

**REDUCED CIGARETTE IGNITION**

**PROPENSITY**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ed Mayne**

House Sponsor: Todd E. Kiser

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**LONG TITLE**

**General Description:**

This bill enacts The Reduced Cigarette Ignition Propensity and Firefighter Protection Act within the Utah Fire Prevention and Safety Act of the Public Safety Code.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ creates test methods and performance standards for cigarettes;
- ▶ requires certification and product marking to ensure compliance with the act;
- ▶ creates a Reduced Cigarette Ignition Propensity and Firefighter Protection Enforcement restricted account within the General Fund;
- ▶ requires marking of cigarette packages;
- ▶ establishes penalties for violations of the act;
- ▶ gives the state fire marshal and the State Tax Commission enforcement powers;
- ▶ gives the attorney general and the state fire marshal the power to inspect records;
- ▶ clarifies application to sales outside of the state;
- ▶ establishes state preemption of local ordinances; and
- ▶ provides that the state law is preempted by any subsequent federal law that may

preempt state law.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

30 This bill takes effect on July 1, 2008.

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **53-7-401**, Utah Code Annotated 1953

34 **53-7-402**, Utah Code Annotated 1953

35 **53-7-403**, Utah Code Annotated 1953

36 **53-7-404**, Utah Code Annotated 1953

37 **53-7-405**, Utah Code Annotated 1953

38 **53-7-406**, Utah Code Annotated 1953

39 **53-7-407**, Utah Code Annotated 1953

40 **53-7-408**, Utah Code Annotated 1953

41 **53-7-409**, Utah Code Annotated 1953

42 **53-7-410**, Utah Code Annotated 1953

43 **53-7-411**, Utah Code Annotated 1953

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45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **53-7-401** is enacted to read:

47 **Part 4. The Reduced Cigarette Ignition Propensity and Firefighter Protection Act**

48 **53-7-401. Title.**

49 This part is known as the "The Reduced Cigarette Ignition Propensity and Firefighter  
50 Protection Act."

51 Section 2. Section **53-7-402** is enacted to read:

52 **53-7-402. Definitions.**

53 As used in this part:

54 (1) "Agent" means any person authorized by the State Tax Commission to purchase  
55 and affix stamps on packages of cigarettes.

56 (2) "Cigarette" means any roll for smoking made wholly or in part of tobacco,  
57 irrespective of size or shape, and whether or not such tobacco is flavored, adulterated, or mixed

58 with any other ingredient, the wrapper or cover of which is made of paper or any other  
59 substance or material except tobacco.

60 (3) "Manufacturer" means:

61 (a) any entity which:

62 (i) manufactures or otherwise produces cigarettes to be sold in the state;

63 (ii) causes cigarettes to be manufactured or produced anywhere with the intent to sell in  
64 the state; or

65 (iii) manufactures or otherwise produces cigarettes or causes cigarettes to be  
66 manufactured or produced with the intent to sell in the United States through an importer;

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

70 (c) any entity that becomes a successor of an entity described in Subsection (3)(a) or  
71 (3)(b).

72 (4) "Quality control and quality assurance program" means the laboratory procedures  
73 implemented to ensure that operator bias, systematic, and nonsystematic methodological errors,  
74 and equipment related problems do not affect the results of the testing. Such a program ensures  
75 that the testing repeatability remains within the required repeatability values stated in  
76 Subsection 53-7-403(2)(f) for all test trials used to certify cigarettes in accordance with this  
77 part.

78 (5) "Repeatability" means the range of values within which the repeat results of  
79 cigarette test trials from a single laboratory will fall 95% of the time.

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

82 (7) "Sale":

83 (a) means any transfer of title or possession or both, exchange or barter, conditional or  
84 otherwise, in any manner or by any means whatever or any agreement therefore; and

85 (b) includes, in addition to cash and credit sales, the giving of cigarettes as samples,

86 prizes, or gifts, and the exchanging of cigarettes for any consideration other than money.

