

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 205
95TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 23, 2009, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

0836S.07C

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 known as sections 320.350, 320.353, 320.356, 320.359, 320.362, 320.365, 320.368, 320.371, 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 "Fire Safety Standard and Firefighter Protection Act".

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

(1) "Agent", any person authorized by the department of revenue to purchase and affix stamps on packages of cigarettes;

(2) "Cigarette":

(a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(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 as described in paragraph (a) of this subdivision;

(3) "Department", the department of revenue;

(4) "Manufacturer":

(a) Any entity which manufactures or otherwise produces

18 cigarettes or causes cigarettes to be manufactured or produced
19 anywhere that such manufacturer intends to be sold in this state,
20 including cigarettes intended to be sold in the United States through
21 an importer; or

22 (b) Any entity that becomes a successor of an entity described in
23 paragraph (a) of this subdivision;

24 (5) "Quality control and quality assurance program", the
25 laboratory procedures implemented to ensure that operator bias,
26 systematic and nonsystematic methodological errors, and equipment-
27 related problems do not affect the results of the testing. Such a
28 program shall ensure that the testing repeatability remains within the
29 required repeatability values stated in subdivision (6) of subsection 1
30 of section 320.353 for all test trials used to certify cigarettes in
31 accordance with sections 320.350 to 320.374;

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

35 (7) "Retail dealer", any person, other than a manufacturer or
36 wholesale dealer, engaged in selling cigarettes or tobacco products;

37 (8) "Sale", any transfer of title or possession, or both, exchange
38 or barter, conditional or otherwise, in any manner or by any means
39 whatever or any agreement therefor. In addition to cash and credit
40 sales, the giving of cigarettes as samples, prizes, or gifts, and the
41 exchanging of cigarettes for any consideration other than money are
42 considered sales;

43 (9) "Sell", to sell, or offer or agree to do the same;

44 (10) "Wholesale dealer", any person other than a manufacturer
45 who sells cigarettes or tobacco products to retail dealers or other
46 person for purposes of resale, and any person who owns, operates, or
47 maintains one or more cigarette or tobacco product vending machines
48 in, at, or upon premises owned or occupied by any other person.

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

7 accordance with section 320.356, and the cigarettes have been marked
8 in accordance with section 320.359. The following shall apply to such
9 testing:

10 (1) Testing of cigarettes shall be conducted in accordance with
11 the American Society of Testing and Materials (ASTM) standard E2187-
12 04, "Standard Test Method for Measuring the Ignition Strength of
13 Cigarettes";

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

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

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

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

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

30 (7) Nothing in this section shall be construed as requiring
31 additional testing if cigarettes are tested consistent with sections
32 320.350 to 320.374 for any other purpose;

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

36 2. Each cigarette listed in a certification submitted under section
37 320.356 that uses lowered permeability bands in the cigarette paper to
38 achieve compliance with the performance standard set forth in this
39 section shall have at least two nominally identical bands on the paper
40 surrounding the tobacco column. At least one complete band shall be
41 located at least fifteen millimeters from the lighting end of the
42 cigarette. For cigarettes on which the bands are positioned by design,
43 there shall be at least two bands fully located at least fifteen

44 millimeters from the lighting end and ten millimeters from the filter
45 end of the tobacco column, or ten millimeters from the labeled end of
46 the tobacco column for nonfiltered cigarettes.

47 3. A manufacturer of a cigarette that the state fire marshal
48 determines cannot be tested in accordance with the test method
49 described in subdivision (1) of subsection 1 of this section shall propose
50 a test method and performance standard for the cigarette to the state
51 fire marshal. Upon approval of the proposed test method and a
52 determination by the state fire marshal that the performance standard
53 proposed by the manufacturer is equivalent to the performance
54 standard prescribed in subdivision (3) of subsection 1 of this section,
55 the manufacturer may employ such test method and performance
56 standard to certify such cigarette under section 320.356. If the state
57 fire marshal determines that another state has enacted reduced
58 cigarette ignition propensity standards that include a test method and
59 performance standard that are the same as those contained in sections
60 320.350 to 320.374, and the state fire marshal finds that the officials
61 responsible for implementing such requirements have approved the
62 proposed alternative test method and performance standard for a
63 particular cigarette proposed by a manufacturer as meeting the fire
64 safety standards of that state's law or regulation under a legal
65 provision comparable to this section, the state fire marshal shall
66 authorize such manufacturer to employ the alternative test method and
67 performance standard to certify that cigarette for sale in this state,
68 unless the state fire marshal demonstrates a reasonable basis why the
69 alternative test should not be accepted under sections 320.350 to
70 320.374. All other applicable requirements of this section shall apply
71 to the manufacturer.

72 4. Each manufacturer shall maintain copies of the reports of all
73 tests conducted on all cigarettes offered for sale for a period of three
74 years, and shall make copies of such reports available to the state fire
75 marshal and the state attorney general upon written request. Any
76 manufacturer who fails to make copies of such reports available within
77 sixty days of receiving a written request shall be subject to a civil
78 penalty not to exceed ten thousand dollars for each day after the
79 sixtieth day that the manufacturer does not make such copies available.

