

SENATE FILE NO. SF0052

Reduced cigarette ignition propensity.

Sponsored by: Senator(s) Coe and Meyer and
Representative(s) Childers, Lubnau and Moniz

A BILL

for

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

7

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

9

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

12

13 ARTICLE 9

14 REDUCED CIGARETTE IGNITION

15

16 **35-9-801. Short title.**

1

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

4

5 **35-9-802. Definitions.**

6

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

9

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

13

14 (ii) "Cigarette" means:

15

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

18

19 (B) Any roll of tobacco wrapped in any
20 substance containing tobacco which, because of its
21 appearance, the type of tobacco used in the filler, or its
22 packaging and labeling, is likely to be offered to or
23 purchased by consumers as a cigarette as described in
24 subparagraph (A) of this paragraph.

1

2 (iii) "Manufacturer" means:

3

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

8

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

11

12 (iv) "Quality control" and "quality assurance
13 program" means the laboratory procedures implemented to
14 ensure that operator bias, systematic and nonsystematic
15 methodological errors and equipment related problems do not
16 affect the results of testing. A quality control program
17 shall ensure that testing repeatability remains within the
18 required repeatability values stated in W.S.
19 35-9-803(a)(vi) for all test trials used to certify
20 cigarettes in accordance with this act;

21

22 (v) "Repeatability" means the range of values
23 within which the repeat results of test trials from a

1 single laboratory must fall ninety-five percent (95%) of
2 the time;

3

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

7

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

14

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

17

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

24

1 (x) "This act" means W.S. 35-9-801 through
2 35-9-811.

3

4 **35-9-803. Requirements for sale; test method;**
5 **adoption of other state's testing method, if appropriate;**
6 **performance standards; exceptions.**

7

8 (a) Except as provided in this act, cigarettes may
9 not be offered for sale or sold to persons located in this
10 state unless the cigarettes have been tested and have met
11 the required performance standard specified in this
12 section, the manufacturer has filed a written certification
13 with the state fire marshal in accordance with W.S.
14 35-9-804 and the cigarettes have been marked in accordance
15 with W.S. 35-9-805. The following testing requirements
16 shall apply:

17

18 (i) Cigarette testing shall be conducted in
19 accordance with the American society of testing and
20 materials ("ASTM") standard E2187-04, "Standard Test Method
21 for Measuring the Ignition Strength of Cigarettes," in
22 effect on February 1, 2010. The state fire marshal may
23 adopt a subsequent ASTM standard upon a written finding
24 that the subsequent method does not result in a change in

1 the percentage of full length burns exhibited by any tested
2 cigarette when compared to the percentage of full length
3 burns the same cigarette would exhibit when tested in
4 accordance with ASTM standard E2187-04 and the performance
5 standard in this section;

6
7 (ii) Testing shall be conducted on ten (10)
8 layers of filter paper;

9
10 (iii) No more than twenty-five percent (25%) of
11 the cigarettes tested in a test trial in accordance with
12 this section shall exhibit full length burns. Forty (40)
13 replicate tests shall comprise a complete test trial for
14 each cigarette tested;

15
16 (iv) The performance standard required by this
17 section shall be applied only to a complete test trial;

18
19 (v) Written certifications shall be based upon
20 testing conducted by a laboratory that has been accredited
21 pursuant to standard ISO/IEC 17025 of the International
22 Organization for Standardization ("ISO"), or other
23 comparable accreditation standard required by the state
24 fire marshal;

1

2 (vi) Laboratories conducting testing in
3 accordance with this section shall implement a quality
4 control and quality assurance program that includes a
5 procedure that will determine the repeatability of the
6 testing results. The repeatability value shall not be
7 greater than nineteen hundredths (0.19);

8

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

12

13 (viii) Testing performed or sponsored by the
14 state fire marshal to determine a cigarette's compliance
15 with the performance standard required by this section
16 shall be conducted in accordance with this section.