87 (8) "Sell" means to sell, or to offer or agree to sell.

88 (9) "Wholesale dealer" means:

89 (a) any person who sells cigarettes or tobacco products to retail dealers or other persons  
90 for purposes of resale; and

91 (b) any person who owns, operates, or maintains one or more cigarette or tobacco  
92 product vending machines in, at, or upon premises owned or occupied by any other person.

93 Section 3. Section **53-7-403** is enacted to read:

94 **53-7-403. Test method and performance standard.**

95 (1) Except as provided in Subsection (8), no cigarettes may be sold or offered for sale  
96 in this state or offered for sale or sold to persons located in this state unless:

97 (a) the cigarettes have been tested in accordance with the test method required by this  
98 section;

99 (b) the cigarettes meet the performance standard specified in this section;

100 (c) a written certification has been filed by the manufacturer with the state fire marshal  
101 in accordance with Section 53-7-404; and

102 (d) the cigarettes have been marked in accordance with Section 53-7-405.

103 (2) (a) Testing of cigarettes shall be conducted in accordance with the American  
104 Society of Testing and Materials ("ASTM") standard E2187-04, "Standard Test Method for  
105 Measuring the Ignition Strength of Cigarettes."

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

107 (c) No more than 25% of the cigarettes tested in a test trial in accordance with this  
108 section shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial  
109 for each cigarette tested.

110 (d) The performance standard required by this section shall only be applied to a  
111 complete test trial.

112 (e) Written certifications shall be based upon testing conducted by a laboratory that has  
113 been accredited pursuant to standard ISO/IEC 17025 of the International Organization for

114 Standardization ("ISO"), or other comparable accreditation standard required by the state fire  
115 marshal.

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

119 (g) This section does not require additional testing if cigarettes are tested consistent  
120 with this part for any other purpose.

121 (h) Testing performed or sponsored by the state fire marshal to determine a cigarette's  
122 compliance with the performance standard required shall be conducted in accordance with this  
123 section.

124 (3) Each cigarette listed in a certification submitted pursuant to Section 53-7-404 that  
125 uses lowered permeability bands in the cigarette paper to achieve compliance with the  
126 performance standard set forth in this section shall have at least two nominally identical bands  
127 on the paper surrounding the tobacco column. At least one complete band shall be located at  
128 least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands  
129 are positioned by design, there shall be at least two bands fully located at least 15 millimeters  
130 from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10  
131 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

132 (4) A manufacturer of a cigarette that the state fire marshal determines cannot be tested  
133 in accordance with the test method prescribed in Subsection (2)(a) shall propose a test method  
134 and performance standard for the cigarette to the state fire marshal. Upon approval of the  
135 proposed test method and a determination by the state fire marshal that the performance  
136 standard proposed by the manufacturer is equivalent to the performance standard prescribed in  
137 Subsection (2)(c), the manufacturer may employ such test method and performance standard to  
138 certify such cigarette pursuant to Section 53-7-404. If the state fire marshal determines that  
139 another state has enacted reduced cigarette ignition propensity standards that include a test  
140 method and performance standard that are the same as those contained in this part, and the state  
141 fire marshal finds that the officials responsible for implementing those requirements have

142 approved the proposed alternative test method and performance standard for a particular  
143 cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or  
144 regulation under a legal provision comparable to this section, then the state fire marshal shall  
145 authorize that manufacturer to employ the alternative test method and performance standard to  
146 certify that cigarette for sale in this state, unless the state fire marshal demonstrates a  
147 reasonable basis why the alternative test should not be accepted under this part. All other  
148 applicable requirements of this section shall apply to the manufacturer.

149 (5) Each manufacturer shall maintain copies of the reports of all tests conducted on all  
150 cigarettes offered for sale for a period of three years, and shall make copies of these reports  
151 available to the state fire marshal and the attorney general upon written request. Any  
152 manufacturer who fails to make copies of these reports available within 60 days of receiving a  
153 written request shall be subject to a civil penalty not to exceed \$10,000 for each day after the  
154 sixtieth day that the manufacturer does not make the copies available.

