CHAPTER 51

Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act

Editor’s Note

2008 Act No. 331, Section 2, effective June 5, 2008, provides as follows:

“Notwithstanding another provision of law, the local governmental units of this State may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, a provision of this act or with any policy of this State expressed by this act, whether that policy be expressed by inclusion of a provision in the act or by exclusion of that subject from the act.”

**SECTION 23‑51‑10.** Citation of chapter.

 This chapter may be cited as the “Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act”.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.

**SECTION 23‑51‑20.** Definitions.

 As used in this chapter:

 (A) “Agent” means a person authorized by the Department of Revenue to pay the excise tax on packages of cigarettes.

 (B) “Cigarette” means:

 (1) any roll for smoking, made wholly or in part of tobacco or another substance, irrespective of size or shape, either flavored or unflavored, adulterated or mixed with another ingredient. The wrapper or cover must be made of paper or another substance or material other than leaf tobacco; or

 (2) any roll for smoking 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 subitem (1).

 (C) “Manufacturer” means:

 (1) an entity which manufactures or produces cigarettes or causes cigarettes to be manufactured or produced with the intent to be sold in this State, including cigarettes intended to be sold in the United States through an importer;

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

 (3) an entity that becomes a successor of an entity described in subitem (1) or (2).

 (D) “Quality control and quality assurance program” means 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. The program must ensure that testing repeatability remains within the required repeatability values stated in Section 23‑51‑30(G) for all test trials used to certify cigarettes in accordance with this chapter.

 (E) “Repeatability” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety‑five percent of the time.

 (F) “Retail dealer” means a person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

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

 (H) “Sell” means to sell, or to offer or agree to do the same.

 (I) “Wholesale dealer” means a person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and a person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by another person.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.

Attorney General’s Opinions

Roll your own cigarettes are subject to payment of cigarette taxes, the Tobacco Escrow Fund Act, the Tobacco Qualified Escrow Fund Enforcement Act, and the Reduced Ignition Propensity Standards and Firefighter’s Protection Act. S.C. Op.Atty.Gen. (October 3, 2012) 2012 WL 4836945.

**SECTION 23‑51‑30.** Performance standards testing.

 (A) Except as provided in subsection (O), cigarettes may not be sold or offered for sale in this State or offered for sale or sold to persons located in this State 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 State Fire Marshal in accordance with Section 23‑51‑40, and the cigarettes have been marked in accordance with Section 23‑51‑50.

 (B) Testing of cigarettes must 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”.

 (C) Testing must be conducted on ten layers of filter paper.

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

 (E) The performance standard required by this section must be applied to a complete test trial.

 (F) Written certifications must be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (ISO), or another comparable accreditation standard required by regulations promulgated under this chapter.

 (G) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value must be no greater than 0.19.

 (H) This section does not require additional testing if cigarettes are tested consistent with this chapter for another purpose.

 (I) Testing performed or sponsored by the State Fire Marshal to determine a cigarette’s compliance with the performance standard required by this section must be conducted in accordance with this section.

 (J) Each cigarette listed in a certification submitted pursuant to Section 23‑51‑40 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard contained in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

 (K) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test method prescribed in subsection (B) shall propose a test method and performance standard for the cigarette to the State Fire Marshal. Upon approval of the proposed test method and a determination by the State Fire Marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (D), the manufacturer may employ the approved test method and performance standard to certify the cigarette pursuant to Section 23‑51‑40. If the State Fire Marshal 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 chapter, and the State Fire Marshal 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 reduced cigarette ignition propensity standards of that state’s law or regulation under a legal provision comparable to this section, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that the cigarette for sale in this State, unless the State Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under this chapter. All other applicable requirements of this section shall apply to the manufacturer.

 (L) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the State Fire Marshal and the Attorney General upon written request. A manufacturer who fails to make copies of these reports available within sixty days of receiving a written request is subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make these copies available.

 (M) The State Fire Marshal may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the 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 in subsection (D).

 (N) The State Fire Marshal shall review the effectiveness of this section and report every three years to the General Assembly the State Fire Marshal’s findings and, if appropriate, recommendations for legislation to improve the effectiveness of this chapter. The report and legislative recommendations must be submitted no later than June thirtieth following the conclusion of each three‑year period.

