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HOUSE BILL 1822

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State of Washington                      60th Legislature                      2007 Regular Session

By Representatives Simpson, Haigh, Appleton, Moeller, Darneille,  
Williams, Hunt, Hurst, Ormsby and Schual-Berke

Read first time 01/30/2007. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to reduced cigarette ignition propensity;  
2 reenacting and amending RCW 43.79A.040; adding a new chapter to Title  
3 19 RCW; prescribing penalties; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires otherwise.

7            (1) "Agent" means any person licensed by the department of revenue  
8 to purchase and affix adhesive or meter stamps on packages of  
9 cigarettes.

10           (2) "Cigarette" means any roll for smoking made wholly or in part  
11 of tobacco, irrespective of size or shape and irrespective of the  
12 tobacco being flavored, adulterated, or mixed with any other  
13 ingredient, when the roll has a wrapper or cover made of paper or any  
14 material, except when the wrapper is wholly or in the greater part made  
15 of natural leaf tobacco in its natural state.

16           (3) "Manufacturer" means:

17           (a) Any entity that manufactures or otherwise produces cigarettes  
18 or causes cigarettes to be manufactured or produced anywhere that the

1 manufacturer intends to be sold in this state, including cigarettes  
2 intended to be sold in the United States through an importer;

3 (b) The first purchaser anywhere that intends to resell in the  
4 United States cigarettes manufactured anywhere that the original  
5 manufacturer or maker does not intend to be sold in the United States;  
6 or

7 (c) Any entity that becomes a successor of an entity described in  
8 (a) or (b) of this subsection.

9 (4) "Quality control and quality assurance program" means the  
10 laboratory procedures implemented to ensure that operator bias,  
11 systematic and nonsystematic methodological errors, and  
12 equipment-related problems do not affect the results of the testing.  
13 Such a program ensures that the testing repeatability remains within  
14 the required repeatability values stated in section 2(1)(f) of this act  
15 for all test trials used to certify cigarettes in accordance with this  
16 chapter.

17 (5) "Repeatability" means the range of values within which the  
18 repeat results of cigarette test trials from a single laboratory will  
19 fall ninety-five percent of the time.

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

22 (7) "Sale" or "sell" means any transfer of title of cigarettes for  
23 consideration, exchange, barter, gift, offer for sale, or distribution,  
24 in any manner or by any means.

25 (8) "Wholesale dealer" means any person who sells cigarettes or  
26 tobacco products to retail dealers or other persons for purposes of  
27 resale, and any person who owns, operates, or maintains one or more  
28 cigarette or tobacco product vending machines in, at, or upon premises  
29 owned or occupied by any other person.

30 NEW SECTION. **Sec. 2.** (1) Except as provided in subsection (7) of  
31 this section, cigarettes may not be sold or offered for sale in this  
32 state or offered for sale or sold to persons located in this state  
33 unless the cigarettes have been tested in accordance with the test  
34 method and meet the performance standard specified in this section, a  
35 written certification has been filed by the manufacturer with the state  
36 director of fire protection in accordance with section 3 of this act,

1 and the cigarettes have been marked in accordance with section 4 of  
2 this act.

3 (a) Testing of cigarettes shall be conducted in accordance with the  
4 American society of testing and materials (ASTM) standard E2187-04,  
5 "standard test method for measuring the ignition strength of  
6 cigarettes."

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

8 (c) No more than twenty-five percent of the cigarettes tested in a  
9 test trial in accordance with this section may exhibit full-length  
10 burns. Forty replicate tests comprise a complete test trial for each  
11 cigarette tested.

12 (d) The performance standard required by (c) of this subsection may  
13 only be applied to a complete test trial.

14 (e) Written certifications shall be based upon testing conducted by  
15 a laboratory that has been accredited pursuant to standard ISO/IEC  
16 17025 of the international organization for standardization (ISO), or  
17 other comparable accreditation standard required by the state director  
18 of fire protection.

19 (f) Laboratories conducting testing in accordance with this section  
20 shall implement a quality control and quality assurance program that  
21 includes a procedure that determines the repeatability of the testing  
22 results. The repeatability value may be no greater than 0.19.

23 (g) This section does not require additional testing if cigarettes  
24 are tested consistent with this chapter for any other purpose.

25 (h) Testing performed or sponsored by the state director of fire  
26 protection to determine a cigarette's compliance with the performance  
27 standard required must be conducted in accordance with this section.

