

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 205

95TH GENERAL ASSEMBLY

0836L.05P

D. ADAM CRUMBLISS, Chief Clerk

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## 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.

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*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 known as sections 320.350, 320.353, 320.356, 320.359, 320.362, 320.365, 320.368, 320.371, 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 "Fire Safety Standard and Firefighter Protection Act".**

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

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

**(2) "Cigarette":**

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

**(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 paragraph (a) of this subdivision;**

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

**(4) "Manufacturer":**

**(a) Any entity which manufactures or otherwise produces cigarettes or causes 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.

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

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

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

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

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

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

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

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

**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 state fire marshal shall make the certifications available to the state attorney  
18 general for purposes consistent with sections 320.350 to 320.374 and the department of  
19 revenue for purposes of ensuring compliance with this section.

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

21           **5.** For each brand family of cigarettes listed for certification, a manufacturer shall  
22 pay a fee of one thousand dollars to the state fire marshal. The fee paid shall apply to all  
23 cigarettes within the brand family certified and shall include any new cigarette certified  
24 within the brand family during the three year certification period.

25           **6.** If a manufacturer has certified a cigarette under this section and thereafter  
26 makes any change to such cigarette that is likely to alter its compliance with the reduced  
27 cigarette ignition propensity standards required by sections 320.350 to 320.374, such  
28 cigarette shall not be sold or offered for sale in this state until the manufacturer retests the  
29 cigarette in accordance with the testing standards and maintains records of such retesting  
30 as required by section 320.353. Any altered cigarette which does not meet the performance  
31 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 section 320.356 shall be marked to indicate compliance with the requirements of section 320.353. The marking shall be in eight-point type or larger and consist of the letters FSC, which signifies fire standard compliant, permanently printed, stamped, engraved, or embossed on the package at or near the UPS Code.**

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

**3. Manufacturers certifying cigarettes in accordance with section 320.356 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the state fire marshal, the department, the state attorney general, and their employees to inspect markings of cigarette packaging marked in accordance with this section.**

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

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

**3. In addition to any other penalty prescribed by law, any corporation, partnership, sole proprietorship, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification under section 320.356 shall be subject to a civil penalty of at least seventy-five thousand dollars and not to exceed two hundred fifty thousand dollars for each such false certification.**

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

**5. Whenever any authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by section 320.356 or that have not been marked in the manner required by section 320.359, such personnel are**

24 authorized and empowered to seize and take possession of such cigarettes. Cigarettes  
25 seized under this section may be destroyed after a reasonable period of time that is not  
26 shorter than two weeks; provided, however, that prior to the destruction of any cigarette  
27 seized under such provisions, any person with an ownership interest in such cigarettes may  
28 appeal to a court of competent jurisdiction for injunctive relief. No cigarette shall be  
29 destroyed once an action for injunctive relief has been filed until a final judgment has been  
30 issued and no appeal to a higher court is possible. The true holder of the trademark rights  
31 in the cigarette brand shall be permitted to inspect the cigarettes.

32 6. In addition to any other remedy provided by law, the state attorney general may  
33 file an action in a court of competent jurisdiction for a violation of sections 320.350 to  
34 320.374, including petitioning:

35 (1) For injunctive relief against any manufacturer, importer, wholesale dealer,  
36 retail dealer, agent, or any other person or entity to enjoin such entity from selling, offering  
37 for sale, or affixing tax stamps to any cigarette that does not comply with the requirements  
38 of sections 320.350 to 320.374; or

39 (2) To recover any costs or damages incurred by the state as a result of such  
40 violation, including enforcement costs relating to the specific violation and attorney's fees.

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42 Each violation of sections 320.350 to 320.374 or rules promulgated thereto shall constitute  
43 a separate civil violation for which the state fire marshal or state attorney general may  
44 obtain relief. Upon obtaining judgment for injunctive relief under this section, the state  
45 fire marshal or state attorney general shall provide a copy of the judgment to all wholesale  
46 dealers and agents to which the cigarettes have been sold.

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 the  
10 effective date of this section 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, and the state fire marshal are authorized to examine the books,**  
3 **papers, invoices, and other business records pertaining to the sale and receipt of any type**  
4 **of cigarettes suspected of failing to conform to the fire safety requirements of sections**  
5 **320.350 to 320.374 of any person in possession or control of any premises where such**  
6 **cigarettes are placed, stored, sold, or offered for sale, as well as the stock of such cigarettes**  
7 **on the premises. Every person in the possession or control of any premises where**  
8 **cigarettes are placed, sold, or offered for sale is directed and required to give the state**  
9 **attorney general, the department, and the state fire marshal, their authorized**  
10 **representatives, and other law enforcement personnel the means, facilities, and opportunity**  
11 **for the examinations authorized by this 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 sections 320.350 to 320.374. The fund shall be administered by the state fire**  
4 **marshal. Upon appropriation, moneys in the fund shall be made available to the state fire**  
5 **marshal to 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 is enacted.**

9 **3. Sections 320.350 to 320.374 preempt any local law, ordinance, or regulation that**  
10 **conflicts with any provision of sections 320.350 to 320.374 or any policy of the state**  
11 **implemented in accordance with sections 320.350 to 320.374. Notwithstanding any other**  
12 **provision of law, the local governmental units of this state may neither enact nor enforce**



13 **any ordinance or other local law or regulation conflicting with, or preempted by, any**  
14 **provision of sections 320.350 to 320.374 or with any policy of this state expressed by**  
15 **sections 320.350 to 320.374 whether that policy is expressed by inclusion of a provision in**  
16 **such sections or by exclusion of that subject from such sections.**

Section B. Section A of this act shall become effective January 1, 2011.

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