WEST VIRGINIA CODE CHAPTER 47 ARTICLE 25

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§47-25-1. Short title.

This article shall be known and may be cited as the Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act.

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§47-25-2. Definitions.

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

(b) "Cigarette" means:

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

(2) 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 this subsection.

(c) "Manufacturer" means:

(1) 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;

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

(3) Any entity that becomes a successor of an entity described in subdivision (1) or (2) of this subsection.

(d) "Quality control and quality assurance program" means 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 shall ensure that the testing repeatability remains within the required repeatability values stated in subdivision (6), subsection (a), section three of this article for all test trials used to certify cigarettes in accordance with this article.

(e) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.

(f) "Retail dealer" has the same meaning as in section two, article seventeen, chapter eleven of this code.

(g) "Sale" has the same meaning as in section two, article seventeen, chapter eleven of this code.

(h) "Wholesale dealer" means 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.

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§47-25-3. Test method and performance standard.

(a) Except as provided in subsection (g) of this section and in section ten of this article, 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: (i) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section; (ii) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section four of this article; and (iii) the cigarettes have been marked in accordance with section five of this article.

(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 ten layers of filter paper.

(3) No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this section may 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.

(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 to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

(b) Each cigarette listed in a certification submitted pursuant to section four of this article 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 fifteen 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 fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

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(c) A manufacturer of a cigarette that cannot be tested in accordance with the test method prescribed in subdivision (1), subsection (a) of this section shall propose a test method and performance standard for the cigarette to the state Fire Marshal. If the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subdivision (3) of said subsection, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to section four of this article. If 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 officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the manufacturer may employ the alternative test method and performance standard to certify cigarettes 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 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 upon written request. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request is subject to a civil penalty not to exceed $10,000 for each day after the sixtieth day that the manufacturer does not make the copies available.

(e) A subsequent ASTM standard test method for measuring the ignition propensity of cigarettes may be used, if 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), subsection (a) of this section.

(f) The State Fire Marshal shall review the effectiveness of this section and report every three years to the Legislature, if appropriate, recommendations for legislation to improve the effectiveness of this article. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

(g) The requirements of subsection (a) of this section shall not prohibit:

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

(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this

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subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer), for the purpose of evaluating consumer acceptance of those cigarettes, using only the quantity of cigarettes that is reasonably necessary for the assessment.

(h) This article shall be implemented and construed as to effectuate its general purpose to make uniform the law of those states that have enacted reduced cigarette ignition propensity laws.

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§47-25-4. Certification and product change.

(a) Each manufacturer shall submit to the state Fire Marshal a written certification attesting that:

(1) Each cigarette listed in the certification has been tested in accordance with section three of this article; and

(2) Each cigarette listed in the certification meets the performance standard set forth in section three of this article.

(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, if applicable;

(6) Filter or nonfilter;

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

(8) Marking pursuant to section five of this article;

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

(10) The date that the testing occurred.

(c) The certifications shall be made available to the state Fire Marshal 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 it submits a written certification under this section, a manufacturer shall pay a fee of $1,000 to the state Fire Marshal for each brand family of cigarettes listed in the certification. The fee shall apply to all cigarettes within the brand family certified and shall include any new cigarette certified within the brand family during the three-year certification period.

(f) All moneys collected as certification fees submitted by manufacturers shall be deposited

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in a special account in the state Treasury to be known as the Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund. The fund shall be administered by the Tax Commissioner. Expenditures from the fund are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2010, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. The fund shall, in addition to any other moneys made available for those purposes, be equally divided and distributed without appropriation between the state Fire Marshal and the State Tax Commissioner to support fire prevention activities and processing, testing, enforcement and oversight activities under this article.

(g) If a manufacturer has certified a cigarette pursuant to this section and thereafter makes any change to the cigarette that is likely to alter the cigarette's 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 three of this article and maintains records of that retesting as required by section three of this article. Any altered cigarette which does not meet the performance standard set forth in section three of this article may not be sold in this state.

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§47-25-5. Marking of cigarette packaging.