28 (2) Each cigarette listed in a certification submitted pursuant to  
29 section 3 of this act that uses lowered permeability bands in the  
30 cigarette paper to achieve compliance with the performance standard set  
31 forth in this section must have at least two nominally identical bands  
32 on the paper surrounding the tobacco column. At least one complete  
33 band must be located at least fifteen millimeters from the lighting end  
34 of the cigarette. For cigarettes on which the bands are positioned by  
35 design, there must be at least two bands fully located at least fifteen  
36 millimeters from the lighting end and ten millimeters from the filter  
37 end of the tobacco column, or ten millimeters from the labeled end of  
38 the tobacco column for nonfiltered cigarettes.

1           (3) A manufacturer of a cigarette that the state director of fire  
2 protection determines cannot be tested in accordance with the test  
3 method prescribed in subsection (1)(a) of this section shall propose a  
4 test method and performance standard for the cigarette to the state  
5 director of fire protection. Upon approval of the proposed test method  
6 and a determination by the state director of fire protection that the  
7 performance standard proposed by the manufacturer is equivalent to the  
8 performance standard prescribed in subsection (1)(c) of this section,  
9 the manufacturer may employ that test method and performance standard  
10 to certify the cigarette pursuant to section 3 of this act. If the  
11 state director of fire protection determines that another state has  
12 enacted reduced cigarette ignition propensity standards that include a  
13 test method and performance standard that are the same as those  
14 contained in this chapter, and the state director of fire protection  
15 finds that the officials responsible for implementing those  
16 requirements have approved the proposed alternative test method and  
17 performance standard for a particular cigarette proposed by a  
18 manufacturer as meeting the fire safety standards of that state's law  
19 or regulation under a legal provision comparable to this section, then  
20 the state director of fire protection shall authorize that manufacturer  
21 to employ the alternative test method and performance standard to  
22 certify that cigarette for sale in this state, unless the state  
23 director of fire protection demonstrates a reasonable basis why the  
24 alternative test should not be accepted under this chapter. All other  
25 applicable requirements of this section apply to the manufacturer.

26           (4) Each manufacturer shall maintain copies of the reports of all  
27 tests conducted on all cigarettes offered for sale for a period of  
28 three years, and shall make copies of these reports available to the  
29 state director of fire protection and the attorney general upon written  
30 request. Any manufacturer who fails to make copies of these reports  
31 available within sixty days of receiving a written request is subject  
32 to a civil penalty not to exceed ten thousand dollars for each day  
33 after the sixtieth day that the manufacturer does not make the copies  
34 available.

35           (5) The state director of fire protection may adopt a subsequent  
36 ASTM standard test method for measuring the ignition strength of  
37 cigarettes upon a finding that the subsequent method does not result in  
38 a change in the percentage of full-length burns exhibited by any tested

1 cigarette when compared to the percentage of full-length burns the same  
2 cigarette would exhibit when tested in accordance with ASTM standard  
3 E2187-04 and the performance standard in subsection (1)(c) of this  
4 section.

5 (6) Beginning in 2111, the state director of fire protection shall  
6 review the effectiveness of this section and report every three years  
7 to the legislature the state director of fire protection's findings  
8 and, if appropriate, recommendations for legislation to improve the  
9 effectiveness of this section. The report and legislative  
10 recommendations shall be submitted no later than July 1st of each  
11 three-year reporting period.

12 (7) The requirements of subsection (1) of this section do not  
13 prohibit wholesale or retail dealers from selling their existing  
14 inventory of cigarettes on or after the effective date of this section  
15 if the wholesale or retailer dealer can establish that state tax stamps  
16 were affixed to the cigarettes prior to the effective date of this  
17 section, and if the wholesale or retail dealer can establish that the  
18 inventory was purchased prior to the effective date of this section in  
19 comparable quantity to the inventory purchased during the same period  
20 of the prior year.

21 (8) This chapter must be implemented in accordance with the  
22 implementation and substance of the New York fire safety standards for  
23 cigarettes, New York Executive Law section 156-c, Fire Safety Standards  
24 for Cigarettes, as it exists on the effective date of this section.  
25 The state director of fire protection shall adopt these standards by  
26 rule and may adopt future changes to these standards by rule.

27 NEW SECTION. **Sec. 3.** (1) Each manufacturer shall submit to the  
28 state director of fire protection a written certification attesting  
29 that:

30 (a) Each cigarette listed in the certification has been tested in  
31 accordance with section 2 of this act; and

32 (b) Each cigarette listed in the certification meets the  
33 performance standard set forth in section 2(1)(c) of this act.

