

SENATE BILL No. 544

By Committee on Federal and State Affairs

2-5

10 AN ACT concerning reduced ignition propensity cigarettes.

11

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

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

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

18 Sec. 2. As used in this act:

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

21 (b) "Cigarette" means any roll for smoking, whether made wholly or
22 in part of tobacco or any other substance, irrespective of size or shape,
23 and irrespective of tobacco or substance being flavored, adulterated or
24 mixed with any other ingredient, ~~the wrapper or cover of which is made~~
25 ~~in whole or part of paper or any other substance or material, other than~~
26 ~~only leaf~~ **if the wrapper is in greater part made of any material except**
27 tobacco.

28 (c) "Director," "retail dealer," **"vending machine operator,"** "sale"
29 and "wholesale dealer" shall have the meanings ascribed thereto in K.S.A.
30 79-3301, and amendments thereto.

31 (d) "Manufacturer" means:

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

36 (2) the first purchaser anywhere that intends to resell in the United
37 States cigarettes manufactured anywhere that the original manufacturer
38 or maker does not intend to be sold in the United States; or

39 (3) any entity that becomes a successor of an entity described in par-
40 agraph (1) or (2).

41 (e) "Quality control and quality assurance program" means the lab-
42 oratory procedures implemented to ensure that operator bias, systematic
43 and non-systematic methodological errors and equipment-related prob-

1 lems do not affect the results of the testing. Such a program ensures that
2 the testing repeatability remains within the required repeatability values
3 required by section 3, and amendments thereto, for all test trials used to
4 certify cigarettes in accordance with this act.

5 (f) “Repeatability” means the range of values within which the repeat
6 results of cigarette test trials from a single laboratory will fall 95% of the
7 time.

8 (g) “Sell” means to sell, or to offer or agree to do the same.

9 Sec. 3. (a) Except as provided in subsection ~~(g)~~ **(h)**, no cigarettes may
10 be sold or offered for sale in this state or offered for sale or sold to any
11 person located in this state unless the cigarettes have been tested in ac-
12 cordance with the test method and meet the performance standard spec-
13 ified in this section, a written certification has been filed by the manu-
14 facturer with the state fire marshal in accordance with section 4, and
15 amendments thereto, and the cigarettes have been marked in accordance
16 with section 5, and amendments thereto.

17 (b) (1) Testing of cigarettes shall be conducted in accordance with
18 the American society of testing and materials (ASTM) standard E2187-
19 04, “Standard Test Method for Measuring the Ignition Strength of
20 Cigarettes.”

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

22 (3) No more than 25% of the cigarettes tested in a test trial in ac-
23 cordance with this section shall exhibit full-length burns. Forty replicate
24 tests shall comprise a complete test trial for each cigarette tested.

25 (4) The performance standard required by this section shall be ap-
26 plied only to a complete test trial.

27 (5) Written certifications shall be based upon testing conducted by a
28 laboratory that has been accredited pursuant to standard ISO/IEC 17025
29 of the international organization for standardization (ISO) or other com-
30 parable accreditation standard required by the state fire marshal.

31 (6) Laboratories conducting testing in accordance with this section
32 shall implement a quality control and quality assurance program that in-
33 cludes a procedure that will determine the repeatability of the testing
34 results. The repeatability value shall be no greater than 0.19.

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

37 (8) Testing performed or sponsored by the state fire marshal to de-
38 termine a cigarette’s compliance with the performance standard required
39 shall be conducted in accordance with this section.

40 ~~(b)~~ **(c)** Each cigarette listed in a certification submitted pursuant to
41 section 4, and amendments thereto, that uses lowered permeability bands
42 in the cigarette paper to achieve compliance with the performance stan-
43 dard set forth in this section shall have at least two nominally identical

1 bands on the paper surrounding the tobacco column. At least one com-
2 plete band shall be located at least 15 millimeters from the lighting end
3 of the cigarette. For cigarettes on which the bands are positioned by
4 design, there shall be at least two bands fully located at least 15 milli-
5 meters from the lighting end and 10 millimeters from the filter end of
6 the tobacco column, or 10 millimeters from the labeled end of the tobacco
7 column for non-filtered cigarettes.