80 5. The state fire marshal may adopt a subsequent ASTM Standard

81 **Test Method for Measuring the Ignition Strength of Cigarettes upon a**
82 **finding that such subsequent method does not result in a change in the**
83 **percentage of full-length burns exhibited by any tested cigarette when**
84 **compared to the percentage of full-length burns the same cigarette**
85 **would exhibit when tested in accordance with ASTM Standard E2187-04**
86 **and the performance standard in subdivision (3) of subsection 1 of this**
87 **section.**

88 **6. The state fire marshal shall review the effectiveness of this**
89 **section and report every three years to the general assembly the state**
90 **fire marshal's findings and, if appropriate, recommendations for**
91 **legislation to improve the effectiveness of sections 320.350 to**
92 **320.374. The report and legislative recommendations shall be submitted**
93 **by June thirtieth following the conclusion of each three-year period.**

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

95 **(1) Wholesale or retail dealers from selling their existing**
96 **inventory of cigarettes on or after the effective date of sections 320.350**
97 **to 320.374 if the wholesale or retail dealer can establish that state tax**
98 **stamps were affixed to the cigarettes prior to such effective date and**
99 **the wholesale or retail dealer can establish that the inventory was**
100 **purchased prior to such effective date; or**

101 **(2) The sale of cigarettes solely for the purpose of consumer**
102 **testing. For purposes of this subdivision, "consumer testing" means an**
103 **assessment of cigarettes that is conducted by a manufacturer, or under**
104 **the control and direction of a manufacturer, for the purpose of**
105 **evaluating consumer acceptance of such cigarettes, utilizing only the**
106 **quantity of cigarettes that is reasonably necessary for such assessment.**

107 **8. The cigarette testing, performance standard, and packaging**
108 **provisions in sections 320.350 to 320.374 shall be interpreted in a**
109 **manner to obtain uniformity with the laws of those states that have**
110 **enacted reduced cigarette ignition propensity standards as of January**
111 **1, 2011.**

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

5 **2. Each cigarette listed in the certification shall be described**
6 **with the following 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,
- 16 if different than 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
19 to the state attorney general for purposes consistent with sections
20 320.350 to 320.374 and the department of revenue for purposes of
21 ensuring compliance with this section. A list shall be compiled by the
22 attorney general and made available to the public.

23 4. Each cigarette certified under this section shall be recertified
24 every three years.

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

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

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

6 embossed on the package at or near the UPC Code.

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

10 3. Manufacturers certifying cigarettes in accordance with section
11 320.356 shall provide a copy of the certifications to all wholesale
12 dealers and agents to which they sell cigarettes. Wholesale dealers,
13 agents, and retail dealers shall permit the department and the state
14 attorney general, and their employees, to inspect markings of cigarette
15 packaging marked in accordance with this section.

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

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

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

20 4. Any person who violates any other provision of sections
21 320.350 to 320.374 shall be subject to a civil penalty for a first offense
22 not to exceed one thousand dollars and for any subsequent offense a
23 civil penalty not to exceed five thousand dollars for each such
24 violation.

25 5. Whenever the state attorney general or the department
26 discovers any cigarettes for which no certification has been filed as
27 required by section 320.356 or that have not been marked in the

28 manner required by section 320.359, such cigarettes shall be
29 sequestered by the owner and not sold or transferred for fourteen days,
30 wherein the state attorney general may file an action in a court of
31 competent jurisdiction petitioning for injunctive relief to enjoin the
32 sale or offer for sale of such cigarettes. If the state attorney general
33 does not file an action within fourteen days, the owner may lawfully
34 sell the sequestered cigarettes.

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

38 (1) For injunctive relief against any manufacturer, importer,
39 wholesale dealer, retail dealer, agent, or any other person or entity to
40 enjoin such entity from selling, offering for sale, or affixing tax stamps
41 to any cigarette that does not comply with the requirements of sections
42 320.350 to 320.374; or

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

46 Each violation of sections 320.350 to 320.374 or rules promulgated
47 thereto shall constitute a separate civil violation for which the state
48 attorney general may obtain relief. Upon obtaining judgment for
49 injunctive relief under this section, the state attorney general shall
50 provide a copy of the judgment to all wholesale dealers and agents to
51 which the cigarettes have been sold.

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

14 2. The department, in the regular course of conducting
15 inspections of wholesale dealers, agents, and retail dealers as
16 authorized under section 149.041, RSMo, may inspect such cigarettes to
17 determine if the cigarettes are marked as required by section 320.359.
18 If the cigarettes are not marked as required, the department shall
19 notify the state attorney general.

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

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

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

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

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

7 sold or offered for sale to persons located in this state.

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

10 3. Sections 320.350 to 320.374 preempt any local law, ordinance,
11 or regulation that conflicts with any provision of sections 320.350 to
12 320.374 or any policy of the state implemented in accordance with
13 sections 320.350 to 320.374. Notwithstanding any other provision of law,
14 the local governmental units of this state may neither enact nor enforce
15 any ordinance or other local law or regulation conflicting with, or
16 preempted by, any provision of sections 320.350 to 320.374 or with any
17 policy of this state expressed by sections 320.350 to 320.374 whether
18 that policy is expressed by inclusion of a provision in such sections or
19 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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