

REFERENCE TITLE: **ignition strength of cigarettes; regulation**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2483

Introduced by
Representatives McComish, Reagan, Schapira: Boone, Clark, Driggs, Robson, Thrasher

AN ACT

AMENDING TITLE 41, CHAPTER 16, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.1; PROVIDING FOR THE CONDITIONAL REPEAL OF SECTIONS 41-2170, 41-2170.01, 41-2170.02, 41-2170.03, 41-2170.04, 41-2170.05, 41-2170.06 AND 41-2170.07, ARIZONA REVISED STATUTES; RELATING TO THE REGULATION OF CIGARETTE MATERIALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 41, chapter 16, Arizona Revised Statutes, is amended by adding article 3.1, to read:

ARTICLE 3.1. REDUCED CIGARETTE IGNITION PROPENSITY

41-2170. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AGENT" MEANS A PERSON WHO IS AUTHORIZED BY THE DEPARTMENT OF REVENUE TO PURCHASE AND AFFIX STAMPS ON PACKAGES OF CIGARETTES.

2. "CIGARETTE" MEANS ANY ROLL OF TOBACCO OR ANY SUBSTITUTE FOR TOBACCO WRAPPED IN PAPER OR ANY SUBSTANCE NOT CONTAINING TOBACCO.

3. "MANUFACTURER" MEANS:

(a) AN ENTITY THAT MANUFACTURES OR OTHERWISE PRODUCES CIGARETTES OR CAUSES CIGARETTES TO BE MANUFACTURED OR PRODUCED ANYWHERE AND THAT THE MANUFACTURER INTENDS TO BE SOLD IN THIS STATE, INCLUDING CIGARETTES THAT ARE 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 THAT ARE MANUFACTURED ANYWHERE AND THAT THE ORIGINAL MANUFACTURER OR MAKER DOES NOT INTEND TO BE SOLD IN THE UNITED STATES.

(c) A SUCCESSOR ENTITY TO AN ENTITY DESCRIBED IN SUBDIVISION (a) OR (b) OF THIS PARAGRAPH.

4. "QUALITY CONTROL AND QUALITY ASSURANCE PROGRAM" MEANS THE LABORATORY PROCEDURES IMPLEMENTED TO ENSURE:

(a) THAT OPERATOR BIAS, SYSTEMATIC AND NONSYSTEMATIC METHODOLOGICAL ERRORS AND EQUIPMENT RELATED PROBLEMS DO NOT AFFECT THE RESULTS OF THE TESTING.

(b) THAT THE TESTING REPEATABILITY REMAINS WITHIN THE REQUIRED REPEATABILITY VALUES PRESCRIBED IN SECTION 41-2170.01, SUBSECTION B, PARAGRAPH 6 FOR ALL TEST TRIALS THAT ARE USED TO CERTIFY CIGARETTES PURSUANT TO THIS ARTICLE.

5. "REPEATABILITY" MEANS THE RANGE OF VALUES WITHIN WHICH THE REPEAT RESULTS OF CIGARETTE TEST TRIALS FROM A SINGLE LABORATORY WILL FALL NINETY-FIVE PER CENT OF THE TIME.

6. "RETAILER" MEANS ANY PERSON, OTHER THAN A MANUFACTURER OR WHOLESALER, WHO IS ENGAGED IN SELLING CIGARETTES OR TOBACCO PRODUCTS.

7. "SALE" MEANS A TRANSFER OF TITLE OR POSSESSION, OR BOTH, OR AN EXCHANGE OR BARTER, CONDITIONAL OR OTHERWISE, IN ANY MANNER OR BY ANY MEANS WHATEVER OR ANY AGREEMENT TO TRANSFER, EXCHANGE OR BARTER. SALE INCLUDES THE GIVING OF CIGARETTES AS SAMPLES, PRIZES OR GIFTS AND THE EXCHANGING OF CIGARETTES FOR ANY CONSIDERATION OTHER THAN MONEY.

8. "SELL" MEANS TO SELL OR TO OFFER OR AGREE TO SELL.

