
SECOND SUBSTITUTE SENATE BILL 5642

State of Washington

60th Legislature

2008 Regular Session

By Senate Ways & Means (originally sponsored by Senators Kohl-Welles, Rockefeller, Franklin, and Tom)

READ FIRST TIME 01/31/08.

1 AN ACT Relating to reduced cigarette ignition propensity;
2 reenacting and amending RCW 43.79A.040; adding a new chapter to Title
3 19 RCW; prescribing penalties; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Agent" means any person licensed by the department of revenue
8 to purchase and affix adhesive or meter stamps on packages of
9 cigarettes.

10 (2) "Cigarette" means any roll for smoking made wholly or in part
11 of tobacco, irrespective of size or shape and irrespective of the
12 tobacco being flavored, adulterated, or mixed with any other
13 ingredient, when the roll has a wrapper or cover made of paper or any
14 material, except when the wrapper is wholly or in the greater part made
15 of natural leaf tobacco in its natural state.

16 (3) "Manufacturer" means:

17 (a) Any entity that manufactures or otherwise produces cigarettes
18 or causes cigarettes to be manufactured or produced anywhere that the

1 manufacturer intends to be sold in this state, including cigarettes
2 intended to be sold in the United States through an importer;

3 (b) The first purchaser anywhere that intends to resell in the
4 United States cigarettes manufactured anywhere that the original
5 manufacturer or maker does not intend to be sold in the United States;
6 or

7 (c) Any entity that becomes a successor of an entity described in
8 (a) or (b) of this subsection.

9 (4) "Quality control and quality assurance program" means the
10 laboratory procedures implemented to ensure that operator bias,
11 systematic and nonsystematic methodological errors, and
12 equipment-related problems do not affect the results of the testing.
13 Such a program ensures that the testing repeatability remains within
14 the required repeatability values stated in section 2(1)(f) of this act
15 for all test trials used to certify cigarettes in accordance with this
16 chapter.

17 (5) "Repeatability" means the range of values within which the
18 repeat results of cigarette test trials from a single laboratory will
19 fall ninety-five percent of the time.

20 (6) "Retail dealer" means any person, other than a manufacturer or
21 wholesale dealer, engaged in selling cigarettes or tobacco products.

22 (7) "Sale" or "sell" means any transfer of title of cigarettes for
23 consideration, exchange, barter, gift, offer for sale, or distribution,
24 in any manner or by any means.

25 (8) "Wholesale dealer" means any person who sells cigarettes or
26 tobacco products to retail dealers or other persons for purposes of
27 resale, and any person who owns, operates, or maintains one or more
28 cigarette or tobacco product vending machines in, at, or upon premises
29 owned or occupied by any other person.

30 NEW SECTION. **Sec. 2.** (1) Except as provided in subsection (7) of
31 this section, cigarettes may not be sold or offered for sale in this
32 state or offered for sale or sold to persons located in this state
33 unless the cigarettes have been tested in accordance with the test
34 method and meet the performance standard specified in this section, a
35 written certification has been filed by the manufacturer with the state
36 director of fire protection in accordance with section 3 of this act,

1 and the cigarettes have been marked in accordance with section 4 of
2 this act.

3 (a) Testing of cigarettes shall be conducted in accordance with the
4 American society of testing and materials (ASTM) standard E2187-04,
5 "standard test method for measuring the ignition strength of
6 cigarettes."

7 (b) Testing shall be conducted on ten layers of filter paper.

8 (c) No more than twenty-five percent of the cigarettes tested in a
9 test trial in accordance with this section may exhibit full-length
10 burns. Forty replicate tests comprise a complete test trial for each
11 cigarette tested.

12 (d) The performance standard required by (c) of this subsection may
13 only be applied to a complete test trial.

14 (e) Written certifications shall be based upon testing conducted by
15 a laboratory that has been accredited pursuant to standard ISO/IEC
16 17025 of the international organization for standardization (ISO), or
17 other comparable accreditation standard required by the state director
18 of fire protection.

19 (f) Laboratories conducting testing in accordance with this section
20 shall implement a quality control and quality assurance program that
21 includes a procedure that determines the repeatability of the testing
22 results. The repeatability value may be no greater than 0.19.

23 (g) This section does not require additional testing if cigarettes
24 are tested consistent with this chapter for any other purpose.

25 (h) Testing performed or sponsored by the state director of fire
26 protection to determine a cigarette's compliance with the performance
27 standard required must be conducted in accordance with this section.