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

36 (a) Brand or trade name on the package;

37 (b) Style, such as light or ultra light;

- 1 (c) Length in millimeters;  
2 (d) Circumference in millimeters;  
3 (e) Flavor, such as menthol or chocolate, if applicable;  
4 (f) Filter or nonfilter;  
5 (g) Package description, such as soft pack or box;  
6 (h) Marking approved in accordance with section 4 of this act;  
7 (i) The name, address, and telephone number of the laboratory, if  
8 different than the manufacturer that conducted the test; and  
9 (j) The date the testing occurred.

10 (3) The certifications must be made available to the attorney  
11 general for purposes consistent with this chapter and the department of  
12 revenue for the purposes of ensuring compliance with this section.

13 (4) Each cigarette certified under this section must be recertified  
14 every three years.

15 (5) For each cigarette listed in a certification, a manufacturer  
16 shall pay to the state director of fire protection a fee of two hundred  
17 fifty dollars. The state director of fire protection is authorized to  
18 annually adjust this fee to ensure it defrays the actual costs of the  
19 processing, testing, enforcement, and oversight activities required by  
20 this chapter.

21 (6) If a manufacturer has certified a cigarette under this section,  
22 and thereafter makes any change to that cigarette that is likely to  
23 alter its compliance with the reduced cigarette ignition propensity  
24 standards required by this chapter, that cigarette may not be sold or  
25 offered for sale in this state until the manufacturer retests the  
26 cigarette in accordance with the testing standards set forth in section  
27 2 of this act and maintains records of that retesting as required by  
28 section 2 of this act. Any altered cigarette which does not meet the  
29 performance standard set forth in section 2 of this act may not be sold  
30 in this state.

31 NEW SECTION. **Sec. 4.** (1) Cigarettes that are certified by a  
32 manufacturer in accordance with section 3 of this act must be marked to  
33 indicate compliance with the requirements of section 2 of this act.  
34 The marking must be in eight-point type or larger and consist of:

35 (a) Modification of the universal product code to include a visible  
36 mark printed at or around the area of the code. The mark may consist

1 of alphanumeric or symbolic characters permanently stamped, engraved,  
2 embossed, or printed in conjunction with the universal product code; or

3 (b) Any visible combination of alphanumeric or symbolic characters  
4 permanently stamped, engraved, or embossed upon the cigarette package  
5 or cellophane wrap; or

6 (c) Printed, stamped, engraved, or embossed text that indicates  
7 that the cigarettes meet the standards of this chapter.

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

11 (3) The state director of fire protection must be notified as to  
12 the marking that is selected.

13 (4) Prior to the certification of any cigarette, a manufacturer  
14 shall present its proposed marking to the state director of fire  
15 protection for approval. Upon receipt of the request, the state  
16 director of fire protection shall approve or disapprove the marking  
17 offered. Proposed markings are deemed approved if the state director  
18 of fire protection fails to act within ten business days of receiving  
19 a request for approval.

20 (5) A manufacturer shall not modify its approved marking unless the  
21 modification has been approved by the state director of fire protection  
22 in accordance with this section.

23 (6) Manufacturers certifying cigarettes in accordance with section  
24 3 of this act shall provide a copy of the certifications to all  
25 wholesale dealers and agents to which they sell cigarettes, and shall  
26 also provide sufficient copies of an illustration of the package  
27 marking utilized by the manufacturer under this section for each retail  
28 dealer to which the wholesale dealers or agents sell cigarettes.  
29 Wholesale dealers and agents shall provide a copy of these package  
30 markings received from manufacturers to all retail dealers to which  
31 they sell cigarettes. Wholesale dealers, agents, and retail dealers  
32 shall permit the state director of fire protection, the department of  
33 revenue, the attorney general, and their employees to inspect markings  
34 of cigarette packaging marked in accordance with this section.

35 NEW SECTION. **Sec. 5.** (1) A manufacturer, wholesale dealer, agent,  
36 or any other person or entity who knowingly sells or offers to sell  
37 cigarettes, other than through retail sale, in violation of section 2

1 of this act, for a first offense is liable to a civil penalty not to  
2 exceed ten thousand dollars per each sale of the cigarettes, and for a  
3 subsequent offense is liable to a civil penalty not to exceed  
4 twenty-five thousand dollars per each sale of the cigarettes. However,  
5 in no case may the penalty against such a person or entity exceed one  
6 hundred thousand dollars during any thirty-day period.