155 (6) The state fire marshal may adopt a subsequent ASTM Standard Test Method for  
156 Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does  
157 not result in a change in the percentage of full-length burns exhibited by any tested cigarette  
158 when compared to the percentage of full-length burns the same cigarette would exhibit when  
159 tested in accordance with ASTM Standard E2187-04 and the performance standard in  
160 Subsection (2)(c).

161 (7) The state fire marshal shall review the effectiveness of this section and report every  
162 three years to the Legislature the state fire marshal's findings and, if appropriate,  
163 recommendations for legislation to improve the effectiveness of this section. The report and  
164 legislative recommendations shall be submitted no later than November 1, 2011 and every  
165 November 1 of each three-year period thereafter.

166 (8) The requirements of Subsection (1) shall not prohibit wholesale or retail dealers  
167 from selling their existing inventory of cigarettes on or after the effective date of this part if the  
168 wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior  
169 to the effective date, and if the wholesale or retail dealer can establish that the inventory was

170 purchased prior to the effective date in comparable quantity to the inventory purchased during  
171 the same period of the prior year.

172 (9) This part shall be implemented in accordance with the implementation and  
173 substance of the New York Fire Safety Standards for Cigarettes.

174 Section 4. Section **53-7-404** is enacted to read:

175 **53-7-404. Certification and product change.**

176 (1) Each manufacturer shall submit to the state fire marshal a written certification  
177 attesting that:

178 (a) each cigarette listed in the certification has been tested in accordance with Section  
179 53-7-403; and

180 (b) each cigarette listed in the certification meets the performance standard set forth in  
181 Subsection 53-7-403(2)(c).

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

184 (a) brand, or trade name on the package;

185 (b) style, such as light or ultra light;

186 (c) length in millimeters;

187 (d) circumference in millimeters;

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

189 (f) filter or nonfilter;

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

191 (h) marking approved in accordance with Section 53-7-405;

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

194 (j) the date that the testing occurred.

195 (3) The certifications shall be made available to the attorney general for purposes  
196 consistent with this part and the State Tax Commission for the purposes of ensuring  
197 compliance with this section.

198 (4) Each cigarette certified under this section shall be recertified every three years.

199 (5) For each cigarette listed in a certification, a manufacturer shall pay to the state fire  
200 marshal a \$250 fee. The state fire marshal is authorized to annually adjust this fee to ensure it  
201 defrays the actual costs of the processing, testing, enforcement, and oversight activities  
202 required by this part.

203 (6) (a) Beginning July 1, 2008, there is created a restricted account within the General  
204 Fund called the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act  
205 Enforcement Account."

206 (b) The account created in Subsection (6)(a) shall consist of:

207 (i) all certification fees submitted by manufacturers; and

208 (ii) interest on account monies.

209 (c) Upon appropriations from the Legislature, monies from the account created in  
210 Subsection (6)(a) shall be used by the state fire marshal solely to support processing, testing,  
211 enforcement, and oversight activities under this part.

212 (7) (a) If a manufacturer has certified a cigarette pursuant to this section, and thereafter  
213 makes any change to the certified cigarette that is likely to alter its compliance with the reduced  
214 cigarette ignition propensity standards required by this part, that cigarette shall not be sold or  
215 offered for sale in this state until the manufacturer:

216 (i) retests the cigarette in accordance with the testing standards set forth in Section  
217 53-7-403; and

218 (ii) maintains records of that retesting as required by Section 53-7-403.

219 (b) Any altered cigarette which does not meet the performance standard set forth in  
220 Section 53-7-403 may not be sold in this state.

