

SECOND REGULAR SESSION

HOUSE BILL NO. 2257

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BRUNS (Sponsor) AND WILDBERGER (Co-sponsor).

Read 1st time February 25, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

3797L.01I

AN ACT

To amend chapter 320, RSMo, by adding thereto nine new sections relating to reduced ignition propensity cigarettes, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 320, RSMo, is amended by adding thereto nine new sections, to be
2 known as sections 320.350, 320.353, 320.356, 320.359, 320.362, 320.365, 320.368, 320.371,
3 and 320.374, to read as follows:

320.350. 1. Sections 320.350 to 320.374 shall be known and may be cited as the
2 **"Fire Safety Standard and Firefighter Protection Act".**

3 **2. As used in sections 320.350 to 320.374, the following terms shall mean:**

4 **(1) "Agent", any person authorized by the department of revenue to purchase and**
5 **affix stamps on packages of cigarettes;**

6 **(2) "Cigarette", any roll for smoking, whether made wholly or in part of tobacco**
7 **or any other substance, irrespective of size or shape, and whether or not such tobacco or**
8 **substance is flavored, adulterated, or mixed with any other ingredient, the wrapper or**
9 **cover of which is made of paper or any other substance or material, other than leaf**
10 **tobacco;**

11 **(3) "Department", the department of revenue;**

12 **(4) "Manufacturer":**

13 **(a) Any entity which manufactures or otherwise produces cigarettes or causes**
14 **cigarettes to be manufactured or produced anywhere that such manufacturer intends to**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 be sold in this state, including cigarettes intended to be sold in the United States through
16 an importer; or

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

20 (c) Any entity that becomes a successor of an entity described in paragraph (a) or
21 (b) of this subdivision;

22 (5) "Quality control and quality assurance program", the laboratory procedures
23 implemented to ensure that operator bias, systematic and nonsystematic methodological
24 errors, and equipment-related problems do not affect the results of the testing. Such a
25 program shall ensure that the testing repeatability remains within the required
26 repeatability values stated in subdivision (6) of subsection 1 of section 320.353 for all test
27 trials used to certify cigarettes in accordance with sections 320.350 to 320.374;

28 (6) "Repeatability", the range of values within which the repeat results of cigarette
29 test trials from a single laboratory will fall ninety-five percent of the time;

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

32 (8) "Sale", any transfer of title or possession, or both, exchange or barter,
33 conditional or otherwise, in any manner or by any means whatever or any agreement
34 therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes,
35 or gifts, and the exchanging of cigarettes for any consideration other than money are
36 considered sales;

37 (9) "Sell", to sell, or offer or agree to do the same;

38 (10) "Wholesale dealer", any person other than a manufacturer who sells cigarettes
39 for purposes of resale, and any person who owns, operates, or maintains one or more
40 cigarette or tobacco product vending machines in, at, or upon premises owned or occupied
41 by any other person.

320.353. 1. Except as provided in subsection 7 of this section, no cigarettes shall be
2 sold or offered for sale in this state or offered for sale or sold to persons located in this state
3 unless the cigarettes have been tested in accordance with the test method and meet the
4 performance standard specified in this section, a written certification has been filed by the
5 manufacturer with the state fire marshal in accordance with section 320.356, and the
6 cigarettes have been marked in accordance with section 320.359. The following shall apply
7 to such testing:

8 (1) Testing of cigarettes shall be conducted in accordance with the American
9 Society of Testing and Materials (ASTM) standard E2187-04, "Standard Test Method for
10 Measuring the Ignition Strength of Cigarettes";

11 (2) Testing shall be conducted on ten layers of filter paper;

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

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

17 (5) Written certifications shall be based upon testing conducted by a laboratory
18 that has been accredited under standard ISO/IEC 17025 of the International Organization
19 for Standardization (ISO), or other comparable accreditation standard required by the
20 state fire marshal;

21 (6) Laboratories conducting testing in accordance with this section shall implement
22 a quality control and quality assurance program that includes a procedure that will
23 determine the repeatability of the testing results. The repeatability value shall be no
24 greater than nineteen one-hundredths;

25 (7) Nothing in this section shall be construed as requiring additional testing if
26 cigarettes are tested consistent with sections 320.350 to 320.374 for any other purpose;

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

30 2. Each cigarette listed in a certification submitted under section 320.356 that uses
31 lowered permeability bands in the cigarette paper to achieve compliance with the
32 performance standard set forth in this section shall have at least two nominally identical
33 bands on the paper surrounding the tobacco column. At least one complete bank shall be
34 located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on
35 which the bands are positioned by design, there shall be at least two bands fully located at
36 least fifteen millimeters from the lighting end and ten millimeters from the filter end of the
37 tobacco column, or ten millimeters from the labeled end of the tobacco column for
38 nonfiltered cigarettes.