7 (2)(a) A retail dealer who knowingly sells cigarettes in violation  
8 of section 2 of this act is:

9 (i) For a first offense liable to a civil penalty not to exceed  
10 five hundred dollars, and for a subsequent offense is liable to a civil  
11 penalty not to exceed two thousand dollars, per each sale or offer for  
12 sale of cigarettes, if the total number of cigarettes sold or offered  
13 for sale does not exceed one thousand cigarettes; or

14 (ii) For a first offense liable to a civil penalty not to exceed  
15 one thousand dollars, and for a subsequent offense is liable to a civil  
16 penalty not to exceed five thousand dollars, per each sale or offer for  
17 sale of cigarettes, if the total number of cigarettes sold or offered  
18 for sale exceeds one thousand cigarettes.

19 (b) A penalty under this subsection may not exceed twenty-five  
20 thousand dollars during a thirty-day period.

21 (3) In addition to any penalty prescribed by law, any corporation,  
22 partnership, sole proprietor, limited partnership, or association  
23 engaged in the manufacture of cigarettes that knowingly makes a false  
24 certification under section 3 of this act is, for a first offense,  
25 liable to a civil penalty of at least seventy-five thousand dollars,  
26 and for a subsequent offense a civil penalty not to exceed two hundred  
27 fifty thousand dollars for each false certification.

28 (4) Any person violating any other provision in this chapter is  
29 liable to a civil penalty for a first offense not to exceed one  
30 thousand dollars, and for a subsequent offense is liable to a civil  
31 penalty not to exceed five thousand dollars, for each violation.

32 (5) Any cigarettes that have been sold or offered for sale that do  
33 not comply with the performance standard required by section 2 of this  
34 act are subject to forfeiture under RCW 82.24.130. However, prior to  
35 the destruction of any cigarette seized under this subsection, the true  
36 holder of the trademark rights in the cigarette brand must be permitted  
37 to inspect the cigarette.



1 (6) In addition to any other remedy provided by law, the state  
2 director of fire protection or attorney general may initiate an  
3 appropriate civil action in superior court for a violation of this  
4 chapter, including petitioning for injunctive relief or to recover any  
5 costs or damages suffered by the state because of a violation of this  
6 chapter, including enforcement costs relating to the specific violation  
7 and attorneys' fees. Each violation of this chapter or of rules  
8 adopted under this chapter constitutes a separate civil violation for  
9 which the state director of fire protection or attorney general may  
10 obtain relief.

11 NEW SECTION. **Sec. 6.** (1) The state director of fire protection  
12 may adopt rules necessary to implement this chapter.

13 (2) The department of revenue in the regular course of conducting  
14 inspections of wholesale dealers, agents, and retail dealers, as  
15 authorized under chapter 82.24 RCW, may inspect cigarettes to determine  
16 if the cigarettes are marked as required by section 4 of this act. If  
17 the cigarettes are not marked as required, the department of revenue  
18 shall notify the state director of fire protection.

19 NEW SECTION. **Sec. 7.** To enforce this chapter, the attorney  
20 general and the state director of fire protection are authorized to  
21 examine the books, papers, invoices, and other records of any person in  
22 possession, control, or occupancy of any premises where cigarettes are  
23 placed, stored, sold, or offered for sale, as well as the stock of  
24 cigarettes on the premises. Every person in the possession, control,  
25 or occupancy of any premises where cigarettes are placed, sold, or  
26 offered for sale, is required to give the attorney general and the  
27 state director of fire protection the means, facilities, and  
28 opportunity for the examinations authorized by this section.

29 NEW SECTION. **Sec. 8.** The reduced cigarette ignition propensity  
30 account is created in the custody of the state treasurer. All receipts  
31 from the payment of certification fees under section 3 of this act and  
32 from the imposition of civil penalties under section 5 of this act must  
33 be deposited into the account. Expenditures from the account may be  
34 used only for fire safety, enforcement, and prevention programs. Only  
35 the state director of fire protection or the director's designee may

1 authorize expenditures from the account. The account is subject to  
2 allotment procedures under chapter 43.88 RCW, but an appropriation is  
3 not required for expenditures.