9. "WHOLESALER" MEANS A PERSON, OTHER THAN A MANUFACTURER, WHO SELLS CIGARETTES OR TOBACCO PRODUCTS TO RETAILERS OR OTHER PERSONS FOR RESALE, AND ANY PERSON WHO OWNS, OPERATES OR MAINTAINS ONE OR MORE CIGARETTE OR TOBACCO PRODUCT VENDING MACHINES IN, AT OR ON PREMISES OWNED OR OCCUPIED BY ANY OTHER PERSON.

41-2170.01. Test method and performance standard; civil penalty; reports

A. EXCEPT AS PROVIDED IN SUBSECTION I OF THIS SECTION, 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 BOTH OF THE FOLLOWING OCCUR:

1. THE CIGARETTES ARE TESTED PURSUANT TO THE TEST METHOD PRESCRIBED IN THIS SECTION AND MEET THE PERFORMANCE STANDARD PRESCRIBED IN THIS SECTION.

2. THE MANUFACTURER FILES A WRITTEN CERTIFICATION WITH THE STATE FIRE MARSHAL PURSUANT TO SECTION 41-2170.02 AND MARKS THE CIGARETTES PURSUANT TO SECTION 41-2170.03.

B. THE TESTS PRESCRIBED IN SUBSECTION A, PARAGRAPH 1 OF THIS SECTION SHALL CONFORM TO THE FOLLOWING STANDARDS:

1. TESTING OF CIGARETTES SHALL BE CONDUCTED PURSUANT TO THE AMERICAN SOCIETY OF TESTING AND MATERIALS STANDARD E2187-04, "STANDARD TEST METHOD FOR MEASURING THE IGNITION STRENGTH OF CIGARETTES".

2. TESTING SHALL BE CONDUCTED ON TEN LAYERS OF FILTER PAPER.

3. NOT MORE THAN TWENTY-FIVE PER CENT OF THE CIGARETTES TESTED IN A TEST TRIAL PURSUANT TO THIS SECTION SHALL EXHIBIT FULL-LENGTH BURNS. FORTY REPLICATE TESTS COMPRISE A COMPLETE TEST TRIAL FOR EACH CIGARETTE TESTED.

4. THE PERFORMANCE STANDARD REQUIRED BY THIS SUBSECTION IS APPLIED ONLY TO A COMPLETE TEST TRIAL.

5. WRITTEN CERTIFICATIONS SHALL BE BASED ON TESTING CONDUCTED BY A LABORATORY THAT HAS BEEN ACCREDITED PURSUANT TO STANDARD ISO/IEC 17025 OF THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION OR OTHER COMPARABLE ACCREDITATION STANDARD REQUIRED BY THE STATE FIRE MARSHAL.

6. LABORATORIES CONDUCTING TESTING PURSUANT TO THIS SUBSECTION 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 SHALL BE NOT GREATER THAN 0.19.

7. ADDITIONAL TESTING IS NOT REQUIRED IF CIGARETTES ARE TESTED CONSISTENT WITH THIS ARTICLE FOR ANY OTHER PURPOSE.

8. TESTING PERFORMED OR SPONSORED BY THE STATE FIRE MARSHAL TO DETERMINE A CIGARETTE'S COMPLIANCE WITH THE PERFORMANCE STANDARD REQUIRED BY THIS SUBSECTION SHALL BE CONDUCTED PURSUANT TO THIS SUBSECTION.

C. EACH CIGARETTE LISTED IN A CERTIFICATION SUBMITTED PURSUANT TO SECTION 41-2170.02 THAT USES LOWERED PERMEABILITY BANDS IN THE CIGARETTE PAPER TO ACHIEVE COMPLIANCE WITH THE PERFORMANCE STANDARD PRESCRIBED IN THIS SECTION SHALL HAVE AT LEAST TWO NOMINALLY IDENTICAL BANDS ON THE PAPER SURROUNDING THE TOBACCO COLUMN. AT LEAST ONE COMPLETE BAND SHALL BE LOCATED AT LEAST FIFTEEN MILLIMETERS FROM THE LIGHTING END OF THE CIGARETTE. FOR CIGARETTES ON WHICH THE BANDS ARE POSITIONED BY DESIGN, THERE SHALL 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.