221 Section 5. Section **53-7-405** is enacted to read:

222 **53-7-405. Marking of cigarette packaging.**

223 (1) Cigarettes that are certified by a manufacturer in accordance with Section 53-7-404  
224 shall be marked to indicate compliance with the requirements of Section 53-7-403. The  
225 marking shall be in eight-point type or larger and consist of:



226 (a) modification of the product UPC code to include a visible mark printed at or around  
227 the area of the UPC code, which may include alphanumeric or symbolic characters permanently  
228 stamped, engraved, embossed, or printed in conjunction with the UPC;

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

231 (c) printed, stamped, engraved, or embossed text that indicates that the cigarettes meet  
232 the standards of this part.

233 (2) A manufacturer shall use only one marking, and shall apply this marking uniformly  
234 for all packages marketed by the manufacturer, including:

235 (a) packs;

236 (b) cartons;

237 (c) cases; and

238 (d) any brands marketed by that manufacturer.

239 (3) The manufacturer shall notify the state fire marshal of the marking that it has  
240 selected in accordance with Subsection (2).

241 (4) Prior to the certification of any cigarette, a manufacturer shall present its proposed  
242 marking to the state fire marshal for approval. Upon receipt of the request, the state fire  
243 marshal shall approve or disapprove the marking offered, except that the state fire marshal shall  
244 approve any marking in use and approved for sale in New York pursuant to the New York Fire  
245 Safety Standards for Cigarettes. Proposed markings shall be considered approved if the state  
246 fire marshal fails to act within ten business days of receiving a request for approval.

247 (5) No manufacturer shall modify its approved marking unless the modification has  
248 been approved by the state fire marshal in accordance with this section.

249 (6) (a) Manufacturers certifying cigarettes in accordance with Section 53-7-404 shall  
250 provide:

251 (i) a copy of the certifications to all wholesale dealers and agents to which they sell  
252 cigarettes; and

253 (ii) sufficient copies of an illustration of the package marking utilized by the

254 manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or  
255 agents sell cigarettes.

256 (b) Wholesale dealers and agents shall provide a copy of the package markings  
257 received from manufacturers under Subsection (6)(a) to all retail dealers to which they sell  
258 cigarettes.

259 (c) Wholesale dealers, agents, and retail dealers shall permit the state fire marshal, the  
260 State Tax Commission, the attorney general, and their employees to inspect markings of  
261 cigarette packaging marked in accordance with this section.

262 Section 6. Section **53-7-406** is enacted to read:

263 **53-7-406. Penalties.**

264 (1) (a) Except as provided in Subsection (1)(b), a manufacturer, wholesale dealer,  
265 agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than  
266 through retail sale, in violation of Section 53-7-403:

267 (i) for a first offense shall be liable for a civil penalty not to exceed \$10,000 per each  
268 sale of cigarettes; and

269 (ii) for a subsequent offense shall be liable for a civil penalty not to exceed \$25,000 per  
270 each sale of such cigarettes.

271 (b) A penalty imposed under Subsection (1)(a) may not exceed \$100,000 during any  
272 30-day period against any one entity described in Subsection (1).

273 (2) (a) Except as provided in Subsection (2)(b), a retail dealer who knowingly sells  
274 cigarettes in violation of Section 53-7-403 shall:

275 (i) for a first offense for each sale or offer for sale of cigarettes, if the total number of  
276 cigarettes sold or offered for sale:

277 (A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$500  
278 for each sale or offer of sale; and

279 (B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$1,000 for  
280 each sale or offer of sale; and

281 (ii) for a subsequent offense, if the total number of cigarettes sold or offered for sale:

282 (A) does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$2,000  
283 for each sale or offer of sale; and

284 (B) does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$5,000 for  
285 each sale or offer of sale.

286 (b) A penalty imposed under Subsection (2)(a) against any retail dealer shall not  
287 exceed \$25,000 during a 30-day period.

288 (3) In addition to any penalty prescribed by law, any corporation, partnership, sole  
289 proprietor, limited partnership, or association engaged in the manufacture of cigarettes that  
290 knowingly makes a false certification pursuant to Section 53-7-404 shall, for each false  
291 certification:

292 (a) for a first offense, be liable for a civil penalty of at least \$75,000; and

293 (b) for a subsequent offense, be liable for a civil penalty not to exceed \$250,000.

