

ORIGINAL SENATE  
FILE NO. 0052

ENROLLED ACT NO. 31, SENATE

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING  
2010 BUDGET SESSION

AN ACT relating to fire safety and prevention; providing requirements for the sale of cigarettes; requiring that cigarettes have a reduced propensity for ignition; providing testing and reporting requirements; providing for enforcement; providing definitions; providing penalties; and providing for effective dates.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 35-9-801 through 35-9-811 are created to read:

ARTICLE 9  
REDUCED CIGARETTE IGNITION

**35-9-801. Short title.**

This article shall be known and may be cited as the "Wyoming Reduced Cigarette Ignition Propensity Act".

**35-9-802. Definitions.**

(a) For the purposes of this act unless the context otherwise requires:

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

(ii) "Cigarette" means:

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

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(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 subparagraph (A) of this paragraph.

(iii) "Manufacturer" means:

(A) Any entity that manufactures cigarettes or causes the manufacture of cigarettes that are intended for sale in this state including cigarettes intended to be sold in the United States through an importer;

(B) Any successor of any entity described in subparagraph (A) of this paragraph.

(iv) "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 testing. A quality control program shall ensure that testing repeatability remains within the required repeatability values stated in W.S. 35-9-803(a)(vi) for all test trials used to certify cigarettes in accordance with this act;

(v) "Repeatability" means the range of values within which the repeat results of test trials from a single laboratory must fall ninety-five percent (95%) of the time;

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

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(vii) "Sale" means any transfer of title or possession, exchange or barter in any manner, by any means, or by any agreement, including cash and credit sales, giving of cigarettes as samples, prizes or gifts, and the exchange of cigarettes for any consideration other than money;

(viii) "Sell" means to sell, or to offer or agree to do the same;

(ix) "Wholesale dealer" means any person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or others for resale and any person who owns, operates or maintains one (1) or more cigarette or tobacco product vending machines upon premises owned or occupied by any other person;

(x) "This act" means W.S. 35-9-801 through 35-9-811.

**35-9-803. Requirements for sale; test method; adoption of other state's testing method, if appropriate; performance standards; exceptions.**

(a) Except as provided in this act, cigarettes may not be offered for sale or sold to persons located in this state unless the cigarettes have been tested and have met the required performance standard specified in this section, the manufacturer has filed a written certification with the state fire marshal in accordance with W.S. 35-9-804 and the cigarettes have been marked in accordance with W.S. 35-9-805. The following testing requirements shall apply:

(i) Cigarette testing shall be conducted in accordance with the American society of testing and

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materials ("ASTM") standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes," in effect on February 1, 2010. The state fire marshal may adopt a subsequent ASTM standard upon a written 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 ASTM standard E2187-04 and the performance standard in this section;

(ii) Testing shall be conducted on ten (10) layers of filter paper;

(iii) No more than twenty-five percent (25%) of the cigarettes tested in a test trial in accordance with this section shall exhibit full length burns. Forty (40) replicate tests shall comprise a complete test trial for each cigarette tested;

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

(v) 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 required by the state fire marshal;

(vi) 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 not be greater than nineteen hundredths (0.19);

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(vii) This section does not require additional testing if cigarettes are tested consistent with this act for any other purpose;

(viii) 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.

(b) Each cigarette listed in a certification submitted pursuant to W.S. 35-9-804 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 (2) nominally identical bands on the paper surrounding the tobacco column. At least one (1) complete band shall be located at least fifteen (15) millimeters from the lighting end of the cigarette. Cigarettes on which the bands are positioned by design shall have at least two (2) bands fully located at least fifteen (15) millimeters from the lighting end and at least ten (10) millimeters from the filter end of the tobacco column. For nonfiltered cigarettes the bands shall be at least ten (10) millimeters from the labeled end of the tobacco column.

(c) If the state fire marshal determines that a cigarette cannot be tested in accordance with paragraph (a)(i) of this section, the manufacturer shall propose a test method and performance standard. If the state fire marshal approves the proposed test method and determines that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in paragraph (a)(iii) of this section, that test method and performance standard may be used to certify the cigarette pursuant to W.S. 35-9-804.

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(d) The state fire marshal shall authorize a manufacturer to employ an alternative test method and performance standard to certify that cigarette for sale in this state if the fire marshal determines that:

(i) Another state has enacted reduced cigarette ignition propensity standards that include the proposed alternative test method and performance standard;

(ii) The other state's testing method and performance standard are the same as those adopted pursuant to paragraph (a)(i) of this section;

(iii) The officials responsible for implementing the other state's requirements have approved the proposed alternative test method and performance standard for a particular cigarette as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section; and

(iv) There is no reasonable basis to reject the alternative testing method.

(e) Manufacturers shall maintain copies of reports of all tests conducted on all cigarettes offered for sale for three (3) years and shall make copies available upon written request by the state fire marshal or attorney general. Any manufacturer failing to make copies of the requested reports available within sixty (60) days of receipt of the request shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000.00) for each day after the sixtieth day that the manufacturer fails to make copies available.

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(f) The state fire marshal shall review the effectiveness of this section and report the findings and any recommended improvements every three (3) years to the joint labor, health and social services interim committee. The report and legislative recommendations shall be submitted no later than June 30, beginning in 2011.

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

(i) Wholesale or retail dealers from selling after the effective date of this act the dealer's inventory of cigarettes existing on the effective date of this act 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 of this act in a comparable quantity to the inventory purchase during the same period of the prior year; or

(ii) The sale of cigarettes solely for the purpose of consumer testing using only the quantity of cigarettes that is reasonably necessary for the testing. For purposes of this paragraph 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.

