand styles listed on the directory,**
26 **including inventory of said brand styles. Notwithstanding the other provisions of this**
27 **subsection, unless enjoined by a court of competent jurisdiction under subsection 6 of**
28 **section 320.362 or subject to sequestration under subsection 5 of section 320.362, any and**
29 **all brand styles that satisfy the requirements of section 320.353 may be lawfully sold in the**
30 **state.**

31 **4. Each cigarette certified under this section shall be recertified every three years.**

32 **5. For each brand family of cigarettes listed for certification, a manufacturer shall**
33 **pay a fee of one thousand dollars to the state fire marshal. The fee paid shall apply to all**
34 **cigarettes within the brand family certified and shall include any new cigarette certified**
within the brand family during the three year certification period.

35 **6. If a manufacturer has certified a cigarette under this section and thereafter**
36 **makes any change to such cigarette that is likely to alter its compliance with the reduced**
37 **cigarette ignition propensity standards required by sections 320.350 to 320.374, such**
38 **cigarette shall not be sold or offered for sale in this state until the manufacturer retests the**
39 **cigarette in accordance with the testing standards and maintains records of such retesting**
40 **as required by section 320.353. Any altered cigarette which does not meet the performance**
41 **standard set forth in section 320.353 shall not be sold in this state.**

320.359. 1. Cigarettes that are certified by a manufacturer in accordance with
2 **section 320.356 shall be marked to indicate compliance with the requirements of section**
3 **320.353. The marking shall be in eight-point type or larger and consist of the letters FSC,**
4 **which signifies fire standard compliant, permanently printed, stamped, engraved, or**
5 **embossed on the package at or near the UPC Code.**

6 **2. A manufacturer shall use only one marking and shall apply such marking**
7 **uniformly for all packages, including but not limited to packs, cartons, and cases, and**
8 **brands marketed by such manufacturer.**

9 **3. Manufacturers certifying cigarettes in accordance with section 320.356 shall**
10 **provide a copy of the certifications to all wholesalers to which they sell cigarettes.**
11 **Wholesalers and retailers shall permit the department and the state attorney general, and**
12 **their employees, to inspect markings of cigarette packaging marked in accordance with this**
13 **section.**

320.362. 1. A manufacturer, wholesaler, or other person or entity who knowingly
2 **sells or offers for sale cigarettes, other than through retail sale, in violation of section**
3 **320.353 shall be subject to a civil penalty not to exceed one hundred dollars for each pack**
4 **of such cigarettes sold or offered for sale; provided that, in no case shall the penalty against**
5 **any such person or entity exceed one hundred thousand dollars during any thirty-day**
6 **period.**

7 **2. A retailer who knowingly sells or offers for sale cigarettes in violation of section**
8 **320.353 shall be subject to a civil penalty not to exceed one hundred dollars for each pack**
9 **of such cigarettes sold or offered for sale; provided that, in no case shall the penalty against**
10 **any retailer exceed twenty-five thousand dollars for sales or offers for sale during any**
11 **thirty-day period.**

12 **3. In addition to any other penalty prescribed by law, any corporation, partnership,**
13 **sole proprietorship, limited partnership, or association engaged in the manufacture of**
14 **cigarettes that knowingly makes a false certification under section 320.356 shall be subject**
15 **to a civil penalty of at least seventy-five thousand dollars and not to exceed two hundred**
16 **fifty thousand dollars for each such false certification.**

17 **4. Any person who violates any other provision of sections 320.350 to 320.374 shall**
18 **be subject to a civil penalty for a first offense not to exceed one thousand dollars and for**
19 **any subsequent offense a civil penalty not to exceed five thousand dollars for each such**
20 **violation.**

21 **5. Whenever the state attorney general or the department discovers any cigarettes**
22 **for which no certification has been filed as required by section 320.356 or that have not**
23 **been marked in the manner required by section 320.359, such cigarettes shall be**
24 **sequestered by the owner and not sold or transferred for fourteen days, wherein the state**
25 **attorney general may file an action in a court of competent jurisdiction petitioning for**
26 **injunctive relief to enjoin the sale or offer for sale of such cigarettes. If the state attorney**
27 **general does not file an action within fourteen days, the owner may lawfully sell the**
28 **sequestered cigarettes.**

29 **6. In addition to any other remedy provided by law, the state attorney general may**
30 **file an action in a court of competent jurisdiction for a violation of sections 320.350 to**
31 **320.374, including petitioning:**