8 ~~(c)~~ **(d)** A manufacturer of a cigarette that the state fire marshal de-
9 termines cannot be tested in accordance with the test method prescribed
10 in subsection ~~(a)~~ **(b)** shall propose a test method and performance stan-
11 dard for the cigarette to the state fire marshal. Upon approval of the
12 proposed test method and a determination by the state fire marshal that
13 the performance standard proposed by the manufacturer is equivalent to
14 the performance standard prescribed in subsection ~~(a)~~ ~~(3)~~ **(b)(3)** of this
15 section, the manufacturer may employ such test method and performance
16 standard to certify such cigarette pursuant to section 4, and amendments
17 thereto. If the state fire marshal determines that another state has enacted
18 reduced cigarette ignition propensity standards that include a test method
19 and performance standard that are the same as those contained in this
20 act, and the state fire marshal finds that the officials responsible for im-
21 plementing those requirements have approved the proposed alternative
22 test method and performance standard for a particular cigarette proposed
23 by a manufacturer as meeting the fire safety standards of that state's law
24 or regulation under a legal provision comparable to this section, then the
25 state fire marshal shall authorize that manufacturer to employ the alter-
26 native test method and performance standard to certify that cigarette for
27 sale in this state, unless the state fire marshal demonstrates a reasonable
28 basis why the alternative test should not be accepted under this act. All
29 other applicable requirements of this section shall apply to the
30 manufacturer.

31 ~~(d)~~ **(e)** Each manufacturer shall maintain copies of the reports of all
32 tests conducted on all cigarettes offered for sale for a period of three
33 years, and shall make copies of these reports available to the state fire
34 marshal and the attorney general upon written request. Any manufacturer
35 who fails to make copies of these reports available within 60 days of
36 receiving a written request shall be subject to a civil penalty not to exceed
37 \$10,000 for each day after the sixtieth day that the manufacturer does not
38 make such copies available.

39 ~~(e)~~ **(f)** The state fire marshal may adopt a subsequent ASTM standard
40 test method for measuring the ignition strength of cigarettes upon a find-
41 ing that such subsequent method does not result in a change in the per-
42 centage of full-length burns exhibited by any tested cigarette when com-
43 pared to the percentage of full-length burns the same cigarette would

1 exhibit when tested in accordance with ASTM standard E2187-04 and
 2 the performance standard in subsection ~~(a)(3)~~ **(b)(3)** of this section.

3 ~~(f)~~ **(g)** The state fire marshal shall review the effectiveness of this
 4 section and report every three years to the legislature the state fire mar-
 5 shal's findings and, if appropriate, recommendations for legislation to im-
 6 prove the effectiveness of this act. The report and legislative recommen-
 7 dations shall be submitted no later than June 30 following the conclusion
 8 of each three-year period.

9 ~~(g)~~ ~~The requirements of subsection (a) shall not prohibit~~ **(h)** *The*
 10 *requirements of subsection (a) shall not prohibit: (1) A wholesale*
 11 *dealer, retail dealer or vending machine operator from selling their*
 12 *existing inventory of cigarettes on or after July 1, 2009, if the whole-*
 13 *sale dealer, retail dealer or vending machine operator can establish*
 14 *that state tax stamps were affixed to such cigarettes prior to July 1,*
 15 *2009, and if the wholesale dealer, retail dealer or vending machine*
 16 *operator can establish that the inventory was purchased prior to*
 17 *July 1, 2009, in comparable quantity to the inventory purchased*
 18 *during the same period of time in the prior year. In no event may*
 19 *a wholesale dealer, retail dealer or vending machine operator sell*
 20 *or offer for sale a cigarette in this state that does not comply with*
 21 *this act after July 1, 2010; or (2) the sale of cigarettes solely for the*
 22 *purpose of consumer testing. For purposes of this subsection, the term*
 23 *“consumer testing” means an assessment of cigarettes that is conducted*
 24 *by a manufacturer, or under the control and direction of a manufacturer,*
 25 *for the purpose of evaluating consumer acceptance of such cigarettes,*
 26 *utilizing only the quantity of cigarettes that is reasonably necessary for*
 27 *such assessment.*

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

30 Sec. 4. (a) Each manufacturer shall submit to the state fire marshal
 31 a written certification attesting that: (1) Each cigarette listed in the cer-
 32 tification has been tested in accordance with section 3, and amendments
 33 thereto; and (2) each cigarette listed in the certification meets the per-
 34 formance standard set forth in section 3, and amendments thereto.