28 (2) Each cigarette listed in a certification submitted pursuant to
29 section 3 of this act that uses lowered permeability bands in the
30 cigarette paper to achieve compliance with the performance standard set
31 forth in this section must have at least two nominally identical bands
32 on the paper surrounding the tobacco column. At least one complete
33 band must be located at least fifteen millimeters from the lighting end
34 of the cigarette. For cigarettes on which the bands are positioned by
35 design, there must be at least two bands fully located at least fifteen
36 millimeters from the lighting end and ten millimeters from the filter
37 end of the tobacco column, or ten millimeters from the labeled end of
38 the tobacco column for nonfiltered cigarettes.

1 (3) A manufacturer of a cigarette that the state director of fire
2 protection determines cannot be tested in accordance with the test
3 method prescribed in subsection (1)(a) of this section shall propose a
4 test method and performance standard for the cigarette to the state
5 director of fire protection. Upon approval of the proposed test method
6 and a determination by the state director of fire protection that the
7 performance standard proposed by the manufacturer is equivalent to the
8 performance standard prescribed in subsection (1)(c) of this section,
9 the manufacturer may employ that test method and performance standard
10 to certify the cigarette pursuant to section 3 of this act. If the
11 state director of fire protection determines that another state has
12 enacted reduced cigarette ignition propensity standards that include a
13 test method and performance standard that are the same as those
14 contained in this chapter, and the state director of fire protection
15 finds that the officials responsible for implementing those
16 requirements have approved the proposed alternative test method and
17 performance standard for a particular cigarette proposed by a
18 manufacturer as meeting the fire safety standards of that state's law
19 or regulation under a legal provision comparable to this section, then
20 the state director of fire protection shall authorize that manufacturer
21 to employ the alternative test method and performance standard to
22 certify that cigarette for sale in this state, unless the state
23 director of fire protection demonstrates a reasonable basis why the
24 alternative test should not be accepted under this chapter. All other
25 applicable requirements of this section apply to the manufacturer.

26 (4) Each manufacturer shall maintain copies of the reports of all
27 tests conducted on all cigarettes offered for sale for a period of
28 three years, and shall make copies of these reports available to the
29 state director of fire protection and the attorney general upon written
30 request. Any manufacturer who fails to make copies of these reports
31 available within sixty days of receiving a written request is subject
32 to a civil penalty not to exceed ten thousand dollars for each day
33 after the sixtieth day that the manufacturer does not make the copies
34 available.

35 (5) The state director of fire protection may adopt a subsequent
36 ASTM standard test method for measuring the ignition strength of
37 cigarettes upon a finding that the subsequent method does not result in
38 a change in the percentage of full-length burns exhibited by any tested

1 cigarette when compared to the percentage of full-length burns the same
2 cigarette would exhibit when tested in accordance with ASTM standard
3 E2187-04 and the performance standard in subsection (1)(c) of this
4 section.

5 (6) Beginning in 2012, the state director of fire protection shall
6 review the effectiveness of this section and report every three years
7 to the legislature the state director of fire protection's findings
8 and, if appropriate, recommendations for legislation to improve the
9 effectiveness of this section. The report and legislative
10 recommendations shall be submitted no later than July 1st of each
11 three-year reporting period.

12 (7) The requirements of subsection (1) of this section do not
13 prohibit wholesale or retail dealers from selling their existing
14 inventory of cigarettes on or after the effective date of this section
15 if the wholesale or retailer dealer can establish that state tax stamps
16 were affixed to the cigarettes prior to the effective date of this
17 section, and if the wholesale or retail dealer can establish that the
18 inventory was purchased prior to the effective date of this section in
19 comparable quantity to the inventory purchased during the same period
20 of the prior year.

21 (8) The implementation and substance of the New York fire safety
22 standards for cigarettes, New York Executive Law section 156-c, Fire
23 Safety Standards for Cigarettes, shall be persuasive authority in the
24 implementation of this chapter.

25 NEW SECTION. **Sec. 3.** (1) Each manufacturer shall submit to the
26 state director of fire protection a written certification attesting
27 that:

28 (a) Each cigarette listed in the certification has been tested in
29 accordance with section 2 of this act; and

30 (b) Each cigarette listed in the certification meets the
31 performance standard set forth in section 2(1)(c) of this act.

