

## CHAPTER 70

## (SB 134)

AN ACT relating to cigarettes.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 8 of this Act:*

- (1) *"Cigarette" means any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not the tobacco or substance is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco;*
- (2) *"Manufacturer" means:*
  - (a) *Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer;*
  - (b) *The first purchaser anywhere 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*
  - (c) *Any entity that becomes a successor of an entity described in paragraphs (a) and (b) of this subsection;*
- (3) *"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 shall ensure that the testing repeatability remains within the required repeatability values stated in paragraph (f) of subsection (1) of Section 2 of this Act for all test trials used to certify cigarettes in accordance with Sections 1 to 8 of this Act;*
- (4) *"Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time;*
- (5) *"Retailer" means any person who sells to a consumer or to any person for any purpose other than resale;*
- (6) *"Sale" means:*
  - (a) *Any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor; and*
  - (b) *The giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money;*
- (7) *"Sell" means an act of selling, or an offer or agreement to sell; and*
- (8) *"Wholesale dealer" means:*
  - (a) *Any person who sells cigarettes or tobacco products to retailers or other persons for purposes of resale; and*
  - (b) *Any person who acts as a "nonresident wholesale," "resident wholesaler," or "unclassified acquirer" as defined in KRS 138.130, and who is authorized by the Department of Revenue to purchase and affix tax stamps on packages of cigarettes.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (7) of this section, no cigarettes shall 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 standards specified in this section, and a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 3 of this Act, and the cigarettes have been marked in accordance with Section 4 of this Act.*
  - (a) *Testing of cigarettes shall 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."*

- (b) *Testing shall be conducted on ten (10) layers of filter paper.*
  - (c) *No more than twenty-five percent (25%) of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty (40) replicate tests shall comprise a complete test trial for each cigarette tested.*
  - (d) *The performance standard required by this section shall only be applied to a complete test trial.*
  - (e) *Written certifications shall 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 other comparable accreditation standard required by the state fire marshal.*
  - (f) *Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure to determine the repeatability of the testing results. The repeatability value shall be no greater than nineteen one-hundredths (0.19).*
  - (g) *This section does not require additional testing if cigarettes are tested consistent with Sections 1 to 8 of this Act for any other purpose.*
  - (h) *Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.*
- (2) (a) *Each cigarette listed in a certification submitted pursuant to Section 3 of this Act that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen (15) millimeters from the lighting end of the cigarette.*
- (b) *For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen (15) millimeters from the lighting end and ten (10) millimeters from the filter end of the tobacco column, or ten (10) millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.*
- (3) (a) *A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in paragraph (a) of subsection (1) of this section 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 paragraph (c) of subsection (1) of this section, the manufacturer may employ a test method and performance standard to certify the cigarette pursuant to Section 3 of this Act.*
- (b) *If the state fire marshal determines the existence of other cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in Sections 1 to 8 of this Act, then the state fire marshal may authorize the manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under Sections 1 to 8 of this Act. All other applicable requirements of this section shall apply to the manufacturer.*
- (4) (a) *Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three (3) years, and shall make copies of the reports available to the state fire marshal and the Attorney General upon written request.*
- (b) *Any manufacturer who fails to make copies of the reports available within sixty (60) days of receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day after the sixtieth day that the manufacturer does not make these copies available.*
- (5) *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 paragraph (c) of subsection (1) of this section.*

- (6) *The state fire marshal shall review the effectiveness of this section and shall report every three (3) years to the General Assembly the fire marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations shall be submitted no later than October 1 of each three (3) year period.*
- (7) *The requirements of this section shall not prohibit a wholesale dealer or retailer from selling its existing inventory of cigarettes on or after the effective date of this Act if the wholesale dealer or retailer can establish that state tax stamps were affixed to the cigarettes prior to the effective date of this Act, and if the wholesale dealer or retailer can establish that the inventory was purchased prior to the effective date of this Act in comparable quantity to the inventory purchased during the same period of the prior year.*
- (8) *The implementation and substance of the New York Fire Safety Standards for Cigarettes shall be the persuasive authority in the implementation of Sections 1 to 8 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *Each manufacturer shall submit to the state fire marshal a written certification attesting that:*
  - (a) *Each cigarette listed in the certification has been tested in accordance with Section 2 of this Act; and*
  - (b) *Each cigarette listed in the certification meets the performance standard set forth under paragraph (c) of subsection (1) of Section 2 of this Act.*
- (2) *Each cigarette listed in the certification shall be described with the following information:*
  - (a) *Brand or trade name on the package;*
  - (b) *Style, such as light or ultra light;*
  - (c) *Length in millimeters;*
  - (d) *Circumference in millimeters;*
  - (e) *Flavor, such as menthol or chocolate, if applicable;*
  - (f) *Filter or nonfilter;*
  - (g) *Package description, such as soft pack or box;*
  - (h) *Marking approved in accordance with Section 4 of this Act;*
  - (i) *The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and*
  - (j) *The date that the testing occurred.*
- (3) *The certifications shall be made available to the Attorney General for purposes consistent with Sections 1 to 8 of this Act and the Department of Revenue for the purposes of ensuring compliance with this section.*
- (4) *Each cigarette certified under this section shall be recertified every three (3) years.*
- (5) *For cigarettes certified in compliance with this section, a manufacturer shall pay to the state fire marshal a fee of one thousand dollars (\$1,000) per brand family. "Brand family" shall have the same meaning as in KRS 131.604.*
- (6) *The "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund" is established in the Finance and Administration Cabinet for use by the state fire marshal solely for processing, testing, enforcement, and oversight activities set out in Sections 1 to 8 of this Act. The fund shall consist of certification fees required under subsection (5) of this section, and any other moneys made available for such purpose from any source. Moneys credited to the fund may be invested until needed. All interest earned in the fund shall be retained in the fund. Notwithstanding KRS 45.229, moneys in the fund shall not lapse, but shall carry forward at the end of the fiscal year.*
- (7) *If a manufacturer has certified a cigarette pursuant to this section, and afterward makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by Sections 1 to 8 of this Act, 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 paragraph (a) of subsection (1) of Section 2 of this Act and maintains records of that retesting as required by Section 2 of*