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

- 37 (1) Brand or trade name on the package;
- 38 (2) style, such as menthol, lights, ultra lights, ~~low tar, kings, 100s or~~
 39 ~~other~~ **or low tar**;
- 40 (3) length in millimeters;
- 41 (4) circumference in millimeters;
- 42 (5) flavor, such as menthol, chocolate or other, if applicable;
- 43 (6) filter or non-filter;

- 1 (7) package description, such as soft pack, box or other;
- 2 (8) the name, address and telephone number of the laboratory, if
3 different than the manufacturer that conducted the test; and
- 4 (9) the date that the testing was conducted.
- 5 (c) For the purpose of compliance with this section, the state fire
6 marshal shall accept completed certifications and make the completed
7 certifications available to the attorney general.
- 8 ~~(d) No later than six months after the effective date of this act the~~
9 ~~attorney general shall create a directory of cigarette brand styles certified~~
10 ~~under this act, to be posted on the attorney general's website. The direc-~~
11 ~~tory shall include the cigarette varieties, brands and styles identified un-~~
12 ~~der subsection (b), and shall be updated as necessary. The directory may~~
13 ~~be combined with existing directories maintained by the attorney general~~
14 ~~as practicable. Any cigarette listed on the directory shall be deemed to~~
15 ~~be in compliance with the requirements of this act.~~
- 16 ~~(e) (d)~~ Each cigarette certified under this section shall be ~~retested~~
17 ~~and~~ recertified every three years. Initial cigarette certifications may be
18 made at any time. Subsequent certifications shall be made before ~~April~~
19 ~~15th~~ **July 31** of the subsequent certification year.
- 20 ~~(f) Every manufacturer shall certify cigarettes within the state and be~~
21 ~~listed on the directory before the manufacturer, a retailer, or wholesaler~~
22 ~~may legally offer a manufacturer's cigarettes for sale within the state. In~~
23 ~~order to obtain and maintain a listing on the directory, a manufacturer~~
24 ~~shall consent to the jurisdiction of the Kansas courts for the purpose of~~
25 ~~enforcement of this act and shall appoint a registered agent for service~~
26 ~~of process in this state and identify the registered agent to the secretary~~
27 ~~of state.~~
- 28 ~~(g) Each time it submits a written certification under this section, a~~
29 ~~manufacturer shall pay to the state fire marshal a fee of \$500 for each~~
30 ~~style of cigarettes listed in the certification. The fee paid shall apply to all~~
31 ~~cigarette styles, identified under subsection (b) within the brand family~~
32 ~~certified and shall include any new cigarette styles certified within the~~
33 ~~brand family during the three-year certification period. Each year, the~~
34 ~~state fire marshal may adjust the amount of such fee in order to pay the~~
35 ~~actual costs of processing, testing, enforcement and oversight activities~~
36 ~~required by this act.~~
- 37 **(e) Every manufacturer shall certify cigarettes within the state**
38 **before the manufacturer, retail dealer, wholesale dealer or vending**
39 **machine operator legally may offer a manufacturer's cigarette for**
40 **sale within the state. In order to obtain and maintain a listing on**
41 **the directory created under subsection (i), a manufacturer shall**
42 **consent to the jurisdiction of the Kansas courts for the purpose of**
43 **enforcement of this act and shall appoint a registered agent for serv-**

1 *ice of process in this state and shall identify the agent to the sec-*
 2 *retary of state.*

3 *(f) For each cigarette listed in a certification, a manufacturer*
 4 *shall pay to the state fire marshal a fee of \$250. The state fire mar-*
 5 *shal may adjust such fee annually, by rule and regulation, to ensure*
 6 *that such fee defrays the actual cost of processing, testing enforce-*
 7 *ment, administration and oversight activities required by law.*

8 ~~(h)~~ *(g)* There is hereby established in the state treasury a separate,
 9 nonlapsing fund to be known as the fire safety standard and firefighter
 10 protection act enforcement fund which shall be administered by the state
 11 fire marshal.