39 3. A manufacturer of a cigarette that the state fire marshal determines cannot be
40 tested in accordance with the test method described in subdivision (1) of subsection 1 of
41 this section shall propose a test method and performance standard for the cigarette to the
42 state fire marshal. Upon approval of the proposed test method and a determination by the
43 state fire marshal that the performance standard proposed by the manufacturer is

44 equivalent to the performance standard prescribed in subdivision (3) of subsection 1 of this
45 section, the manufacturer may employ such test method and performance standard to
46 certify such cigarette under section 320.356. If the state fire marshal determines that
47 another state has enacted reduced cigarette ignition propensity standards that include a
48 test method and performance standard that are the same as those contained in sections
49 320.350 to 320.374, and the state fire marshal finds that the officials responsible for
50 implementing such requirements have approved the proposed alternative test method and
51 performance standard for a particular cigarette proposed by a manufacturer as meeting
52 the fire safety standards of that state's law or regulation under a legal provision
53 comparable to this section, the state fire marshal shall authorize such manufacturer to
54 employ the alternative test method and performance standard to certify that cigarette for
55 sale in this state, unless the state fire marshal demonstrates a reasonable basis why the
56 alternative test should not be accepted under sections 320.350 to 320.374. All other
57 applicable requirements of this section shall apply to the manufacturer.

58 4. Each manufacturer shall maintain copies of the reports of all tests conducted on
59 all cigarettes offered for sale for a period of three years, and shall make copies of such
60 reports available to the state fire marshal and the state attorney general upon written
61 request. Any manufacturer who fails to make copies of such reports available within sixty
62 days of receiving a written request shall be subject to a civil penalty not to exceed ten
63 thousand dollars for each day after the sixtieth day that the manufacturer does not make
64 such copies available.

65 5. The state fire marshal may adopt a subsequent ASTM Standard Test Method
66 for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent
67 method does not result in a change in the percentage of full-length burns exhibited by any
68 tested cigarette when compared to the percentage of full-length burns the same cigarette
69 would exhibit when tested in accordance with ASTM Standard E2187-04 and the
70 performance standard in subdivision (3) of subsection 1 of this section.

71 6. The state fire marshal shall review the effectiveness of this section and report
72 every three years to the general assembly the state fire marshal's findings and, if
73 appropriate, recommendations for legislation to improve the effectiveness of sections
74 320.350 to 320.374. The report and legislative recommendations shall be submitted by
75 June thirtieth following the conclusion of each three-year period.

76 7. The requirements of subsection 1 of this section shall not prohibit:

77 (1) Wholesale or retail dealers from selling their existing inventory of cigarettes on
78 or after the effective date of sections 320.350 to 320.374 if the wholesale or retail dealer can
79 establish that state tax stamps were affixed to the cigarettes prior to such effective date and

80 the wholesale or retail dealer can establish that the inventory was purchased prior to such
81 effective date in comparable quantity to the inventory purchased during the same period
82 of the prior year; or

83 (2) The sale of cigarettes solely for the purpose of consumer testing. For purposes
84 of this subdivision, "consumer testing" means an assessment of cigarettes that is conducted
85 by a manufacturer, or under the control and direction of a manufacturer, for the purpose
86 of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of
87 cigarettes that is reasonably necessary for such assessment.

88 8. Sections 320.350 to 320.374 shall be implemented in accordance with the
89 implementation and substance of the New York Fire Safety Standards for Cigarettes.

320.356. 1. Each manufacturer shall submit to the state fire marshal a written
2 certification attesting that each cigarette listed in the certification has been tested in
3 accordance with and meets the performance standard set forth in section 320.353.

4 2. Each cigarette listed in the certification shall be described with the following
5 information:

- 6 (1) Brand or trade name on the package;
- 7 (2) Style, such as light or ultra light;
- 8 (3) Length in millimeters;
- 9 (4) Circumference in millimeters;
- 10 (5) Flavor, such as menthol or chocolate, if applicable;
- 11 (6) Filter or nonfilter;
- 12 (7) Package description, such as soft pack or box;
- 13 (8) Marking under section 320.359;
- 14 (9) The name, address, and telephone number of the laboratory, if different than
15 the manufacturer that conducted the test; and
- 16 (10) The date that the testing occurred.

17 3. The certifications shall be made available to the state attorney general for
18 purposes consistent with sections 320.350 to 320.374 and the department of revenue for
19 purposes of ensuring compliance with this section.

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

21 5. At the time it submits a written certification under this section, a manufacturer
22 shall pay to the state fire marshal a fee of one thousand dollars for each brand family of
23 cigarettes listed in the certification. The fee paid shall apply to all cigarettes within the
24 brand family certified and shall include any new cigarette certified within the brand family
25 during the three-year certification period.