*this Act. Any altered cigarette which does not meet the performance standard set forth in paragraph (c) of subsection (1) of Section 2 of this Act shall not be sold in this state.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

*A manufacturer shall place on each individual package of cigarettes the letters "FSC" or "FS" which signify "Fire Standards Compliance," indicating compliance with the fire safety performance standard set forth in paragraph (c) of subsection (1) of Section 2 of this Act. The letters shall appear in eight (8) point type and be permanently printed, stamped, engraved, or embossed on the package at or near the UPC Code, if present.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *A manufacturer, wholesale dealer, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Section 2 of this Act, for the first offense shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per each sale of the cigarettes and, for a subsequent offense, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per each sale of the cigarettes, except that in no case shall the penalty against the person or entity exceed one hundred thousand dollars (\$100,000) for each thirty (30) day period.*
- (2) *A retailer who knowingly sells cigarettes in violation of Section 2 of this Act shall:*
  - (a) *For the first offense be liable for a civil penalty not to exceed five hundred dollars (\$500) and, for a subsequent offense, be liable for a civil penalty not to exceed two thousand dollars (\$2,000) per each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale in the sale does not exceed one thousand (1,000) cigarettes; or*
  - (b) *For the first offense be liable for a civil penalty not to exceed one thousand dollars (\$1,000) and, for a subsequent offense, be liable for a civil penalty not to exceed five thousand dollars (\$5,000) per each sale or offer for sale of the cigarettes, if the total number of cigarettes sold or offered for sale in the sale exceeds one thousand (1,000) cigarettes, except that the penalty against any retailer shall not exceed twenty-five thousand dollars (\$25,000) during a thirty (30) day period.*
- (3) *In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 3 of this Act shall for the first offense be liable for a civil penalty not to exceed seventy-five thousand dollars (\$75,000) and, for a subsequent offense, be liable for a civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) for each false certification.*
- (4) *Any other person violating any provision of Sections 1 to 8 of this Act shall be liable for a civil penalty for a first offense not to exceed one thousand dollars (\$1,000) and, for a subsequent offense, be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.*
- (5) *Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by Section 2 of this Act shall be subject to forfeiture in accordance with the provisions of KRS 138.165. Before the destruction of any cigarette seized pursuant to KRS 138.165, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.*
- (6) *In addition to any other remedy provided by law, the state fire marshal or Attorney General may file an action in Circuit Court for a violation of Sections 1 to 8 of this Act, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of Sections 1 to 8 of this Act, including enforcement costs relating to the specific violation and attorney's fees. Each violation of Sections 1 to 8 of this Act or of administrative regulations promulgated under Section 6 of this Act shall constitute a separate civil violation for which the state fire marshal or Attorney General may obtain relief.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *The state fire marshal may promulgate administrative regulations if necessary to carry out the purposes of Sections 1 to 8 of this Act in accordance with the provisions of KRS Chapter 13A.*
- (2) *The Department of Revenue in the regular course of conducting inspections of wholesale dealers and retailers, as authorized under the provisions of KRS 138.130 to 138.205, may inspect cigarettes to determine if the cigarettes are marked as required by Section 4 of this Act. If the cigarettes are not marked as required, the Department of Revenue shall notify the state fire marshal.*
- (3) (a) *To enforce provisions of Sections 1 to 8 of this Act, the Attorney General and the state fire marshal 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.*

- (b) *Every 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 and the state fire marshal the means, facilities, and opportunity for the examinations authorized by this section.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

*There is hereby established in the State Treasury a special fund to be known as the "Fire Prevention and Public Safety Fund." The fund shall consist of all moneys recovered as penalties under Section 5 of this Act. The moneys shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for such purpose, be made available to the state fire marshal to support fire safety and prevention programs.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *Nothing in Sections 1 to 8 of this Act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 2 of this Act if the cigarettes are or will be stamped for sale in another state 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.*
- (2) *Sections 1 to 8 of this Act shall no longer apply if a federal reduced cigarette ignition propensity standard is adopted and becomes effective.*
- (3) *Notwithstanding any other provision of law, city, county, urban-county, charter county, or consolidated local government units of this state shall neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of Sections 1 to 8 of this Act or with any policy of this state expressed by Sections 1 to 8 of this Act, whether that policy be expressed by inclusion of a provision in Sections 1 to 8 of this Act or by exclusion of that subject from this Act.*

Section 9. This Act takes effect on April 1, 2008.

**Approved March 23, 2007.**