17

18 (b) Each cigarette listed in a certification
19 submitted pursuant to W.S. 35-9-804 that uses lowered
20 permeability bands in the cigarette paper to achieve
21 compliance with the performance standard set forth in this
22 section shall have at least two (2) nominally identical
23 bands on the paper surrounding the tobacco column. At
24 least one (1) complete band shall be located at least

1 fifteen (15) millimeters from the lighting end of the
2 cigarette. Cigarettes on which the bands are positioned by
3 design shall have at least two (2) bands fully located at
4 least fifteen (15) millimeters from the lighting end and at
5 least ten (10) millimeters from the filter end of the
6 tobacco column. For nonfiltered cigarettes the bands shall
7 be at least ten (10) millimeters from the labeled end of
8 the tobacco column.

9

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

20

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

1

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

5

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

9

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

16

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

19

20 (e) Manufacturers shall maintain copies of reports of
21 all tests conducted on all cigarettes offered for sale for
22 three (3) years and shall make copies available upon
23 written request by the state fire marshal or attorney
24 general. Any manufacturer failing to make copies of the

1 requested reports available within sixty (60) days of
2 receipt of the request shall be subject to a civil penalty
3 not to exceed ten thousand dollars (\$10,000.00) for each
4 day after the sixtieth day that the manufacturer fails to
5 make copies available.

6

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

13

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

16

17 (i) Wholesale or retail dealers from selling
18 after the effective date of this act the dealer's inventory
19 of cigarettes existing on the effective date of this act if
20 the wholesale or retail dealer can establish that state tax
21 stamps were affixed to the cigarettes prior to the
22 effective date and the wholesale or retail dealer can
23 establish that the inventory was purchased prior to the
24 effective date of this act in a comparable quantity to the

1 inventory purchase during the same period of the prior
2 year; or

3
4 (ii) The sale of cigarettes solely for the
5 purpose of consumer testing using only the quantity of
6 cigarettes that is reasonably necessary for the testing.
7 For purposes of this paragraph the term "consumer testing"
8 means an assessment of cigarettes that is conducted by a
9 manufacturer, or under the control and direction of a
10 manufacturer, for the purpose of evaluating consumer
11 acceptance of the cigarettes.

12
13 **35-9-804. Certification and product change.**

14
15 (a) Each manufacturer shall certify in writing to the
16 state fire marshal:

17
18 (i) Each cigarette listed in the certification
19 has been tested pursuant to W.S. 35-9-803; and

20
21 (ii) Each cigarette listed in the certification
22 meets the performance standard set forth in W.S. 35-9-803.

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

3
4 (i) Brand or trade name on the packaging;

5
6 (ii) Style;

7
8 (iii) Length in millimeters;

9
10 (iv) Circumference in millimeters;

11
12 (v) Flavor such as menthol if applicable;

13
14 (vi) Filter or nonfilter;

15
16 (vii) Package description such as soft pack or
17 box;

18
19 (viii) Marking pursuant to W.S. 35-9-805;

20
21 (ix) Contact information for the laboratory
22 that conducted the testing, including name, address and
23 telephone number; and
24

1 (x) The date of testing.

2

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

7

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

10

11 (e) For each cigarette listed in a certification, a
12 manufacturer shall pay a fee of two hundred fifty dollars
13 (\$250.00) payable to the state fire marshal for processing,
14 testing, enforcement and oversight activities required by
15 this act.

16

17 (f) If a cigarette is certified and is subsequently
18 changed in a manner that is likely to alter its compliance
19 with the reduced cigarette ignition propensity standards
20 required by this act, the cigarette shall not be sold or
21 offered for sale in this state until the manufacturer
22 retests the cigarette in accordance with the testing
23 standards consistent with the provisions of this act and
24 maintains the records of that retesting as required by this

1 act. Any altered cigarette which does not meet the
2 performance standard set forth in this act shall not be
3 sold in this state.