**35-9-804. Certification and product change.**

(a) Each manufacturer shall certify in writing to the state fire marshal:

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(i) Each cigarette listed in the certification has been tested pursuant to W.S. 35-9-803; and

(ii) Each cigarette listed in the certification meets the performance standard set forth in W.S. 35-9-803.

(b) For each cigarette listed in the certification the following information shall be included:

- (i) Brand or trade name on the packaging;
- (ii) Style;
- (iii) Length in millimeters;
- (iv) Circumference in millimeters;
- (v) Flavor such as menthol if applicable;
- (vi) Filter or nonfilter;
- (vii) Package description such as soft pack or box;
- (viii) Marking pursuant to W.S. 35-9-805;
- (ix) Contact information for the laboratory that conducted the testing, including name, address and telephone number; and
- (x) The date of testing.

(c) The state fire marshal shall make the certifications available to the attorney general and department of revenue for purposes consistent with this act.



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(d) Cigarettes certified pursuant to this section shall be recertified every three (3) years.

(e) For each cigarette listed in a certification, a manufacturer shall pay a fee of two hundred fifty dollars (\$250.00) payable to the state fire marshal for processing, testing, enforcement and oversight activities required by this act to be deposited into the general fund.

(f) If a cigarette is certified and is subsequently changed in a manner that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this act, the cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards consistent with the provisions of this act and maintains the records of that retesting as required by this act. Any altered cigarette which does not meet the performance standard set forth in this act shall not be sold in this state.

**35-9-805. Cigarette packaging.**

(a) Cigarettes certified by a manufacturer in accordance with W.S. 35-9-804 shall be marked to indicate compliance with the requirements of W.S. 35-9-803. The marking shall include the letters "FSC" (Fire Standard Compliant), shall not be less than eight (8) point type and shall be permanently printed, stamped, engraved or embossed on the package at or near the UPC Code.

(b) A manufacturer shall use only one (1) marking applied uniformly for all packages including packs, cartons, cases and brands marketed by the manufacturer.

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(c) Manufacturers certifying cigarettes in accordance with W.S. 35-9-804 shall submit copies of the certification to all wholesale dealers and agents selling their cigarettes.

**35-9-806. Penalties.**

(a) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers for sale cigarettes, other than through retail sale, in violation of W.S. 35-9-803 shall be subject to a civil penalty not to exceed one hundred dollars (\$100.00) for each pack of such cigarettes sold or offered for sale. In no case shall the penalty against any such person or entity exceed one hundred thousand dollars (\$100,000.00) during any thirty (30) day period.

(b) A retail dealer who knowingly sells or offers for sale cigarettes in violation of any provision of this act shall be subject to a civil penalty not to exceed one hundred dollars (\$100.00) for each pack of such cigarettes sold or offered for sale. In no case shall the penalty against any retail dealer exceed ten thousand dollars (\$10,000.00) during any thirty (30) 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 W.S. 35-9-804 shall be subject to a civil penalty of not less than seventy-five thousand dollars (\$75,000.00) nor more than two hundred fifty thousand dollars (\$250,000.00) for each false certification.

(d) Any person violating any other provision of this act shall be subject to a civil penalty for a first offense

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not to exceed one thousand dollars (\$1,000.00) and for each subsequent offense a penalty not to exceed five thousand dollars (\$5,000.00) for each violation.

(e) Law enforcement personnel or an authorized representative of the state fire marshal may seize cigarettes for which no certification has been filed or that have not been marked in the manner required by this act. Cigarettes seized pursuant to this section shall be destroyed not less than thirty (30) days after the trademark holder in the cigarette brand has been given an opportunity 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 this act, including petitioning for any one (1) or more of the following remedies:

(i) For preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent or any other individual or entity to enjoin such individual or entity from selling, offering to sell or affixing tax stamps to any cigarette that does not comply with the requirements of this act;

(ii) To recover any costs or damages suffered by the state because of a violation of this act, including enforcement costs relating to the specific violation and attorney's fees.

(g) Each violation of this act or of rules and regulations adopted under this 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

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of the judgment to all wholesale dealers and agents to which the subject cigarette has been sold.

**35-9-807. Inspection and enforcement.**

(a) The department of revenue may inspect cigarettes to determine if the cigarettes are marked as required by W.S. 35-9-805. If the cigarettes are not marked as required, the department of revenue shall notify the state fire marshal.

(b) To enforce the provisions of this act, the attorney general, the department of revenue and the state fire marshal, their agent and other law enforcement personnel are authorized to examine books, papers, invoices and other records of any person or entity possessing, controlling or occupying any premises where cigarettes are placed, held, stored, sold or offered for sale.

**35-9-808. Fee and penalties.**

All certification fees paid under W.S. 35-9-804 shall be deposited in the general fund. All monies recovered as penalties under W.S. 35-9-806 shall be paid over to the state treasurer pursuant to W.S. 8-1-109.

**35-9-809. Sale in other states.**

Nothing in this act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of W.S. 35-9-803 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 such cigarettes will not be sold or offered for sale to persons located in this state.

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**35-9-810. Preemption of local law.**

This act shall preempt any local law, ordinance or regulation conflicting with any provision of this act.

**35-9-811. Construction of act.**

This act shall be interpreted and construed as provided in W.S. 8-1-103(a)(vii).

**Section 2.** No city, town or political subdivision shall enact any law, ordinance, resolution or regulation regulating cigarette ignition propensity on or after July 1, 2010.

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**Section 3.**

(a) Except as provided in subsection (b) of this section, this act is effective July 1, 2011.

(b) Section 2 of this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the Senate.

\_\_\_\_\_  
Chief Clerk