 (O) The requirements of subsection (A) shall not prohibit:

 (1) wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this chapter if the wholesale or retail dealer can establish that all taxes owed on the cigarettes pursuant to Article 5, Chapter 21 of Title 12 have been paid before the effective date and the wholesale or retail dealer can establish that the inventory was purchased before the effective date in comparable quantity to the inventory purchased during the same period of the prior year; or

 (2) the sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term “consumer testing” shall mean an assessment of cigarettes that is conducted by a manufacturer or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for this assessment, and in a controlled setting where the cigarettes are either consumed on‑site or returned to the testing administrators at the conclusion of the testing.

 (P) This chapter shall be implemented in accordance with the implementation and substance of New York Fire Safety Standards for Cigarettes in effect on May 1, 2008. If after May 1, 2008, the New York Fire Safety Standards are changed, then the State Fire Marshal shall recommend to the chairpersons of the appropriate standing committees of the General Assembly such proposed legislation as may be necessary to make this chapter consistent, as far as possible, with the New York Fire Safety Standards for Cigarettes.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.

**SECTION 23‑51‑40.** Certification by manufacturer.

 (A) Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

 (1) each cigarette listed in the certification has been tested in accordance with Section 23‑51‑30; and

 (2) each cigarette listed in the certification meets the performance standard contained in Section 23‑51‑30.

 (B) Each cigarette listed in the certification must be described with the following information:

 (1) brand, or trade name on the package;

 (2) style, such as light or ultra light;

 (3) length in millimeters;

 (4) circumference in millimeters;

 (5) flavor, such as menthol or chocolate, if applicable;

 (6) filter or nonfilter;

 (7) package description, such as soft pack or box;

 (8) marking, pursuant to Section 23‑51‑50;

 (9) the name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and

 (10) the date that the testing occurred.

 (C) The certifications must be made available to the Attorney General for purposes consistent with this chapter and the Department of Revenue for the purposes of ensuring compliance with this section.

 (D) Each cigarette certified under this section must be recertified every three years.

 (E) For each cigarette brand style listed in a certification, a manufacturer shall pay to the State Fire Marshal a two hundred fifty‑dollar fee. The State Fire Marshal is authorized to annually adjust this fee to ensure that it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this chapter.

 (F) There is established in the State Treasury a special fund to be known as the “Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Enforcement Fund”. The fund shall consist of all certification fees submitted by manufacturers, and shall, in addition to any other monies made available for this purpose, be available to the State Fire Marshal solely to support processing, testing, enforcement, and oversight activities under this chapter.

 (G) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes a change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter, that cigarette shall not be sold or offered for sale in this State until the manufacturer retests the cigarette in accordance with the testing standards set forth in Section 23‑51‑30 and maintains records of that retesting as required by Section 23‑51‑30. An altered cigarette which does not meet the performance standard contained in Section 23‑51‑30 may not be sold in this State.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.

**SECTION 23‑51‑50.** Marking to indicate compliance.

 (A) Cigarettes that are certified by a manufacturer in accordance with Section 23‑51‑40 must be marked to indicate compliance with the requirements of Section 23‑51‑30. The marking must be in eight point type or larger and consist of:

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

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

 (3) printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter.

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

 (C) The State Fire Marshal must be notified as to the marking that is selected.

 (D) Before a cigarette is certified, a manufacturer shall present its proposed marking to the State Fire Marshal for approval. Upon receipt of the request, the State Fire Marshal shall approve or disapprove the marking offered, except that the State Fire Marshal shall approve:

 (1) any marking in use and approved for sale in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes in effect on May 1, 2008. If after May 1, 2008, the New York Fire Safety Standards for marking are changed, then the State Fire Marshal shall recommend to the chairpersons of the appropriate standing committees of the General Assembly such proposed legislation as may be necessary to make this chapter consistent, as far as possible, with the New York Fire Safety Standards for Cigarettes; or

 (2) the letters “FSC”, which signify Fire Standards Compliant, appearing in eight point type or larger and permanently printed, stamped, engraved, or embossed on the package at or near the UPC Code. Proposed markings shall be deemed approved if the State Fire Marshal fails to act within ten business days of receiving a request for approval.

