

FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT (EXCERPT)
Act 56 of 2009

***** 29.495.new *THIS NEW SECTION IS EFFECTIVE JANUARY 1, 2010; THIS NEW SECTION IS ALSO REPEALED ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511.new* *****

29.495.new Cigarettes; testing requirements.

Sec. 5. (1) Except as provided in subsection (12), a person shall not sell cigarettes in this state or sell cigarettes to a person located in this state unless the cigarettes are tested in accordance with the test method described in subsection (2), the cigarettes meet the performance standard described in subsection (3), the manufacturer has filed a written certification with the department under section 7, and the cigarettes are marked in compliance with section 11.

(2) All of the following apply to the testing of cigarettes for the purposes of this section:

(a) Except as provided in subsection (7), testing of cigarettes is conducted in accordance with ASTM standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes".

(b) Testing is conducted on 10 layers of filter paper.

(c) Forty replicate tests compose a complete test trial for each cigarette tested.

(d) The performance standard described in subsection (3) is only applied to a complete test trial.

(e) Testing is conducted by a laboratory that is accredited pursuant to standard ISO/IEC 17025:2005 of the international organization for standardization or other comparable accreditation standard required by the department.

(f) A laboratory conducting testing has implemented a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results.

(g) The repeatability value of the testing results is 0.19 or less.

(3) When a cigarette is tested under subsection (2), no more than 25% of the cigarettes tested in a test trial shall exhibit full-length burns.

(4) This section does not require additional testing if cigarettes are tested consistently with this act for any other purpose.

(5) Any testing performed or sponsored by the department to determine a cigarette's compliance with the performance standard described in subsection (3) must comply with this section.

(6) A cigarette listed in a certification submitted under section 7 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard described in subsection (3) must have at least 2 nominally identical bands on the paper surrounding the tobacco column, with at least 1 complete band located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, the cigarette must have at least 2 bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or, for nonfiltered cigarettes, 10 millimeters from the labeled end of the tobacco column.

(7) A manufacturer of a cigarette that the department determines cannot be tested in compliance with subsection (2)(a) shall propose a test method and performance standard for the cigarette to the department. If the department approves of the proposed test method and determines that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (3), the manufacturer may employ that test method and performance standard to certify the cigarette under section 7. If the department 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 act and the department 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 fire safety standards of that state's law or regulation under a legal provision comparable to this section, the department shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the department demonstrates a reasonable basis why the alternative test should not be accepted. All other applicable requirements of this section apply to the manufacturer.

(8) A manufacturer shall maintain copies of the reports of all tests conducted under this act on all cigarettes offered for sale in this state for a period of 3 years and make copies of these reports available to the department or the attorney general upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request from the department or the attorney general is subject to a civil fine of not more than \$10,000.00 for each day after the sixtieth day that the manufacturer

does not make the copies available to the department or the attorney general.

(9) The department may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes if it finds 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 the ASTM standard described in subsection (2)(a) and the performance standard described in subsection (3).

(10) The department shall implement this section in accordance with the implementation and substance of the New York fire safety standards for cigarettes.

(11) The department shall review the effectiveness of this section and report every 3 years to the legislature the department's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this act. The department shall submit the report and legislative recommendations no later than the first June 30 following the conclusion of each 3-year period.

(12) This section does not prohibit any of the following:

(a) A wholesale or retail dealer from selling its existing inventory of cigarettes if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes before the effective date of this act and the wholesale or retail dealer can establish that the inventory was purchased before the effective date of this act in comparable quantity to the inventory purchased during the same period of the preceding year.

(b) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subdivision, "consumer testing" means 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 those cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for that assessment.

History: 2009, Act 56, Eff. Jan. 1, 2010.