12 ~~(i)~~ *(h)* If a manufacturer has certified a cigarette pursuant to this
 13 section, and thereafter makes any change to such cigarette that is likely
 14 to alter its compliance with the reduced cigarette ignition propensity stan-
 15 dards required by this act, that cigarette shall not be sold or offered for
 16 sale in this state until the manufacturer retests the cigarette in accordance
 17 with the testing standards set forth in section 3, and amendments thereto,
 18 and maintains records of that retesting as required by section 3, and
 19 amendments thereto. Any altered cigarette which does not meet the per-
 20 formance standard set forth in section 3, and amendments thereto, may
 21 not be sold in this state.

22 ~~(j)~~ *(i)* Not later than July 31, 2009, the attorney general shall develop
 23 a directory of all certified cigarettes under this act. The directory shall be
 24 updated as necessary and shall be posted on the attorney general's web-
 25 site. ~~The directory shall include the brands or trade names and styles~~
 26 ~~identified under subsection (b). Any cigarette listed on the directory shall~~
 27 ~~be deemed to be in compliance with the requirements of this act. Unless~~
 28 ~~a wholesale dealer, retail dealer or vending machine operator has~~
 29 ~~actual knowledge that cigarettes do not comply with this act, the~~
 30 ~~wholesale dealer, retail dealer or vending machine operator shall~~
 31 ~~consider any cigarette listed on the directory posted on the website~~
 32 ~~to be lawful to sell in this state for the purpose of compliance with~~
 33 ~~this act by such wholesale dealer, retail dealer or vending machine~~
 34 ~~operator.~~

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

37 Sec. 5. ~~(a) Cigarettes properly certified under this act shall be~~
 38 ~~marked with the letters "FSC." The marking shall be permanently, legibly~~
 39 ~~printed, in 8 point font or larger, around the area of the UPC code.~~

40 ~~—(b) A manufacturer shall apply this "FSC" marking uniformly for all~~
 41 ~~packages, including, but not limited to, packs, cartons, and cases and~~
 42 ~~brands marketed by that manufacturer.~~

43 ~~—(c) Manufacturers certifying cigarettes in accordance with section 4,~~

1 and amendments thereto, shall provide a copy of the certifications to all
2 wholesale dealers and agents to which they sell cigarettes, and also shall
3 provide sufficient copies of an illustration of the package marking utilized
4 by the manufacturer pursuant to this section for each retail dealer to
5 which the wholesale dealers or agents sell cigarettes. Wholesale dealers
6 and agents shall provide a copy of these package markings received from
7 manufacturers to all retail dealers to which they sell cigarettes. Wholesale
8 dealers, agents and retail dealers shall permit the state fire marshal, the
9 director, the attorney general and their employees to inspect markings of
10 cigarette packaging marked in accordance with this section.

11 **(d) Cigarettes that are certified by a manufacturer in accordance**
12 **with section 4, and amendments thereto, shall be marked with the**
13 **letters “FSC”, which signifies fire standards compliant, appearing**
14 **in eight-point type or larger and permanently printed, stamped, en-**
15 **graved or embossed on the package at or near the UPC code. A**
16 **manufacturer certifying cigarettes in accordance with section 4,**
17 **and amendments thereto, shall provide a copy of the certifications**
18 **to any wholesale dealer and its agents to which the manufacturer**
19 **sells cigarettes. Any wholesale dealer, agent, retail dealer or vend-**
20 **ing machine operator shall permit the state fire marshal, the direc-**
21 **tor, the attorney general, and employees thereof, to inspect cigarette**
22 **packaging marked in accordance with this section.**

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

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

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

42 (c) In addition to any penalty prescribed by law, any corporation,
43 partnership, sole proprietor, limited partnership or association engaged