32 **(1) For injunctive relief against any manufacturer, importer, wholesaler, retailer,**
33 **or any other person or entity to enjoin such entity from selling, offering for sale, or affixing**
34 **tax stamps to any cigarette that does not comply with the requirements of sections 320.350**
35 **to 320.374; or**

36 **(2) To recover any costs or damages incurred by the state as a result of such**
37 **violation, including enforcement costs relating to the specific violation and attorney's fees.**
38

39 **Each violation of sections 320.350 to 320.374 or rules promulgated thereto shall constitute**
40 **a separate civil violation for which the state attorney general may obtain relief. Upon**
41 **obtaining judgment for injunctive relief under this section, the state attorney general shall**
42 **provide a copy of the judgment to all wholesalers to which the cigarettes have been sold.**

320.365. 1. The department of revenue may promulgate rules to implement the
2 **provisions of sections 320.350 to 320.374. Any rule or portion of a rule, as that term is**
3 **defined in section 536.010, RSMo, that is created under the authority delegated in sections**
4 **320.350 to 320.374 shall become effective only if it complies with and is subject to all of the**
5 **provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections**
6 **320.350 to 320.374 and chapter 536, RSMo, are nonseverable and if any of the powers**
7 **vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the**
8 **effective date, or to disapprove and annul a rule are subsequently held unconstitutional,**
9 **then the grant of rulemaking authority and any rule proposed or adopted after the**
10 **effective date of this section shall be invalid and void.**

11 **2. The department, in the regular course of conducting inspections of wholesalers**
12 **and retailers as authorized under section 149.041, RSMo, may inspect such cigarettes to**
13 **determine if the cigarettes are marked as required by section 320.359. If the cigarettes are**
14 **not marked as required, the department shall notify the state attorney general.**

320.368. To enforce the provisions of sections 320.350 to 320.374, the state attorney
2 **general and the department are authorized to examine only the books, papers, invoices,**
3 **and other business records pertaining to the sale and receipt of any type of cigarettes**
4 **suspected of failing to conform to the fire safety requirements of sections 320.350 to**
5 **320.374 of any person in possession or control of any premises where such cigarettes are**
6 **placed, stored, sold, or offered for sale, as well as the stock of such cigarettes on the**
7 **premises. Every person in the possession or control of any premises where cigarettes are**
8 **placed, sold, or offered for sale is directed and required to give the state attorney general**
9 **and the department the opportunity for the examinations authorized by this section.**

320.371. 1. There is hereby created in the state treasury the "Cigarette Fire Safety
2 **Standard and Firefighter Protection Act Fund" which shall consist of moneys collected**
3 **under sections 320.350 to 320.374. The fund shall be administered by the state fire**
4 **marshal. Upon appropriation, moneys in the fund shall be made available to the state fire**
5 **marshal to support fire safety and prevention programs.**

6 **2. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any**
7 **moneys remaining in the fund at the end of the biennium shall not revert to the credit of**
8 **the general revenue fund.**

9 **3. The state treasurer shall invest moneys in the fund in the same manner as other**
10 **funds are invested. Any interest and moneys earned on such investments shall be credited**
11 **to the fund.**

320.374. 1. Nothing in sections 320.350 to 320.374 shall be construed to prohibit
2 **any person or entity from manufacturing or selling cigarettes that do not meet the**
3 **requirements of section 320.353 if the cigarettes are or will be stamped for sale in another**
4 **state or are packaged for sale outside the United States and such person or entity has taken**
5 **reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons**
6 **located in this state.**

7 **2. Sections 320.350 to 320.374 shall terminate if a federal cigarette ignition**
8 **propensity standard is enacted.**

9 **3. Sections 320.350 to 320.374 preempt any local law, ordinance, or regulation that**
10 **conflicts with any provision of sections 320.350 to 320.374 or any policy of the state**
11 **implemented in accordance with sections 320.350 to 320.374. Notwithstanding any other**
12 **provision of law, the local governmental units of this state may neither enact nor enforce**

13 **any ordinance or other local law or regulation conflicting with, or preempted by, any**
14 **provision of sections 320.350 to 320.374 or with any policy of this state expressed by**
15 **sections 320.350 to 320.374 whether that policy is expressed by inclusion of a provision in**
16 **such sections or by exclusion of that subject from such sections.**

Section B. Section A of this act shall become effective January 1, 2011.

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