

No. 2008-42

AN ACT

HB 1612

Providing for testing standards for cigarette fire safety, for certification of compliance by manufacturers, for package markings and for enforcement and penalties; establishing special funds; and providing for sale of existing inventory, for manufacturers' sale to other states or foreign countries and for regulations and preemptions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Cigarette Fire Safety and Firefighter Protection Act.

Section 2. (Reserved).

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Agent.” Any person authorized by the Commonwealth to purchase and affix tax stamps on packages of cigarettes.

“Cigarette.” Any of the following:

(1) A roll for smoking whether made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not the tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(2) A roll for smoking wrapped in any substance containing tobacco other than a product accepted by the Federal Government as a cigar, which, because of its appearance or 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).

“Commissioner.” The State Fire Commissioner.

“Department.” The Department of Revenue of the Commonwealth.

“Manufacturer.”

(1) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced in any jurisdiction that such manufacturer intends to be sold in this Commonwealth, including cigarettes intended to be sold in the United States through an importer.

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

(3) Any entity that becomes a successor of any entity described under paragraph (1) or (2).

“Quality control and quality assurance program.” 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.

“Repeatability.” The range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.

“Retail dealer.” Any person other than a manufacturer or wholesale dealer engaged in selling cigarettes or tobacco products.

“Sale.” Any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefore. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts and the exchanging of cigarettes for any consideration other than money shall be considered sales.

“Sell.” To sell, to offer or to agree to do the same.

“Wholesale dealer.” 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.

Section 4. Standards for cigarette fire safety.

(a) Testing.—Except as provided under subsection (g), no cigarettes may be sold or offered for sale in this Commonwealth or offered for sale or sold to persons located in this Commonwealth unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the department in accordance with section 5 and the cigarettes have been marked in accordance with section 6.

(b) Testing standards.—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.” Testing shall be conducted on ten layers of filter paper. No more than 25% of the cigarettes tested in a test trial in accordance with this subsection shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested. The performance standard required by this subsection shall only be applied to a complete test trial. Laboratories conducting testing in accordance with this subsection shall implement a quality control and quality assurance program that includes a procedure to determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19. The program shall ensure that the testing repeatability remains within the required repeatability values for all test trials used to certify cigarettes in accordance with this act. Written certifications shall be based upon testing conducted by a laboratory that has been accredited under standard ISO/IEC 17025 of the International

Organization for Standardization or has been accredited under another comparable accreditation standard required by the commissioner. Additional testing shall not be required under this subsection if cigarettes are tested in a manner consistent with this act for any other purposes. Testing performed or sponsored by the commissioner to determine a cigarette's compliance with the required performance standard shall be conducted in accordance with this subsection.

(c) Use of bands.—Each cigarette listed in a certification submitted under section 5 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 15 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 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for a nonfiltered cigarette.

(d) Alternate testing.—The manufacturer or manufacturers of a cigarette that the commissioner determines cannot be tested in accordance with the test method prescribed under subsection (a) shall propose a test method and performance standard for such cigarette to the commissioner. Upon approval of the proposed test method and a determination by the commissioner that the performance standard proposed by the manufacturer or manufacturers is equivalent to the performance standard prescribed under subsection (a), the manufacturer or manufacturers may employ such test method and performance standard to certify the cigarette under section 5. If the commissioner 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 this act and the commissioner 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 provision comparable to this section, then the commissioner shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this Commonwealth, unless the commissioner demonstrates a reasonable basis why the alternative test should not be accepted under this act. All other applicable requirements of this section shall apply to the manufacturer or manufacturers.

(e) Compliance.—In order to ensure compliance with the performance standard specified in subsection (a), data from testing conducted by manufacturers on all cigarettes offered for sale to comply with this act shall be kept on file by the manufacturers for a period of three years, and copies shall be sent to the department upon the department's written request, to the commissioner upon the commissioner's written request and to the Office of

Attorney General upon the Attorney General's written request. Any manufacturer that fails to make copies of the reports available within 60 days of receipt of a written request shall be subject to a civil penalty not to exceed \$10,000 for each day after the 60th day that the manufacturer does not make the copies available.

(f) Subsequent testing methods.—The commissioner may adopt a subsequent ASTM Standard Test Method upon a finding that such 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 under subsection (b).