32 (2) Each cigarette listed in the certification shall be described
33 with the following information:

34 (a) Brand or trade name on the package;

35 (b) Style, such as light or ultra light;

36 (c) Length in millimeters;

37 (d) Circumference in millimeters;

- 1 (e) Flavor, such as menthol or chocolate, if applicable;
2 (f) Filter or nonfilter;
3 (g) Package description, such as soft pack or box;
4 (h) Marking approved in accordance with section 4 of this act;
5 (i) The name, address, and telephone number of the laboratory, if
6 different than the manufacturer that conducted the test; and
7 (j) The date the testing occurred.

8 (3) The certifications must be made available to the attorney
9 general for purposes consistent with this chapter and the department of
10 revenue for the purposes of ensuring compliance with this section.

11 (4) Each cigarette certified under this section must be recertified
12 every three years.

13 (5) For each cigarette listed in a certification, a manufacturer
14 shall pay to the state director of fire protection a fee of two hundred
15 fifty dollars. The state director of fire protection is authorized to
16 annually adjust this fee to ensure it defrays the actual costs of the
17 processing, testing, enforcement, and oversight activities required by
18 this chapter.

19 (6) If a manufacturer has certified a cigarette under this section,
20 and thereafter makes any change to that cigarette that is likely to
21 alter its compliance with the reduced cigarette ignition propensity
22 standards required by this chapter, that cigarette may not be sold or
23 offered for sale in this state until the manufacturer retests the
24 cigarette in accordance with the testing standards set forth in section
25 2 of this act and maintains records of that retesting as required by
26 section 2 of this act. Any altered cigarette which does not meet the
27 performance standard set forth in section 2 of this act may not be sold
28 in this state.

29 NEW SECTION. **Sec. 4.** (1) Cigarettes that are certified by a
30 manufacturer in accordance with section 3 of this act must be marked to
31 indicate compliance with the requirements of section 2 of this act.
32 The marking must be in eight-point type or larger and consist of:

33 (a) Modification of the universal product code to include a visible
34 mark printed at or around the area of the code. The mark may consist
35 of alphanumeric or symbolic characters permanently stamped, engraved,
36 embossed, or printed in conjunction with the universal product code; or

1 (b) Any visible combination of alphanumeric or symbolic characters
2 permanently stamped, engraved, or embossed upon the cigarette package
3 or cellophane wrap; or

4 (c) Printed, stamped, engraved, or embossed text that indicates
5 that the cigarettes meet the standards of this chapter.

6 (2) A manufacturer shall use only one marking, and shall apply this
7 marking uniformly for all packages, including but not limited to packs,
8 cartons, and cases, and brands marketed by that manufacturer.

9 (3) The state director of fire protection must be notified as to
10 the marking that is selected.

11 (4) Prior to the certification of any cigarette, a manufacturer
12 shall present its proposed marking to the state director of fire
13 protection for approval. Upon receipt of the request, the state
14 director of fire protection shall approve or disapprove the marking
15 offered, except that the state director of fire protection shall (a)
16 approve the letters "FSC," which signify fire standards compliant; and
17 (b) give preference to any packaging marking in use and approved for
18 that cigarette in New York pursuant to New York Executive Law section
19 156-c, Fire Safety Standards for Cigarettes, unless the state director
20 of fire protection demonstrates a reasonable basis why that marking
21 should not be approved under this chapter. Proposed markings are
22 deemed approved if the state director of fire protection fails to act
23 within ten business days of receiving a request for approval.

24 (5) A manufacturer shall not modify its approved marking unless the
25 modification has been approved by the state director of fire protection
26 in accordance with this section.

27 (6) Manufacturers certifying cigarettes in accordance with section
28 3 of this act shall provide a copy of the certifications to all
29 wholesale dealers and agents to which they sell cigarettes, and shall
30 also provide sufficient copies of an illustration of the package
31 marking utilized by the manufacturer under this section for each retail
32 dealer to which the wholesale dealers or agents sell cigarettes.
33 Wholesale dealers and agents shall provide a copy of these package
34 markings received from manufacturers to all retail dealers to which
35 they sell cigarettes. Wholesale dealers, agents, and retail dealers
36 shall permit the state director of fire protection, the department of
37 revenue, the attorney general, and their employees to inspect markings
38 of cigarette packaging marked in accordance with this section.

1 NEW SECTION. **Sec. 5.** (1) A manufacturer, wholesale dealer, agent,
2 or any other person or entity who knowingly sells or offers to sell
3 cigarettes, other than through retail sale, in violation of section 2
4 of this act, for a first offense is liable to a civil penalty not to
5 exceed ten thousand dollars per each sale of the cigarettes, and for a
6 subsequent offense is liable to a civil penalty not to exceed
7 twenty-five thousand dollars per each sale of the cigarettes. However,
8 in no case may the penalty against such a person or entity exceed one
9 hundred thousand dollars during any thirty-day period.