294 (4) Any person violating any other provision in this part shall be liable for a civil  
295 penalty for each violation:

296 (a) for a first offense, not to exceed \$1,000; and

297 (b) for a subsequent offense, not to exceed \$5,000.

298 (5) Any cigarettes that have been sold or offered for sale that do not comply with the  
299 performance standard required by Section 53-7-403 shall be subject to forfeiture under Title 24,  
300 Chapter 1, Utah Uniform Forfeiture Procedures Act, and, upon being forfeited, shall be  
301 destroyed, provided, however, that prior to the destruction of any cigarette seized pursuant to  
302 this part, the true holder of the trademark rights in the cigarette brand shall be permitted to  
303 inspect the cigarette.

304 (6) In addition to any other remedy provided by law, the state fire marshal or attorney  
305 general may file an action in district court for a violation of this part, including petitioning for  
306 injunctive relief or to recover any costs or damages suffered by the state because of a violation  
307 of this part, including enforcement costs relating to the specific violation and attorney fees.

308 Each violation of this part or of rules or regulations adopted under this part constitutes a  
309 separate civil violation for which the state fire marshal or attorney general may obtain relief.

310 Section 7. Section **53-7-407** is enacted to read:

311 **53-7-407. Implementation -- Effect of part on Model Tobacco Settlement Act and**  
312 **Tobacco Tax and Licensing Act.**

313 (1) The state fire marshal may promulgate rules and regulations, pursuant to Title 63,  
314 Chapter 46a, Utah Administrative Rulemaking Act, necessary to effectuate the purposes of this  
315 part.

316 (2) The State Tax Commission in the regular course of conducting inspections of  
317 wholesale dealers, agents, and retail dealers, as authorized under Title 59, Chapter 14, Cigarette  
318 and Tobacco Tax and Licensing Act, may inspect cigarettes to determine if the cigarettes are  
319 marked as required by Section 53-7-405. If the cigarettes are not marked as required, the State  
320 Tax Commission shall notify the state fire marshal.

321 (3) Nothing in this part shall affect an entity's obligations pursuant to:

322 (a) Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act; or

323 (b) Title 59, Chapter 22, Model Tobacco Settlement Act.

324 Section 8. Section **53-7-408** is enacted to read:

325 **53-7-408. Inspection.**

326 To enforce the provisions of this part, the attorney general and the state fire marshal are  
327 hereby authorized to examine the books, papers, invoices, and other records of any person in  
328 possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or  
329 offered for sale, as well as the stock of cigarettes on the premises. Every person in the  
330 possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered  
331 for sale, is hereby directed and required to give the attorney general and the state fire marshal  
332 the means, facilities, and opportunity for the examinations authorized by this section.

333 Section 9. Section **53-7-409** is enacted to read:

334 **53-7-409. Sale outside of Utah.**

335 Nothing in this part shall be construed to prohibit any person or entity from  
336 manufacturing or selling cigarettes that do not meet the requirements of Section 53-7-403 if the  
337 cigarettes are or will be stamped for sale in another state or are packaged for sale outside the

338 United States and that person or entity has taken reasonable steps to ensure that such cigarettes  
339 will not be sold or offered for sale to persons located in this state.

340 Section 10. Section **53-7-410** is enacted to read:

341 **53-7-410. Preemption.**

342 This part shall be repealed if a federal reduced cigarette ignition propensity standard  
343 that preempts this part is adopted and becomes effective.

344 Section 11. Section **53-7-411** is enacted to read:

345 **53-7-411. Local regulation.**

346 Notwithstanding any other provision of law, a political subdivision of this state may  
347 neither enact nor enforce any ordinance or other local law or regulation conflicting with, or  
348 preempted by, any provision of this part or with any policy of this state expressed by this part,  
349 whether that policy be expressed by inclusion of a provision in this part or by exclusion of that  
350 subject from this part.

351 Section 12. **Effective date.**

352 This bill takes effect on July 1, 2008.