26 **6. (1) There is hereby created in the state treasury the "Fire Safety Standard and**
27 **Firefighter Protection Act Enforcement Fund" which shall consist of moneys collected**
28 **under this section. The fund shall be administered by the state fire marshal. Upon**
29 **appropriation, moneys in the fund shall be available to the state fire marshal solely to**
30 **support processing, testing, enforcement, and oversight activities under sections 320.350**
31 **to 320.374.**

32 **(2) Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any**
33 **moneys remaining in the fund at the end of the biennium shall not revert to the credit of**
34 **the general revenue fund.**

35 **(3) The state treasurer shall invest moneys in the fund in the same manner as other**
36 **funds are invested. Any interest and moneys earned on such investments shall be credited**
37 **to the fund.**

38 **7. If a manufacturer has certified a cigarette under this section and thereafter**
39 **makes any change to such cigarette that is likely to alter its compliance with the reduced**
40 **cigarette ignition propensity standards required by sections 320.350 to 320.374, such**
41 **cigarette shall not be sold or offered for sale in this state until the manufacturer retests the**
42 **cigarette in accordance with the testing standards and maintains records of such retesting**
43 **as required by section 320.353. Any altered cigarette which does not meet the performance**
44 **standard set forth in section 320.353 shall not be sold in this state.**

320.359. 1. Cigarettes that are certified by a manufacturer in accordance with
2 **section 320.356 shall be marked to indicate compliance with the requirements of section**
3 **320.353. The marking shall be in eight-point type or larger and consist of:**

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

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

10 **(3) Printed, stamped, engraved, or embossed text that indicates that the cigarettes**
11 **meet the standards of sections 320.350 to 320.374.**

12 **2. A manufacturer shall use only one marking and shall apply such marking**
13 **uniformly for all packages, including but not limited to packs, cartons, and cases, and**
14 **brands marketed by such manufacturer.**

15 **3. The state fire marshal shall be notified as to the marking that is selected.**

16 **4. Prior to the certification of any cigarette, a manufacturer shall present its**
17 **proposed marking to the state fire marshal for approval. Upon receipt of the request, the**

18 state fire marshal shall approve or disapprove the marking offered; except that, the state
19 fire marshal shall approve:

20 (1) Any marking in use and approved for sale in New York under the New York
21 Fire Safety Standards for Cigarettes; or

22 (2) The letters "FSC" which signify fire standards compliant appearing in eight-
23 point type or larger and shall be permanently printed, stamped, engraved, or embossed on
24 the package at or near the UPC Code.

25

26 Proposed markings shall be deemed approved if the state fire marshal fails to act within
27 ten business days of receiving a request for approval.

28 5. No manufacturer shall modify its approved marking unless the modification has
29 been approved by the state fire marshal in accordance with this section.

30 6. Manufacturers certifying cigarettes in accordance with section 320.356 shall
31 provide a copy of the certifications to all wholesale dealers and agents to which they sell
32 cigarettes and shall also provide sufficient copies of an illustration of the package marking
33 utilized by the manufacturer under this section for each retail dealer to which the
34 wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a
35 copy of such package markings received from manufacturers to all retail dealers to which
36 they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the state fire
37 marshal, the department, the state attorney general, and their employees to inspect
38 markings of cigarette packaging marked in accordance with this section.

320.362. 1. A manufacturer, wholesale dealer, agent, or other person or entity who
2 knowingly sells or offers for sale cigarettes, other than through retail sale, in violation of
3 section 320.353 shall be subject to a civil penalty not to exceed one hundred dollars for each
4 pack of such cigarettes sold or offered for sale; provided that, in no case shall the penalty
5 against any such person or entity exceed one hundred thousand dollars during any thirty-
6 day period.

7 2. A retail dealer who knowingly sells or offers for sale cigarettes in violation of
8 section 320.353 shall be subject to a civil penalty not to exceed one hundred dollars for each
9 pack of such cigarettes sold or offered for sale; provided that, in no case shall the penalty
10 against any retail dealer exceed twenty-five thousand dollars for sales or offers for sale
11 during any thirty-day period.

12 3. In addition to any other penalty prescribed by law, any corporation, partnership,
13 sole proprietorship, limited partnership, or association engaged in the manufacture of
14 cigarettes that knowingly makes a false certification under section 320.356 shall be subject

15 to a civil penalty of at least seventy-five thousand dollars and not to exceed two hundred
16 fifty thousand dollars for each such false certification.

17 4. Any person who violates any other provision of sections 320.350 to 320.374 shall
18 be subject to a civil penalty for a first offense not to exceed one thousand dollars and for
19 any subsequent offense a civil penalty not to exceed five thousand dollars for each such
20 violation.