(g) Consumer testing.—The requirements of subsection (a) shall not prohibit the sale of cigarettes solely for the purpose of consumer testing. For the purposes of this subsection, "consumer testing" shall mean an assessment of cigarettes that is conducted by a manufacturer or under the control or direction of a manufacturer, for the purpose of evaluation of consumer acceptance of cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for the assessment.

(h) Review of standards.—Three years from the effective date of this section, and every three years thereafter, the commissioner shall undertake a review of the effectiveness of this section based upon incidents of cigarette-caused fires, advances in cigarette fire safety, including improvements in cigarette technology, and the data submitted to demonstrate compliance with the performance standard. Based upon the triennial review, the commissioner shall report his findings to the General Assembly and, if appropriate, submit recommendations to improve the effectiveness of this section.

(i) Implementation.—This act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.

Section 5. Certification of compliance by manufacturers.

(a) Written certification.—Each manufacturer shall submit to the department a written certification attesting that:

(1) Each cigarette listed in the certification has been tested in accordance with section 4.

(2) Each cigarette listed in the certification meets the performance standard set forth under section 4.

(3) Each cigarette listed in the certification shall be described with the following information:

(i) Brand, such as the trade name on the package.

(ii) Style, such as light, ultra light.

(iii) Length in millimeters.

(iv) Circumference in millimeters.

(v) Flavor, such as menthol, chocolate, if applicable.

(vi) Filter or nonfilter.

- (vii) Package description, such as soft pack, box.
- (viii) Marking approved in accordance with section 6.
- (ix) The name, address and telephone number of the laboratory, if different from the manufacturer, that conducted the test.
- (x) The date that the testing occurred.

(b) **Certifications.**—The certifications shall be made available to the Attorney General and the commissioner for the purposes of ensuring compliance with this section. Each cigarette certified under this section shall be retested and recertified every three years.

(c) **Certification fee.**—For each certification form submitted to the department, a manufacturer shall pay to the department a fee of \$1,000 per brand family, except that, whenever a manufacturer submits a certification form listing a cigarette that is within a brand family for which the manufacturer already has paid a fee of \$1,000 within the three-year certification period and that has not already been listed in a certification form submitted during that three-year period, the manufacturer shall pay the department an additional fee of \$500. The fee may be increased by regulation by the department.

(d) **Modification of certain products.**—If a manufacturer has certified a cigarette under this section and later makes a change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required under this act, the cigarette shall not be sold or offered for sale in this Commonwealth until the manufacturer retests the cigarette in accordance with the testing standards under section 4 and maintains records of that retesting as required under section 4. Any altered cigarette which does not meet the performance standards under section 4 may not be sold in this Commonwealth.

Section 6. Package markings.

(a) **Approval of markings.**—Prior to the certification of any cigarette, a manufacturer shall present to the department for approval a proposed marking for use on all packages. Upon receipt of the request, the department shall approve or disapprove the marking offered. The department shall approve the use of letters “FSC,” which signifies Fire Standards Compliant. The marking shall appear in eight-point type or larger and permanently printed, stamped or engraved on the package at or near the UPC Code. Proposed markings shall be deemed approved if the department fails to act within ten business days of receiving a request for approval.

(b) **Modification of marking.**—No manufacturer shall modify its approved marking unless the modification has been approved by the department in accordance with this section.

(c) **Copy of certifications.**—Manufacturers certifying cigarettes in accordance with section 5 shall provide a copy of such 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 utilized 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 commissioner, the department, the Office of Attorney General or employees thereof to inspect markings of cigarette packaging marked in accordance with this section.

Section 7. Enforcement and penalties.

(a) Penalties.—

(1) Any 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 4 shall, for a first offense, be subject to a civil penalty not to exceed \$10,000 per each sale of cigarettes and, for a subsequent offense, be subject to a civil penalty not to exceed \$25,000 per each sale of cigarettes. A penalty against a person or entity under this section may not exceed \$100,000 during any 30-day period.

(2) Any retail dealer who knowingly sells or offers to sell cigarettes in violation of section 4 shall, for a first offense, be subject to a civil penalty not to exceed \$500 and, for a subsequent offense, be subject to a civil penalty not to exceed \$5,000 for each violation. In no case shall the penalty against any retail dealer exceed \$25,000 for sales or offers to sell during any 30-day period.