D. A MANUFACTURER OF A CIGARETTE THAT THE STATE FIRE MARSHAL DETERMINES CANNOT BE TESTED PURSUANT TO THE TEST METHOD PRESCRIBED IN SUBSECTION B, PARAGRAPH 1 OF THIS SECTION SHALL PROPOSE A TEST METHOD AND PERFORMANCE STANDARD FOR THE CIGARETTE TO THE STATE FIRE MARSHAL. ON 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 B, PARAGRAPH 3 OF THIS SECTION, THE MANUFACTURER MAY EMPLOY THAT TEST METHOD AND PERFORMANCE STANDARD TO CERTIFY THE CIGARETTE PURSUANT TO SECTION 41-2170.02. 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 PRESCRIBED IN THIS ARTICLE, 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 FIRE SAFETY STANDARDS OF THAT STATE'S LAW OR REGULATION UNDER A LEGAL PROVISION COMPARABLE TO THIS SECTION, THE STATE FIRE MARSHAL SHALL AUTHORIZE THAT 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 PURSUANT TO THIS ARTICLE. ALL OTHER APPLICABLE REQUIREMENTS OF THIS SECTION APPLY TO THE MANUFACTURER.

E. EACH MANUFACTURER SHALL MAINTAIN COPIES OF THE REPORTS OF ALL TESTS CONDUCTED ON ALL CIGARETTES OFFERED FOR SALE FOR THREE YEARS AND SHALL MAKE COPIES OF THESE REPORTS AVAILABLE TO THE STATE FIRE MARSHAL AND THE ATTORNEY GENERAL ON WRITTEN REQUEST. ANY MANUFACTURER WHO FAILS TO MAKE COPIES OF THESE REPORTS AVAILABLE WITHIN SIXTY DAYS AFTER RECEIVING A WRITTEN REQUEST IS SUBJECT TO A CIVIL PENALTY OF NOT TO EXCEED TEN THOUSAND

DOLLARS FOR EACH DAY AFTER THE SIXTIETH DAY THAT THE MANUFACTURER DOES NOT MAKE THE COPIES AVAILABLE.

F. THE STATE FIRE MARSHAL MAY ADOPT A SUBSEQUENT AMERICAN SOCIETY OF TESTING AND MATERIALS STANDARD TEST METHOD FOR MEASURING THE IGNITION STRENGTH OF CIGARETTES ON A FINDING THAT THE SUBSEQUENT METHOD DOES NOT RESULT IN A CHANGE IN THE PERCENTAGE OF FULL-LENGTH BURNS EXHIBITED BY ANY TESTED CIGARETTE IF COMPARED TO THE PERCENTAGE OF FULL-LENGTH BURNS THE SAME CIGARETTE WOULD EXHIBIT IF IT WERE TESTED PURSUANT TO THE AMERICAN SOCIETY OF TESTING AND MATERIALS STANDARD E2187-04 AND THE PERFORMANCE STANDARD PRESCRIBED IN SUBSECTION B, PARAGRAPH 3 OF THIS SECTION.

G. THE STATE FIRE MARSHAL SHALL REVIEW THE EFFECTIVENESS OF THIS SECTION AND REPORT EVERY THREE YEARS TO THE LEGISLATURE ON THE STATE FIRE MARSHAL'S FINDINGS AND ANY RECOMMENDATIONS FOR LEGISLATION TO IMPROVE THE EFFECTIVENESS OF THIS SECTION. THE STATE FIRE MARSHAL SHALL SUBMIT THE REPORT AND LEGISLATIVE RECOMMENDATIONS ON OR BEFORE JULY 1 OF EACH THREE-YEAR PERIOD.

H. THE STATE FIRE MARSHAL SHALL NOTIFY THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE IN WRITING IMMEDIATELY AFTER A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THE STANDARD PRESCRIBED IN THIS ARTICLE BECOMES EFFECTIVE.

