

AN ACT

RELATING TO FIRE PREVENTION; ENACTING THE FIRE-SAFER CIGARETTE AND FIREFIGHTER PROTECTION ACT; IMPOSING PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Fire-Safer Cigarette and Firefighter Protection Act".

Section 2. DEFINITIONS.--As used in the Fire-Safer Cigarette and Firefighter Protection Act:

A. "agent" means any person authorized by the taxation and revenue department 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; or

(2) any roll of tobacco wrapped in any substance containing tobacco that, 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 (1) of this subsection;

C. "manufacturer" means:

(1) any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be

manufactured or produced that are intended to be sold in New Mexico, including cigarettes intended to be sold in New Mexico through an importer; or

(2) any entity that becomes a successor of an entity described in Paragraph (1) of this subsection;

D. "quality control and 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 and that the testing repeatability remains within the required repeatability values in Subsection C of Section 3 of the Fire-Safer Cigarette and Firefighter Protection Act for all test trials used to certify cigarettes under that act;

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" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products;

G. "sale" or "sell" means a transfer of or an offer or agreement to transfer title or possession by exchange, barter or any other means. In addition to cash and credit sales, giving cigarettes as samples, prizes or gifts and exchanging cigarettes for any consideration other than money is a "sale"; and

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 on premises owned or occupied by another person.

Section 3. TEST METHOD AND PERFORMANCE STANDARD.--

A. Except as provided in Subsection K of this section, cigarettes shall not be sold or offered for sale in New Mexico unless:

(1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section;

(2) a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act; and

(3) the cigarettes have been marked in accordance with Section 5 of that act.

B. Testing of cigarettes shall be conducted in accordance with the American society of testing and materials standard E2187-04 standard test method for measuring the ignition strength of cigarettes and shall be conducted on ten layers of filter paper. No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this

section shall exhibit full-length burns. Forty replicate tests shall constitute a complete test trial for each cigarette tested. The performance standard required by this section shall only be applied to a complete test trial. 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 or other comparable accreditation standard required by the state fire marshal.

C. 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.

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

E. This section does not require additional testing if cigarettes are tested consistent with the Fire-Safer Cigarette and Firefighter Protection Act for any other purpose.

F. Each cigarette listed in a certification submitted pursuant to Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act 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 non-filtered cigarettes.

G. A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in Subsection B of this section shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in Subsection B of this section, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act. If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test

method and performance standard that are the same as those contained in the Fire-Safer Cigarette and Firefighter Protection Act, and the state fire marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, the state fire marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in New Mexico, unless the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under the Fire-Safer Cigarette and Firefighter Protection Act. All other applicable requirements of this section shall apply to the manufacturer.

H. 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 the reports available to the state fire marshal and the attorney general upon written request. Any manufacturer who fails to make copies of the reports available within sixty days of receiving a written request may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day after the sixtieth day that the manufacturer does not make the

copies available.

I. The state fire marshal may adopt a subsequent American society of testing and materials standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the American society of testing and materials standard E2187-04 and the performance standard in Subsection B of this section.

J. The state fire marshal shall review the effectiveness of this section and report findings and make recommendations to the legislature every three years.

K. 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 section 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 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 the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for an assessment.

L. The Fire-Safer Cigarette and Firefighter Protection Act shall be interpreted and construed to effectuate its general purpose and to make that act uniform with the laws of those states that have enacted reduced cigarette ignition propensity laws as of the date that the Fire-Safer Cigarette and Firefighter Protection Act is enacted.

Section 4. CERTIFICATION AND PRODUCT CHANGE.--

A. Each manufacturer shall submit to the state fire marshal a written certification attesting that each cigarette listed in the certification has been tested in accordance with the test method and meets the performance standard in Section 3 of the Fire-Safer Cigarette and Firefighter Protection Act.

B. Each cigarette listed in the certification shall be described with the following information:

(1) the brand or the trade name on the

package;

(2) the style, such as light or ultralight;

(3) the length in millimeters;

(4) the circumference in millimeters;

(5) the flavor, such as menthol or

chocolate, if applicable;

(6) whether the cigarette has a filter or is a nonfilter cigarette;

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

(8) the marking pursuant to Section 5 of the Fire-Safer Cigarette and Firefighter Protection Act;

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

(10) the date that the testing occurred.

C. The state fire marshal shall verify that the manufacture's certifications have been received by the state fire marshal and shall make the verified certifications available to the attorney general for purposes consistent with the Fire-Safer Cigarette and Firefighter Protection Act and to the taxation and revenue department for the purposes of ensuring compliance with this section.

D. Each cigarette certified under this section shall be recertified every three years.

E. For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a fee of two hundred fifty dollars (\$250). The state fire marshal may adjust the amount of the fee by rule on an annual basis as necessary to defray the costs of processing, testing, enforcement and oversight activities required by the Fire-Safer Cigarette and Firefighter Protection Act, but in no case shall the fee exceed four hundred dollars (\$400). The state fire marshal may establish the amount of the fee by rule on an annual basis.

F. If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by the Fire-Safer Cigarette and Firefighter Protection Act, that cigarette shall not be sold or offered for sale in New Mexico until the manufacturer retests the cigarette in accordance with the testing standards set forth in Section 3 of that act and maintains records of that retesting as required by Section 3 of that act. Any altered cigarette that does not meet the performance standard set forth in Section 3 of that act shall not be sold in New Mexico.