10 (2)(a) A retail dealer who knowingly sells cigarettes in violation
11 of section 2 of this act is:

12 (i) For a first offense liable to a civil penalty not to exceed
13 five hundred dollars, and for a subsequent offense is liable to a civil
14 penalty not to exceed two thousand dollars, per each sale or offer for
15 sale of cigarettes, if the total number of cigarettes sold or offered
16 for sale does not exceed one thousand cigarettes; or

17 (ii) For a first offense liable to a civil penalty not to exceed
18 one thousand dollars, and for a subsequent offense is liable to a civil
19 penalty not to exceed five thousand dollars, per each sale or offer for
20 sale of cigarettes, if the total number of cigarettes sold or offered
21 for sale exceeds one thousand cigarettes.

22 (b) A penalty under this subsection may not exceed twenty-five
23 thousand dollars during a thirty-day period.

24 (3) In addition to any penalty prescribed by law, any corporation,
25 partnership, sole proprietor, limited partnership, or association
26 engaged in the manufacture of cigarettes that knowingly makes a false
27 certification under section 3 of this act is, for a first offense,
28 liable to a civil penalty of at least seventy-five thousand dollars,
29 and for a subsequent offense a civil penalty not to exceed two hundred
30 fifty thousand dollars for each false certification.

31 (4) Any person violating any other provision in this chapter is
32 liable to a civil penalty for a first offense not to exceed one
33 thousand dollars, and for a subsequent offense is liable to a civil
34 penalty not to exceed five thousand dollars, for each violation.

35 (5) Any cigarettes that have been sold or offered for sale that do
36 not comply with the performance standard required by section 2 of this
37 act are subject to forfeiture under RCW 82.24.130. However, prior to

1 the destruction of any cigarette seized under this subsection, the true
2 holder of the trademark rights in the cigarette brand must be permitted
3 to inspect the cigarette.

4 (6) In addition to any other remedy provided by law, the state
5 director of fire protection or attorney general may initiate an
6 appropriate civil action in superior court for a violation of this
7 chapter, including petitioning for injunctive relief or to recover any
8 costs or damages suffered by the state because of a violation of this
9 chapter, including enforcement costs relating to the specific violation
10 and attorneys' fees. Each violation of this chapter or of rules
11 adopted under this chapter constitutes a separate civil violation for
12 which the state director of fire protection or attorney general may
13 obtain relief.

14 NEW SECTION. **Sec. 6.** (1) The state director of fire protection
15 may adopt rules necessary to implement this chapter.

16 (2) The department of revenue in the regular course of conducting
17 inspections of wholesale dealers, agents, and retail dealers, as
18 authorized under chapter 82.24 RCW, may inspect cigarettes to determine
19 if the cigarettes are marked as required by section 4 of this act. If
20 the cigarettes are not marked as required, the department of revenue
21 shall notify the state director of fire protection.

22 NEW SECTION. **Sec. 7.** To enforce this chapter, the attorney
23 general and the state director of fire protection are authorized to
24 examine the books, papers, invoices, and other records of any person in
25 possession, control, or occupancy of any premises where cigarettes are
26 placed, stored, sold, or offered for sale, as well as the stock of
27 cigarettes on the premises. Every person in the possession, control,
28 or occupancy of any premises where cigarettes are placed, sold, or
29 offered for sale, is required to give the attorney general and the
30 state director of fire protection the means, facilities, and
31 opportunity for the examinations authorized by this section.

32 NEW SECTION. **Sec. 8.** The reduced cigarette ignition propensity
33 account is created in the custody of the state treasurer. All receipts
34 from the payment of certification fees under section 3 of this act and
35 from the imposition of civil penalties under section 5 of this act must

1 be deposited into the account. Expenditures from the account may be
2 used only for fire safety, enforcement, and prevention programs. Only
3 the state director of fire protection or the director's designee may
4 authorize expenditures from the account. The account is subject to
5 allotment procedures under chapter 43.88 RCW, but an appropriation is
6 not required for expenditures.

7 **Sec. 9.** RCW 43.79A.040 and 2007 c 523 s 5, 2007 c 357 s 21, and
8 2007 c 214 s 14 are each reenacted and amended to read as follows:

9 (1) Money in the treasurer's trust fund may be deposited, invested,
10 and reinvested by the state treasurer in accordance with RCW 43.84.080
11 in the same manner and to the same extent as if the money were in the
12 state treasury.