I. THIS SECTION DOES NOT PROHIBIT EITHER OF THE FOLLOWING:

1. WHOLESALERS OR RETAILERS FROM SELLING THEIR EXISTING INVENTORY OF CIGARETTES ON OR AFTER AUGUST 1, 2009 IF THE WHOLESALER OR RETAILER CAN ESTABLISH THAT STATE TAX STAMPS WERE AFFIXED TO THE CIGARETTES BEFORE AUGUST 1, 2009 AND THE WHOLESALER OR RETAILER CAN ESTABLISH THAT THE INVENTORY WAS PURCHASED BEFORE AUGUST 1, 2009 IN COMPARABLE QUANTITY TO THE INVENTORY PURCHASED DURING THE SAME PERIOD OF THE PRIOR YEAR.

2. THE SALE OF CIGARETTES SOLELY FOR THE PURPOSE OF CONSUMER TESTING. FOR THE PURPOSES OF THIS PARAGRAPH, "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 THE CIGARETTES, USING ONLY THE QUANTITY OF CIGARETTES THAT IS REASONABLY NECESSARY FOR SUCH AN ASSESSMENT.

J. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

41-2170.02. Certification; product change; fee

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 PURSUANT TO SECTION 41-2170.01.

2. EACH CIGARETTE LISTED IN THE CERTIFICATION MEETS THE PERFORMANCE STANDARDS PRESCRIBED IN SECTION 41-2170.01.

B. THE MANUFACTURER SHALL DESCRIBE EACH CIGARETTE LISTED IN THE CERTIFICATION 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 APPROVED PURSUANT TO SECTION 41-2170.03.

9. THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE LABORATORY, IF DIFFERENT THAN THE MANUFACTURER THAT CONDUCTED THE TEST.

10. THE DATE THAT THE TESTING OCCURRED.

C. A MANUFACTURER SHALL RECERTIFY EACH CIGARETTE CERTIFIED UNDER THIS SECTION EVERY THREE YEARS.

D. A MANUFACTURER SHALL MAKE THE CERTIFICATIONS AVAILABLE TO THE ATTORNEY GENERAL FOR PURPOSES CONSISTENT WITH THIS ARTICLE AND THE

DEPARTMENT OF REVENUE FOR THE PURPOSES OF ENSURING COMPLIANCE WITH THIS SECTION.

E. IF A MANUFACTURER HAS CERTIFIED A CIGARETTE PURSUANT TO THIS SECTION AND AFTER CERTIFICATION MAKES ANY CHANGE TO THE CIGARETTE THAT IS LIKELY TO ALTER ITS COMPLIANCE WITH THE REDUCED CIGARETTE IGNITION PROPENSITY STANDARDS PRESCRIBED BY THIS ARTICLE, THAT CIGARETTE SHALL NOT BE SOLD OR OFFERED FOR SALE IN THIS STATE UNTIL THE MANUFACTURER RETESTS THE CIGARETTE PURSUANT TO THE TESTING STANDARDS PRESCRIBED IN SECTION 41-2170.01 AND MAINTAINS RECORDS OF THAT RETESTING AS REQUIRED BY SECTION 41-2170.01. ANY ALTERED CIGARETTE THAT DOES NOT MEET THE PERFORMANCE STANDARD PRESCRIBED IN SECTION 41-2170.01 MAY NOT BE SOLD IN THIS STATE.

F. THE STATE FIRE MARSHAL MAY ADOPT RULES REQUIRING EACH MANUFACTURER TO PAY TO THE STATE FIRE MARSHAL A FEE OF TWO HUNDRED FIFTY DOLLARS PER BRAND FAMILY OF CIGARETTES CERTIFIED IN COMPLIANCE WITH THIS SECTION. THE FEE APPLIES TO ALL CIGARETTES WITHIN THE BRAND FAMILY CERTIFIED AND INCLUDES ANY NEW CIGARETTE BRAND STYLE WITHIN THE BRAND FAMILY DURING THE THREE-YEAR CERTIFICATION PERIOD.

G. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

41-2170.03. Markings; requirements; fire marshal approval

A. A MANUFACTURER SHALL MARK CIGARETTES THAT ARE CERTIFIED PURSUANT TO SECTION 41-2170.02 TO INDICATE COMPLIANCE WITH SECTION 41-2170.01. THE MARKING SHALL BE IN AT LEAST EIGHT POINT TYPE AND SHALL CONSIST OF EITHER:

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 CODE.

2. ANY VISIBLE COMBINATION OF ALPHANUMERIC OR SYMBOLIC CHARACTERS PERMANENTLY STAMPED, ENGRAVED OR EMBOSSED ON THE CIGARETTE PACKAGE OR CELLOPHANE WRAP.

3. PRINTED, STAMPED, ENGRAVED OR EMBOSSED TEXT THAT INDICATES THAT THE CIGARETTES MEET THE STANDARDS OF THIS SECTION.

B. A MANUFACTURER SHALL USE ONLY ONE MARKING AND SHALL APPLY THIS MARKING UNIFORMLY FOR ALL PACKAGES, INCLUDING PACKS, CARTONS AND CASES, AND BRANDS MARKETED BY THAT MANUFACTURER.

C. BEFORE THE CERTIFICATION OF ANY CIGARETTE, A MANUFACTURER SHALL PRESENT ITS PROPOSED MARKING TO THE STATE FIRE MARSHAL FOR APPROVAL. PROPOSED MARKINGS ARE DEEMED APPROVED IF THE STATE FIRE MARSHAL FAILS TO ACT WITHIN TEN BUSINESS DAYS AFTER RECEIVING A REQUEST FOR APPROVAL. ON RECEIPT OF THE REQUEST, THE STATE FIRE MARSHAL SHALL APPROVE OR DISAPPROVE THE MARKING OFFERED, EXCEPT THAT THE STATE FIRE MARSHAL SHALL APPROVE EITHER OF THE FOLLOWING:

1. ANY MARKING IN USE AND APPROVED FOR SALE IN NEW YORK STATE PURSUANT TO THE NEW YORK FIRE SAFETY STANDARDS FOR CIGARETTES IN SECTION 156-c OF THE NEW YORK EXECUTIVE LAW AND PART 429 OF TITLE 19 OF THE NEW YORK CODE OF RULES AND REGULATIONS.

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.

D. A MANUFACTURER SHALL NOT MODIFY ITS APPROVED MARKING UNLESS THE MODIFICATION HAS BEEN APPROVED BY THE STATE FIRE MARSHAL PURSUANT TO THIS SECTION.

E. MANUFACTURERS CERTIFYING CIGARETTES PURSUANT TO SECTION 41-2170.02 SHALL PROVIDE A COPY OF THE CERTIFICATIONS TO ALL WHOLESALERS AND AGENTS TO WHOM THEY SELL CIGARETTES AND SHALL ALSO PROVIDE SUFFICIENT COPIES OF AN ILLUSTRATION OF THE PACKAGE MARKING USED BY THE MANUFACTURER PURSUANT TO THIS SECTION FOR EACH RETAILER TO WHOM THE WHOLESALERS OR AGENTS SELL CIGARETTES. WHOLESALERS AND AGENTS SHALL PROVIDE A COPY OF THESE PACKAGE MARKINGS RECEIVED FROM MANUFACTURERS TO ALL RETAILERS TO WHOM THEY SELL CIGARETTES. WHOLESALERS, AGENTS AND RETAILERS SHALL

PERMIT THE STATE FIRE MARSHAL, THE DEPARTMENT OF REVENUE OR THE ATTORNEY GENERAL, OR THEIR EMPLOYEES, TO INSPECT MARKINGS OF CIGARETTE PACKAGING MARKED PURSUANT TO THIS SECTION.

F. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

41-2170.04. Civil penalties

A. A MANUFACTURER, WHOLESALER, AGENT OR OTHER PERSON OR ENTITY THAT KNOWINGLY SELLS OR OFFERS TO SELL CIGARETTES, OTHER THAN THROUGH RETAIL SALE, IN VIOLATION OF SECTION 41-2170.01 IS SUBJECT TO A CIVIL PENALTY OF NOT TO EXCEED ONE HUNDRED DOLLARS FOR EACH PACK OF CIGARETTES SOLD OR OFFERED FOR SALE. THIS PENALTY SHALL NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS DURING ANY THIRTY-DAY PERIOD.

B. A RETAILER WHO KNOWINGLY SELLS OR OFFERS TO SELL CIGARETTES IN VIOLATION OF SECTION 41-2170.01 IS SUBJECT TO A CIVIL PENALTY OF NOT TO EXCEED ONE HUNDRED DOLLARS FOR EACH PACK OF CIGARETTES SOLD OR OFFERED FOR SALE. THIS PENALTY SHALL NOT EXCEED ONE THOUSAND DOLLARS DURING ANY THIRTY-DAY PERIOD.

C. IN ADDITION TO ANY PENALTY PRESCRIBED BY LAW, ANY CORPORATION, PARTNERSHIP, SOLE PROPRIETOR, LIMITED PARTNERSHIP OR ASSOCIATION THAT IS ENGAGED IN THE MANUFACTURE OF CIGARETTES AND THAT KNOWINGLY MAKES A FALSE CERTIFICATION PURSUANT TO SECTION 41-2170.02 IS SUBJECT TO A CIVIL PENALTY OF AT LEAST TWENTY-FIVE THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS FOR EACH FALSE CERTIFICATION.

D. A PERSON WHO VIOLATES ANY OTHER PROVISION OF THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY FOR A FIRST OFFENSE OF NOT TO EXCEED ONE THOUSAND DOLLARS AND A CIVIL PENALTY OF NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION.

E. ANY CIGARETTES THAT HAVE BEEN SOLD OR OFFERED FOR SALE AND THAT DO NOT COMPLY WITH THE PERFORMANCE STANDARD PRESCRIBED BY SECTION 41-2170.01 ARE SUBJECT TO FORFEITURE AND, ON FORFEITURE, SHALL BE DESTROYED. BEFORE THE DESTRUCTION OF ANY FORFEITED CIGARETTE, THE TRUE HOLDER OF THE TRADEMARK RIGHTS IN THE CIGARETTE BRAND MAY INSPECT THE CIGARETTE.

F. IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW, THE STATE FIRE MARSHAL OR THE ATTORNEY GENERAL MAY FILE AN ACTION IN THE SUPERIOR COURT FOR INJUNCTIVE RELIEF OR TO RECOVER ANY COSTS OR DAMAGES SUFFERED BY THIS STATE BECAUSE OF A VIOLATION OF THIS SECTION, INCLUDING ENFORCEMENT COSTS RELATING TO THE SPECIFIC VIOLATION AND ATTORNEY FEES. EACH VIOLATION OF THIS SECTION OR RULES ADOPTED PURSUANT TO THIS SECTION IS A SEPARATE CIVIL VIOLATION FOR WHICH THE STATE FIRE MARSHAL OR ATTORNEY GENERAL MAY OBTAIN RELIEF.

G. IF A LAW ENFORCEMENT OFFICER OR DULY AUTHORIZED REPRESENTATIVE OF THE STATE FIRE MARSHAL DISCOVERS CIGARETTES THAT HAVE NOT BEEN MARKED AS REQUIRED BY SECTION 41-2170.03, THE OFFICER OR REPRESENTATIVE MAY SEIZE AND TAKE POSSESSION OF THE CIGARETTES. THE CIGARETTES SHALL BE TURNED OVER TO THE DEPARTMENT OF REVENUE AND SHALL BE FORFEITED TO THE STATE. CIGARETTES SEIZED PURSUANT TO THIS SECTION SHALL BE DESTROYED. BEFORE THE DESTRUCTION OF ANY SEIZED CIGARETTE, THE TRUE HOLDER OF THE TRADEMARK RIGHTS IN THE CIGARETTE BRAND MAY INSPECT THE CIGARETTE.

H. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

41-2170.05. Implementation; rule making; inspection of cigarettes; definitions

A. THE STATE FIRE MARSHAL SHALL IMPLEMENT THIS ARTICLE PURSUANT TO THE IMPLEMENTATION AND SUBSTANCE OF THE NEW YORK FIRE SAFETY STANDARDS FOR CIGARETTES IN SECTION 156-c OF THE NEW YORK EXECUTIVE LAW AND PART 429 OF TITLE 19 OF THE NEW YORK CODE OF RULES AND REGULATIONS.

B. THE STATE FIRE MARSHAL MAY ADOPT RULES TO ENFORCE THIS ARTICLE.

C. AS AUTHORIZED PURSUANT TO SECTION 42-3151, THE DEPARTMENT OF REVENUE IN THE REGULAR COURSE OF CONDUCTING INSPECTIONS OF CIGARETTE DISTRIBUTORS AND RETAILERS MAY INSPECT CIGARETTES TO DETERMINE IF THE CIGARETTES ARE MARKED AS REQUIRED BY SECTION 41-2170.03. IF THE CIGARETTES ARE NOT MARKED AS REQUIRED, THE DEPARTMENT OF REVENUE SHALL NOTIFY THE STATE FIRE MARSHAL.

D. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

E. FOR THE PURPOSES OF THIS SECTION, "CIGARETTE", "CIGARETTE DISTRIBUTOR" AND "RETAILER" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 42-3001.

41-2170.06. Inspection

BEGINNING AUGUST 1, 2009, TO ENFORCE THIS ARTICLE, THE ATTORNEY GENERAL AND THE STATE FIRE MARSHAL MAY 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. EACH PERSON IN THE POSSESSION, CONTROL OR OCCUPANCY OF ANY PREMISES WHERE CIGARETTES ARE PLACED, SOLD OR OFFERED FOR SALE SHALL ALLOW THE ATTORNEY GENERAL AND THE STATE FIRE MARSHAL THE MEANS, FACILITIES AND OPPORTUNITY FOR THE EXAMINATIONS AUTHORIZED BY THIS SECTION.

41-2170.07. Sale outside of state

BEGINNING AUGUST 1, 2009, THIS ARTICLE DOES NOT PROHIBIT ANY PERSON OR ENTITY FROM MANUFACTURING OR SELLING CIGARETTES THAT DO NOT MEET THE REQUIREMENTS OF SECTION 41-2170.01 IF THE CIGARETTES ARE OR WILL BE STAMPED FOR SALE IN ANOTHER STATE OR ARE PACKAGED FOR SALE OUTSIDE OF 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 IN THIS STATE.

41-2170.08. State preemption

THE LEGISLATURE FINDS THAT THE SAFETY STANDARDS PRESCRIBED IN THIS ARTICLE ARE OF STATEWIDE CONCERN. THIS ARTICLE PREEMPTS REGULATION BY A POLITICAL SUBDIVISION OF THIS STATE REGARDING THE CIGARETTE IGNITION PROPENSITY SAFETY STANDARDS PRESCRIBED IN THIS ARTICLE.

Sec. 2. Conditional repeal; notice

A. Sections 41-2170, 41-2170.01, 41-2170.02, 41-2170.03, 41-2170.04, 41-2170.05, 41-2170.06 and 41-2170.07, Arizona Revised Statutes, as added by this act, are repealed if a federal reduced cigarette ignition propensity standard is enacted into law.

B. The state fire marshal shall notify in writing the director of the Arizona legislative council of the effective date of this federal legislation.

Sec. 3. Requirements for enactment; two-thirds vote

Pursuant to article IX, section 22, Constitution of Arizona, this act is effective only on the affirmative vote of at least two-thirds of the members of each house of the legislature and is effective immediately on the signature of the governor or, if the governor vetoes this act, on the subsequent affirmative vote of at least three-fourths of the members of each house of the legislature.