(a) Cigarettes that are certified by a manufacturer in accordance with section four of this article shall be marked to indicate compliance with the requirements of section three of this article. The marking shall be in eight-point type or larger and consist of:

(1) Modification of the product UPC code to include a visible mark printed at or around the area of the UPC code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed or printed in conjunction with the UPC;

(2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the cigarette package or cellophane wrap; or

(3) Printed, stamped, engraved or embossed text that indicates that the cigarettes meet the standards of this article.

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

(c) The State Tax Commissioner shall be notified as to the marking that is selected.

(d) Prior to the certification of any cigarette, a manufacturer shall submit its proposed marking to the State Tax Commissioner for approval. Upon receipt of the request, the State Tax Commissioner shall approve or disapprove the marking offered, except that the State Tax Commissioner shall approve:

(1) Any marking in use and approved for sale in another state; or

(2) The letters "FSC", which signifies fire standards compliant, appearing in eight-point type or larger and permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

(e) A manufacturer shall not modify its approved marking unless the modification has been approved by the State Tax Commissioner in accordance with this section.

(f) Manufacturers certifying cigarettes in accordance with section four of this article shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking used by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents and retail dealers shall permit the State Tax Commissioner and its agents to inspect markings of cigarette packaging marked in accordance with this section.

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§47-25-6. Penalties.

(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 three of this article, is subject to a civil penalty not to exceed $100 for each pack of the cigarettes sold or offered for sale: Provided, That in no case shall the penalty against that person or entity exceed $100,000 during any thirty-day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of section three of this article is subject to a civil penalty not to exceed $100 for each pack of the cigarettes sold or offered for sale: Provided, That in no case shall the penalty against that retail dealer exceed $25,000 for sales or offers to sell during any thirty-day period.

(c) In addition to any penalty prescribed by law, any manufacturer of cigarettes that knowingly makes a false certification pursuant to section four of this article is subject to a civil penalty of at least $75,000 and not to exceed $250,000 for each false certification.

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

(e) In addition to any other remedy provided by law, the state Fire Marshal or the State Tax Commissioner may file an action in circuit court for a violation of this article, including petitioning for injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent or any other person or entity to enjoin that 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 of rules promulgated under this article constitutes a separate civil violation for which the state Fire Marshal or the State Tax Commissioner may obtain relief. Upon obtaining injunctive relief under this section, the state Fire Marshal or the State Tax Commissioner shall provide a copy of the judgment to all wholesale dealers and agents to which the cigarette has been sold.

(f) Whenever any law-enforcement personnel or duly authorized representative of the State Tax Commissioner discovers any cigarettes for which no certification has been filed as required by section four of this article or that have not been marked in the manner required by section five of this article, they may seize and take possession of the cigarettes. The cigarettes shall be forfeited to the state. The State Tax Commissioner shall destroy any cigarettes seized pursuant to this section: Provided, That prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand may inspect the cigarette.

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§47-25-7. Implementation.

(a) The State Fire Marshal or the State Tax Commissioner may promulgate rules, pursuant to the Administrative Procedures Act, chapter twenty-nine-a of this code, necessary to effectuate the purposes of this article.

(b) The State Tax Commissioner in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, as authorized under article seventeen, chapter eleven of this code, may inspect the cigarettes to determine if the cigarettes are marked as required by section five of this article.

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§47-25-8. Inspection.

To enforce the provisions of this article, the State Tax Commissioner and its duly authorized representatives may 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, shall give the State Tax Commissioner and its duly authorized representatives the means, facilities and opportunity for the examinations authorized by this section.

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§47-25-9. Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund.

All moneys collected as civil penalties under section six of this article shall be deposited in a special account in the state Treasury to be known as the Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund. The moneys shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for that purpose, be equally divided between the state Fire Marshal and the State Tax Commissioner to support fire safety and prevention programs and tax department enforcement activities.

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§47-25-10. Sales outside of West Virginia.

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 three of this article, 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.

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§47-25-11. Preemption.

This article shall have no force and effect if a federal law or regulation establishing a national reduced cigarette ignition propensity standard is adopted and becomes effective.

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§47-25-12. Local regulation.

Notwithstanding any other provision of law, the local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation relating to cigarette fire safety standards conflicting with any provision of this article.

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§47-25-13. Effective date.

Except as otherwise specifically provided in this section, the provisions of this article take effect on January 1, 2010. The provisions of section twelve of this article take effect on the effective date of this article.

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