4

5 **35-9-805. Cigarette packaging.**

6

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

14

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

18

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

23

24 **35-9-806. Penalties.**

1

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

11

12 (b) A retail dealer who knowingly sells or offers for
13 sale cigarettes in violation of any provision of this act
14 shall be subject to a civil penalty not to exceed one
15 hundred dollars (\$100.00) for each pack of such cigarettes
16 sold or offered for sale. In no case shall the penalty
17 against any retail dealer exceed twenty-five thousand
18 dollars (\$25,000.00) during any thirty (30) day period.

19

20 (c) In addition to any penalty prescribed by law any
21 corporation, partnership, sole proprietor, limited
22 partnership or association engaged in the manufacture of
23 cigarettes that knowingly makes a false certification
24 pursuant to W.S. 35-9-804 shall be subject to a civil

1 penalty of not less than seventy-five thousand dollars
2 (\$75,000.00) nor more than two hundred fifty thousand
3 dollars (\$250,000.00) for each false certification.

4
5 (d) Any person violating any other provision of this
6 act shall be subject to a civil penalty for a first offense
7 not to exceed one thousand dollars (\$1,000.00) and for each
8 subsequent offense a penalty not to exceed five thousand
9 dollars (\$5,000.00) for each violation.

10
11 (e) Law enforcement personnel or an authorized
12 representative of the state fire marshal may seize
13 cigarettes for which no certification has been filed or
14 that have not been marked in the manner required by this
15 act. Cigarettes seized pursuant to this section shall be
16 destroyed not less than thirty (30) days after the
17 trademark holder in the cigarette brand has been given an
18 opportunity to inspect the cigarettes.

19
20 (f) In addition to any other remedy provided by law,
21 the attorney general may file an action in district court
22 for a violation of this act, including petitioning for any
23 one (1) or more of the following remedies:

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

7
8 (ii) To recover any costs or damages suffered by
9 the state because of a violation of this act, including
10 enforcement costs relating to the specific violation and
11 attorney's fees.

12
13 (g) Each violation of this act or of rules and
14 regulations adopted under this act constitutes a separate
15 civil violation for which the state fire marshal or
16 attorney general may obtain relief. Upon obtaining
17 judgment for injunctive relief under this section, the
18 state fire marshal or attorney general shall provide a copy
19 of the judgment to all wholesale dealers and agents to
20 which the subject cigarette has been sold.

21
22 **35-9-807. Inspection and enforcement.**

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

6
7 (b) To enforce the provisions of this act, the
8 attorney general, the department of revenue and the state
9 fire marshal, their agent and other law enforcement
10 personnel are authorized to examine books, papers, invoices
11 and other records of any person or entity possessing,
12 controlling or occupying any premises where cigarettes are
13 placed, held, stored, sold or offered for sale.

14

15 **35-9-808. Reduced cigarette ignition propensity**
16 **standard account.**

17

18 The reduced cigarette ignition propensity standard account
19 is created. All certification fees paid under W.S. 35-9-804
20 shall be deposited in the state treasury to the credit of
21 this account. All monies recovered as penalties under W.S.
22 35-9-806 shall be paid over to the state treasurer pursuant
23 to W.S. 8-1-109. Subject to legislative appropriation,

1 funds in the account shall be made available to support
2 fire safety and prevention programs.

3

4 **35-9-809. Sale in other states.**

5

6 Nothing in this act shall be construed to prohibit any
7 person or entity from manufacturing or selling cigarettes
8 that do not meet the requirements of W.S. 35-9-803 if the
9 cigarettes are or will be stamped for sale in another state
10 or are packaged for sale outside the United States and that
11 person or entity has taken reasonable steps to ensure that
12 such cigarettes will not be sold or offered for sale to
13 persons located in this state.

14

15 **35-9-810. Preemption of local law.**

16

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

19

20 **35-9-811. Construction of act.**

21

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

24

1 **Section 2.** No city, town or political subdivision
2 shall enact any law, ordinance, resolution or regulation
3 regulating cigarette ignition propensity on or after July
4 1, 2010.

5

6 Section 3.

7

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

10

(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.

15

16 (END)