 (E) No manufacturer shall modify its approved marking unless the modification has been approved by the State Fire Marshal in accordance with this section.

 (F) Manufacturers certifying cigarettes in accordance with Section 23‑51‑40 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes, and also shall 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 State Fire Marshal, the Department of Revenue, the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.

**SECTION 23‑51‑60.** Sale of uncertified cigarettes; penalties; forfeiture of unmarked cigarettes.

 (A) A manufacturer, wholesale dealer, agent, or another person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Section 23‑51‑30, is subject to a civil penalty not to exceed one hundred dollars for each pack of cigarettes sold or offered for sale. However, the penalty against a person or entity shall not exceed one hundred thousand dollars during a thirty‑day period.

 (B) A retail dealer who knowingly sells or offers to sell cigarettes in violation of Section 23‑51‑30 is subject to a civil penalty not to exceed one hundred dollars for each pack of cigarettes sold or offered for sale. However, the penalty against any retail dealer shall not exceed twenty‑five thousand dollars for sales or offers to sell during a thirty‑day period.

 (C) In addition to any penalty prescribed by law, a corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 23‑51‑40 is subject to a civil penalty of at least seventy‑five thousand dollars and not to exceed two hundred fifty thousand dollars for each false certification.

 (D) A person violating another provision in this chapter is subject to a civil penalty for a first offense not to exceed one thousand dollars, and for a subsequent offense subject to a civil penalty not to exceed five thousand dollars for each violation.

 (E) Cigarettes that have been sold or offered for sale that do not comply with the performance standard required by Section 23‑51‑30 are subject to forfeiture under Section 15‑77‑40. Cigarettes forfeited pursuant to this section must be destroyed. However, prior to the destruction of any cigarette forfeited pursuant to these provisions, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

 (F) In addition to another remedy provided by law, the State Fire Marshal or Attorney General may file an action in circuit court for a violation of this chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the State because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney’s fees. Each violation of this chapter or of regulations promulgated under this chapter constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief.

 (G) Whenever any law enforcement personnel or duly authorized representative of the State Fire Marshal discovers any cigarettes that have not been marked in the manner required by Section 23‑51‑50 of this chapter, he is authorized and empowered to seize and take possession of the cigarettes. The cigarettes must be turned over to the Department of Revenue, and must be forfeited to the State. Cigarettes seized pursuant to this section must be destroyed. However, prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.

**SECTION 23‑51‑70.** Promulgation of regulations; notification of unmarked certification by Department of Revenue.

 (A) The State Fire Marshal may promulgate regulations pursuant to the Administrative Procedures Act necessary to effectuate the purposes of this chapter.

 (B) The Department of Revenue in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under Section 12‑21‑2860, may inspect the cigarettes to determine if they are marked as required by Section 23‑51‑50. If the cigarettes are not marked as required, the Department of Revenue shall notify the State Fire Marshal.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.

**SECTION 23‑51‑80.** Examination of records.

 To enforce the provisions of this chapter, the Attorney General, the Department of Revenue, and the State Fire Marshal, their duly authorized representatives and other law enforcement personnel are authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. A person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, is directed and required to give the Attorney General, the Department of Revenue, and the State Fire Marshal, their duly authorized representatives and other law enforcement personnel, the means, facilities, and opportunity for the examinations authorized by this section.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.

**SECTION 23‑51‑90.** Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Fund established.

 There is established in the State Treasury a special fund to be known as the “Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Fund”. The fund shall consist of all monies recovered as penalties under Section 23‑51‑60. The monies must be deposited to the credit of the fund and, in addition to any other monies made available for such purpose, must be made available to the State Fire Marshal to support fire safety and prevention programs.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.

**SECTION 23‑51‑100.** Manufacture of cigarettes for sale in another state or outside the United States.

 Nothing in this chapter may be construed to prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 23‑51‑30 if the cigarettes are or will be stamped for sale in another state or sold in North Carolina, or are packaged for sale outside the United States, and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in this State.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.

**SECTION 23‑51‑110.** Effect of adoption of federal standard.

 This chapter is effective until repealed or a federal reduced cigarette ignition standard is adopted and becomes effective.

HISTORY: 2008 Act No. 331, Section 1, eff January 1, 2010.