(3) In addition to any penalty provided by statute, an entity engaged in the manufacture of cigarettes that knowingly makes a false certification under section 5 shall be subject to a civil penalty of not less than \$75,000 and not more than \$250,000 for each false certification.

(4) Any cigarettes that have been sold or offered for sale and are not certified pursuant to this act or do not bear the package marking approved by the department shall be deemed to be contraband and shall be subject to immediate seizure. The seized cigarettes may be destroyed by the Commonwealth ten days after written notice of such seizure is given to the manufacturer. The manufacturer may inspect such seized cigarettes during that ten-day period.

(5) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required under this act shall be deemed to be contraband and shall be subject to seizure by the Commonwealth, provided that the Commonwealth gives written notice to the manufacturer ten days prior to seizure. The Commonwealth may apply for a court order to shorten this time period. The manufacturer may apply for a court order to prevent such seizure. If seized, the manufacturer shall have the opportunity to inspect and test such seized cigarettes and to appear in a forfeiture proceeding which will determine whether such cigarettes may be destroyed by the Commonwealth.

(b) Enforcement.—The department, the commissioner and the Office of Attorney General are authorized to enforce this act.

(c) Regulations.—The department and the commissioner may promulgate regulations as necessary to implement and administer this act.

(d) Memorandum of understanding.—The department may enter into a memorandum of understanding with the commissioner and the Attorney General to coordinate the random inspections of wholesale dealers, agents and retail dealers to ensure that only cigarettes complying with this act and related acts are sold in this Commonwealth.

(e) Injunctive relief.—In addition to any other remedy provided by law, the Attorney General may file an action in State court for a violation of this act, including petitioning for injunctive relief or to recover any costs or damages suffered by the Commonwealth because of a violation of this act, including enforcement costs relating to the specific violation and attorney fees. In any such action, the Attorney General shall have the same authority to investigate and to obtain remedies. Each violation of this section or of rules adopted under this section constitutes a separate civil violation for which the Attorney General may obtain relief.

Section 8. Establishment of special funds.

(a) Cigarette Fire Safety and Firefighter Protection Act Enforcement Fund.—There is established in the custody of the State Treasurer a special fund to be known as the Cigarette Fire Safety and Firefighter Protection Act Enforcement Fund. The fund shall consist of all certification fees submitted by manufacturers and shall be appropriated by the General Assembly to the department and the Office of Attorney General and shall be used solely to support State processing, testing, enforcement and oversight activities related to this act.

(b) Fire Prevention and Public Safety Fund.—There is established in the custody of the State Treasurer a special fund to be known as the Fire Prevention and Public Safety Fund. The fund shall consist of all moneys recovered as penalties under this act. The money shall be deposited to the credit of the fund and shall be appropriated by the General Assembly to the commissioner and be available to the commissioner to support fire safety and prevention programs.

Section 9. Sale of existing inventory.

(a) Existing inventory.—The requirement that only cigarettes certified as compliant with the performance standard in this act may be sold shall not prohibit wholesale dealers or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this section if the wholesale dealer or retail dealer can establish that State tax stamps were affixed to the cigarettes prior to the effective date of this section and if the wholesale dealer or retail dealer can establish that the inventory was purchased prior to the effective date of this section, in comparable quantity to the inventory purchased during the same period of the prior year.

(b) Limitation.—Notwithstanding subsection (a), a wholesale dealer or retail dealer may not sell or offer for sale a cigarette in this Commonwealth that does not comply with this act after July 1, 2009.

Section 10. Manufacturer sale to other states or foreign countries.

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 section 4(a) if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this Commonwealth.

Section 11. Effect of Federal regulations.

This act shall be preempted if a Federal reduced cigarette ignition propensity standard is adopted and becomes effective.

Section 20. Effective date.

This act shall take effect as follows:

- (1) The following provisions of this act shall take effect immediately:
 - (i) Section 7(b), (c) and (d).
 - (ii) This section.
- (2) The remainder of this act shall take effect January 1, 2009.

APPROVED—The 4th day of July, A.D. 2008.

EDWARD G. RENDELL