1 in the manufacture of cigarettes that knowingly makes a false certification
2 pursuant to section 4, and amendments thereto, shall be subject to a civil
3 penalty of at least \$75,000 and not to exceed \$250,000 for each such false
4 certification. ~~All cigarettes certified by the violating manufacturer shall
5 be removed from the directory required by section 4, and amendments
6 thereto, and shall be considered illegal for sale in the state until such time
7 as the cigarette manufacturer has paid the civil penalty in full and the
8 state fire marshal has confirmed, to its satisfaction, that the manufac-
9 turer's cigarettes will comply with the performance standards required by
10 section 3, and amendments thereto. A second violation of this subsection
11 shall result in the violating manufacturer being prohibited from selling
12 cigarettes to consumers within the state for a period not to exceed two
13 years. Following the prohibition, the state fire marshal shall again con-
14 firm, to its satisfaction, that the manufacturer's cigarettes will comply with
15 the performance standards required by section 3, and amendments
16 thereto.~~

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

21 (e) Any cigarettes that have been sold or offered for sale that do not
22 comply with the performance standard required by section 3, and amend-
23 ments thereto, shall be considered contraband and subject to forfeiture.
24 Cigarettes forfeited pursuant to this section shall be destroyed. Prior to
25 the destruction of any cigarette forfeited pursuant to this subsection, the
26 true holder of the trademark rights in the cigarette brand shall be per-
27 mitted to inspect the cigarette. ~~A third violation of this subsection within
28 two years shall constitute a knowingly false certification by the cigarette
29 manufacturer under section 6, and amendments thereto.~~

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

38 (g) Whenever any law enforcement personnel or duly authorized rep-
39 resentative of the state fire marshal, director, or attorney general shall
40 discover any cigarettes that have not been marked in the manner required
41 by section 5, and amendments thereto, ~~or are not listed on the directory~~
42 **for which a certification has not been filed** as required by section 4,
43 and amendments thereto, such personnel are hereby authorized and em-

1 powered to seize and take possession of such cigarettes with or without
2 process or warrant. Such cigarettes shall be turned over to the division of
3 taxation, and shall be subject to forfeiture proceedings. Cigarettes seized
4 pursuant to this section shall be destroyed. Prior to the destruction of any
5 cigarette seized pursuant to this subsection, the true holder of the trade-
6 mark rights in the cigarette brand shall be permitted to inspect the
7 cigarettes.

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

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

13 Sec. 7. (a) The director, in the regular course of conducting inspec-
14 tions of wholesale dealers, agents ~~and retail dealers,~~ **retail dealers or**
15 **vending machine operators,** as authorized under the Kansas cigarette
16 and tobacco products **act** or other state statutes, rules, or regulations ~~act,~~
17 may inspect such cigarettes to determine if the cigarettes are marked as
18 required by section 5, and amendments thereto. If the cigarettes are not
19 marked as required, the director may seize such contraband with or with-
20 out process or warrant and shall notify the state fire marshal.

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

23 Sec. 8. (a) To enforce the provisions of this act, the attorney general,
24 the director and the state fire marshal, their duly authorized represen-
25 tatives and other law enforcement personnel are hereby authorized to
26 examine the books, papers, invoices and other records of any person in
27 possession, control or occupancy of any premises where cigarettes are
28 placed, stored, ~~sold~~ or offered for sale, as well as the stock of cigarettes
29 on the premises. Every person in the possession, control or occupancy of
30 any premises where cigarettes are placed, ~~sold~~ **stored** or offered for sale,
31 is hereby directed and required to give the attorney general, the director
32 and the state fire marshal, their duly authorized representatives and other
33 law enforcement personnel the means, facilities and opportunity for the
34 examinations authorized by this section.

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

37 Sec. 9. (a) There is hereby established in the state treasury a sepa-
38 rate, nonlapsing fund to be known as the cigarette fire safety standard
39 and firefighter protection act fund which shall be administered by the
40 state fire marshal. The fund shall consist of all moneys recovered as pen-
41 alties under section 6, and amendments thereto. The moneys shall be
42 deposited to the credit of the fund and in addition to any other money
43 made available for such purpose, shall be made available to the state entity

1 responsible for administering the provisions of this act to support fire
2 safety and prevention programs.

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

5 Sec. 10. (a) Nothing in this act shall be construed to prohibit any
6 person or entity from manufacturing or selling cigarettes that do not meet
7 the requirements of section 3, and amendments thereto, if the cigarettes
8 are or will be stamped for sale in another state or are packaged for sale
9 outside the United States and that person or entity has taken reasonable
10 steps to ensure that such cigarettes will not be sold or offered for sale to
11 persons located in this state.

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

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

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

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

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