13 (2) All income received from investment of the treasurer's trust
14 fund shall be set aside in an account in the treasury trust fund to be
15 known as the investment income account.

16 (3) The investment income account may be utilized for the payment
17 of purchased banking services on behalf of treasurer's trust funds
18 including, but not limited to, depository, safekeeping, and
19 disbursement functions for the state treasurer or affected state
20 agencies. The investment income account is subject in all respects to
21 chapter 43.88 RCW, but no appropriation is required for payments to
22 financial institutions. Payments shall occur prior to distribution of
23 earnings set forth in subsection (4) of this section.

24 (4)(a) Monthly, the state treasurer shall distribute the earnings
25 credited to the investment income account to the state general fund
26 except under (b) and (c) of this subsection.

27 (b) The following accounts and funds shall receive their
28 proportionate share of earnings based upon each account's or fund's
29 average daily balance for the period: The Washington promise
30 scholarship account, the college savings program account, the
31 Washington advanced college tuition payment program account, the
32 agricultural local fund, the American Indian scholarship endowment
33 fund, the foster care scholarship endowment fund, the foster care
34 endowed scholarship trust fund, the students with dependents grant
35 account, the basic health plan self-insurance reserve account, the
36 contract harvesting revolving account, the Washington state combined
37 fund drive account, the commemorative works account, the Washington

1 international exchange scholarship endowment fund, the developmental
2 disabilities endowment trust fund, the energy account, the fair fund,
3 the family leave insurance account, the fruit and vegetable inspection
4 account, the future teachers conditional scholarship account, the game
5 farm alternative account, the GET ready for math and science
6 scholarship account, the grain inspection revolving fund, the juvenile
7 accountability incentive account, the law enforcement officers' and
8 firefighters' plan 2 expense fund, the local tourism promotion account,
9 the produce railcar pool account, the regional transportation
10 investment district account, the rural rehabilitation account, the
11 stadium and exhibition center account, the youth athletic facility
12 account, the self-insurance revolving fund, the sulfur dioxide
13 abatement account, the children's trust fund, the Washington horse
14 racing commission Washington bred owners' bonus fund account, the
15 Washington horse racing commission class C purse fund account, the
16 individual development account program account, the Washington horse
17 racing commission operating account (earnings from the Washington horse
18 racing commission operating account must be credited to the Washington
19 horse racing commission class C purse fund account), the life sciences
20 discovery fund, the Washington state heritage center account, the
21 reduced cigarette ignition propensity account, and the reading
22 achievement account. However, the earnings to be distributed shall
23 first be reduced by the allocation to the state treasurer's service
24 fund pursuant to RCW 43.08.190.

25 (c) The following accounts and funds shall receive eighty percent
26 of their proportionate share of earnings based upon each account's or
27 fund's average daily balance for the period: The advanced right-of-way
28 revolving fund, the advanced environmental mitigation revolving
29 account, the city and county advance right-of-way revolving fund, the
30 federal narcotics asset forfeitures account, the high occupancy vehicle
31 account, the local rail service assistance account, and the
32 miscellaneous transportation programs account.

33 (5) In conformance with Article II, section 37 of the state
34 Constitution, no trust accounts or funds shall be allocated earnings
35 without the specific affirmative directive of this section.

36 NEW SECTION. **Sec. 10.** This chapter does not prohibit any person
37 or entity from manufacturing or selling cigarettes that do not meet the

1 requirements of section 2 of this act if the cigarettes are or will be
2 stamped for sale in another state or are packaged for sale outside the
3 United States and that person or entity has taken reasonable steps to
4 ensure that the cigarettes will not be sold or offered for sale to
5 persons located in this state.

6 NEW SECTION. **Sec. 11.** If a federal reduced cigarette ignition
7 propensity standard that preempts this act is adopted and becomes
8 effective, the state director of fire protection shall prepare and
9 submit to the legislature the necessary legislation to repeal this
10 chapter.

11 NEW SECTION. **Sec. 12.** The local governmental units of this state
12 may neither enact nor enforce any ordinance or other local law or
13 regulation conflicting with, or preempted by, any provision of this
14 chapter or with any policy of this state expressed by this chapter,
15 whether that policy is expressed by inclusion of a provision in this
16 chapter or by exclusion of that subject from this chapter.

17 NEW SECTION. **Sec. 13.** Sections 1 through 8 and 10 through 12 of
18 this act constitute a new chapter in Title 19 RCW.

19 NEW SECTION. **Sec. 14.** This act takes effect August 1, 2009.

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