21 5. Any cigarettes that have been sold or offered for sale that do not comply with the
22 performance standard required by section 320.353 shall be subject to forfeiture. Cigarettes
23 forfeited under this section shall be destroyed; provided, however, that prior to the
24 destruction of any cigarette forfeited under such provisions, the true holder of the
25 trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

26 6. In addition to any other remedy provided by law, the state fire marshal or state
27 attorney general may file an action in a court of competent jurisdiction for a violation of
28 sections 320.350 to 320.374, including petitioning for injunctive relief or to recover any
29 costs or damages incurred by the state as a result of such violation, including enforcement
30 costs relating to the specific violation and attorney's fees. Each violation of sections
31 320.350 to 320.374 or rules promulgated thereto shall constitute a separate civil violation
32 for which the state fire marshal or state attorney general may obtain relief.

33 7. Whenever any law enforcement personnel or authorized representative of the
34 state fire marshal discovers any cigarettes that have not been marked in the manner
35 required by section 320.359, such personnel are authorized and empowered to seize and
36 take possession of such cigarettes. Such cigarettes shall be turned over to the department
37 and shall be forfeited to the state. Cigarettes seized under this section shall be destroyed;
38 provided, however, that prior to the destruction of any cigarette seized under such
39 provisions, the true holder of the trademark rights in the cigarette brand shall be
40 permitted to inspect the cigarette.

320.365. 1. The department of revenue may promulgate rules to implement the
2 provisions of sections 320.350 to 320.374. Any rule or portion of a rule, as that term is
3 defined in section 536.010, RSMo, that is created under the authority delegated in sections
4 320.350 to 320.374 shall become effective only if it complies with and is subject to all of the
5 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections
6 320.350 to 320.374 and chapter 536, RSMo, are nonseverable and if any of the powers
7 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
8 effective date, or to disapprove and annul a rule are subsequently held unconstitutional,
9 then the grant of rulemaking authority and any rule proposed or adopted after August 28,
10 2008, shall be invalid and void.

11 **2. The department, in the regular course of conducting inspections of wholesale**
12 **dealers, agents, and retail dealers as authorized under section 149.041, RSMo, may inspect**
13 **such cigarettes to determine if the cigarettes are marked as required by section 320.359.**
14 **If the cigarettes are not marked as required, the department shall notify the state fire**
15 **marshal.**

320.368. To enforce the provisions of sections 320.350 to 320.374, the state attorney
2 **general, the department, the state fire marshal, and other law enforcement personnel are**
3 **authorized to examine the books, papers, invoices, and other records of any person in**
4 **possession, control, or occupancy of any premises where cigarettes are placed, stored, sold,**
5 **or offered for sale, as well as the stock of cigarettes on the premises. Every person in the**
6 **possession, control, or occupancy of any premises where cigarettes are placed, sold, or**
7 **offered for sale is directed and required to give the state attorney general, the department,**
8 **and the state fire marshal, their authorized representatives, and other law enforcement**
9 **personnel the means, facilities, and opportunity for the examinations authorized by this**
10 **section.**

320.371. 1. There is hereby created in the state treasury the "Cigarette Fire Safety
2 **Standard and Firefighter Protection Act Fund" which shall consist of moneys collected**
3 **under section 320.362. The fund shall be administered by the state fire marshal. Upon**
4 **appropriation, moneys in the fund shall be made available to the state fire marshal to**
5 **support fire safety and prevention programs.**

6 **2. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any**
7 **moneys remaining in the fund at the end of the biennium shall not revert to the credit of**
8 **the general revenue fund.**

9 **3. The state treasurer shall invest moneys in the fund in the same manner as other**
10 **funds are invested. Any interest and moneys earned on such investments shall be credited**
11 **to the fund.**

320.374. 1. Nothing in sections 320.350 to 320.374 shall be construed to prohibit
2 **any person or entity from manufacturing or selling cigarettes that do not meet the**
3 **requirements of section 320.353 if the cigarettes are or will be stamped for sale in another**
4 **state or are packaged for sale outside the United States and such person or entity has taken**
5 **reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons**
6 **located in this state.**

7 **2. Sections 320.350 to 320.374 shall terminate if a federal cigarette ignition**
8 **propensity standard that preempts sections 320.350 to 320.374 is enacted.**

9 **3. Notwithstanding any other provision of law, the local governmental units of this**
10 **state may neither enact nor enforce any ordinance or other local law or regulation**

11 **conflicting with, or preempted by, any provision of sections 320.350 to 320.374 or with any**
12 **policy of this state expressed by sections 320.350 to 320.374 whether that policy is expressed**
13 **by inclusion of a provision in such sections or by exclusion of that subject from such**
14 **sections.**

Section B. Section A of this act shall become effective July 31, 2009.

✓