Section 5. MARKING OF CIGARETTE PACKAGING.--

A. Cigarettes that are certified by a manufacturer in accordance with the Fire-Safer Cigarette and Firefighter

Protection Act shall be marked to indicate compliance with that act. The marking shall be in eight-point type or larger and consist of the letters "FSC", which signifies fire standard compliant, and shall be permanently printed, stamped, engraved or embossed on the package at or near the universal product code.

B. A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including packs, cartons and cases, and for brands marketed by that manufacturer.

C. A manufacturer certifying cigarettes in accordance with Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act shall provide a copy of the certifications to all wholesale dealers and agents to which it sells cigarettes. Wholesale dealers, agents and retail dealers shall permit the state fire marshal, the taxation and revenue department and the attorney general to inspect markings of cigarette packaging marked in accordance with this section.

Section 6. PENALTIES.--

A. A manufacturer, wholesale dealer, agent or any other person who knowingly sells cigarettes, other than through retail sales, in violation of Section 3 of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty not to exceed one hundred dollars (\$100) for

each pack of the cigarettes sold; provided that in no case shall the penalty against any person or entity exceed one hundred thousand dollars (\$100,000) for sales during any thirty-day period.

B. A retail dealer who knowingly sells cigarettes in violation of Section 3 of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold; provided that in no case shall the penalty against any retail dealer exceed twenty-five thousand dollars (\$25,000) for sales during any thirty-day period.

C. In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty of at least seventy-five thousand dollars (\$75,000), not to exceed two hundred fifty thousand dollars (\$250,000) for each false certification.

D. A person violating any other provision of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty for a first offense not to exceed one thousand dollars (\$1,000), and for a subsequent offense subject to a civil penalty not to exceed five thousand dollars

(\$5,000) for each violation.

E. Whenever a law enforcement agency or duly authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act or that have not been marked as required by Section 5 of that act, the state fire marshal or law enforcement agency may seize and take possession of the cigarettes. Cigarettes seized pursuant to this section shall be destroyed; provided, however, that, prior to the destruction of any cigarette seized pursuant to these provisions, the attorney general and the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

F. In addition to any other remedy provided by law, the attorney general may file an action in district court for a violation of the Fire-Safer Cigarette and Firefighter Protection Act, including petitioning for preliminary or permanent injunctive relief or to recover costs, damages and attorney fees. Each violation of the Fire-Safer Cigarette and Firefighter Protection Act or of rules or regulations adopted under that act constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief. Upon obtaining judgment for injunctive relief under this section, the state fire marshal or attorney general shall

provide a copy of the judgment to all wholesale dealers and agents to which a cigarette has been sold.

Section 7. IMPLEMENTATION.--

A. The state fire marshal may promulgate rules pursuant to the Administrative Procedures Act, necessary to effectuate the purposes of the Fire-Safer Cigarette and Firefighter Protection Act and for inspection, seizure and destruction of cigarettes pursuant to the Forfeiture Act.

B. The taxation and revenue department in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, pursuant to the Cigarette Tax Act, may inspect cigarettes to determine if the cigarettes are marked as required by Section 5 of the Fire-Safer Cigarette and Firefighter Protection Act. If the cigarettes are not marked as required, the taxation and revenue department shall notify the state fire marshal.

Section 8. INSPECTION.--To enforce the provisions of the Fire-Safer Cigarette and Firefighter Protection Act, the attorney general, the taxation and revenue department and the state fire marshal, their duly authorized representatives and other law enforcement personnel may examine the books, papers, invoices and other records of any person in possession, control or occupancy of 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 premises where cigarettes are placed, sold or offered for sale is hereby directed and required to give the attorney general, the taxation and revenue department and the state fire marshal and other law enforcement personnel the means, facilities and opportunity for the examinations authorized by this section.

Section 9. FIRE-SAFER CIGARETTE AND FIREFIGHTER PROTECTION ACT FUND.--The "fire-safer cigarette and firefighter protection fund" is created in the state treasury. The fund consists of appropriations, income from investment of the fund, money otherwise accruing to the fund, certification fees paid under Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act and money recovered as penalties under Section 6 of that act. Money in the fund shall not revert to any other fund at the end of a fiscal year. Money in the fund is appropriated to the state fire marshal to enforce the Fire-Safer Cigarette and Firefighter Protection Act and to support fire safety and prevention programs and shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the state fire marshal or the state fire marshal's authorized representative.

Section 10. SALE OUTSIDE OF NEW MEXICO.--Nothing in the Fire-Safer Cigarette and Firefighter Protection Act shall be construed to prohibit a person or entity from manufacturing or

selling cigarettes that do not meet the requirements of Section 3 of that act 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 New Mexico.

Section 11. CONTINGENT REPEAL.--The Fire-Safer Cigarette and Firefighter Protection Act is repealed, effective on the date that the New Mexico compilation commission receives certification from the state fire marshal that the federal government has adopted or enacted a reduced cigarette ignition propensity standard and that the standard is in effect.

Section 12. STATE PREEMPTION.--Cities, counties, home rule municipalities and other political subdivisions of the state shall not adopt or continue in effect any ordinance, rule, regulation, resolution or statute on cigarette testing and standards. The Fire-Safer Cigarette and Firefighter Protection Act preempts any local law, ordinance or regulation that conflicts with any provision of that act or any policy of the state of New Mexico implemented in accordance with that act, and, notwithstanding any other provision of law, a governmental unit of the state of New Mexico shall not enact or enforce an ordinance, local law or regulation conflicting with or preempted by that act.

Section 13. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 6 and 8 through 11 of this act is January 1, 2010.

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HF/HJC/HB 70  
Page 17