4 **Sec. 9.** RCW 43.79A.040 and 2006 c 311 s 21 and 2006 c 120 s 2 are  
5 each reenacted and amended to read as follows:

6 (1) Money in the treasurer's trust fund may be deposited, invested,  
7 and reinvested by the state treasurer in accordance with RCW 43.84.080  
8 in the same manner and to the same extent as if the money were in the  
9 state treasury.

10 (2) All income received from investment of the treasurer's trust  
11 fund shall be set aside in an account in the treasury trust fund to be  
12 known as the investment income account.

13 (3) The investment income account may be utilized for the payment  
14 of purchased banking services on behalf of treasurer's trust funds  
15 including, but not limited to, depository, safekeeping, and  
16 disbursement functions for the state treasurer or affected state  
17 agencies. The investment income account is subject in all respects to  
18 chapter 43.88 RCW, but no appropriation is required for payments to  
19 financial institutions. Payments shall occur prior to distribution of  
20 earnings set forth in subsection (4) of this section.

21 (4)(a) Monthly, the state treasurer shall distribute the earnings  
22 credited to the investment income account to the state general fund  
23 except under (b) and (c) of this subsection.

24 (b) The following accounts and funds shall receive their  
25 proportionate share of earnings based upon each account's or fund's  
26 average daily balance for the period: The Washington promise  
27 scholarship account, the college savings program account, the  
28 Washington advanced college tuition payment program account, the  
29 agricultural local fund, the American Indian scholarship endowment  
30 fund, the foster care scholarship endowment fund, the foster care  
31 endowed scholarship trust fund, the students with dependents grant  
32 account, the basic health plan self-insurance reserve account, the  
33 contract harvesting revolving account, the Washington state combined  
34 fund drive account, the commemorative works account, the Washington  
35 international exchange scholarship endowment fund, the developmental  
36 disabilities endowment trust fund, the energy account, the fair fund,  
37 the fruit and vegetable inspection account, the future teachers

1 conditional scholarship account, the game farm alternative account, the  
2 grain inspection revolving fund, the juvenile accountability incentive  
3 account, the law enforcement officers' and fire fighters' plan 2  
4 expense fund, the local tourism promotion account, the produce railcar  
5 pool account, the regional transportation investment district account,  
6 the rural rehabilitation account, the stadium and exhibition center  
7 account, the youth athletic facility account, the self-insurance  
8 revolving fund, the sulfur dioxide abatement account, the children's  
9 trust fund, the Washington horse racing commission Washington bred  
10 owners' bonus fund account, the Washington horse racing commission  
11 class C purse fund account, the individual development account program  
12 account, the Washington horse racing commission operating account  
13 (earnings from the Washington horse racing commission operating account  
14 must be credited to the Washington horse racing commission class C  
15 purse fund account), the life sciences discovery fund, the reduced  
16 cigarette ignition propensity account, and the reading achievement  
17 account. However, the earnings to be distributed shall first be  
18 reduced by the allocation to the state treasurer's service fund  
19 pursuant to RCW 43.08.190.

20 (c) The following accounts and funds shall receive eighty percent  
21 of their proportionate share of earnings based upon each account's or  
22 fund's average daily balance for the period: The advanced right of way  
23 revolving fund, the advanced environmental mitigation revolving  
24 account, the city and county advance right-of-way revolving fund, the  
25 federal narcotics asset forfeitures account, the high occupancy vehicle  
26 account, the local rail service assistance account, and the  
27 miscellaneous transportation programs account.

28 (5) In conformance with Article II, section 37 of the state  
29 Constitution, no trust accounts or funds shall be allocated earnings  
30 without the specific affirmative directive of this section.

31 NEW SECTION. **Sec. 10.** This chapter does not prohibit any person  
32 or entity from manufacturing or selling cigarettes that do not meet the  
33 requirements of section 2 of this act if the cigarettes are or will be  
34 stamped for sale in another state or are packaged for sale outside the  
35 United States and that person or entity has taken reasonable steps to  
36 ensure that the cigarettes will not be sold or offered for sale to  
37 persons located in this state.

1        NEW SECTION.    **Sec. 11.**    If a federal reduced cigarette ignition  
2 propensity standard that preempts this act is adopted and becomes  
3 effective, the state director of fire protection shall prepare and  
4 submit to the legislature the necessary legislation to repeal this  
5 chapter.

6        NEW SECTION.    **Sec. 12.**    The local governmental units of this state  
7 may neither enact nor enforce any ordinance or other local law or  
8 regulation conflicting with, or preempted by, any provision of this  
9 chapter or with any policy of this state expressed by this chapter,  
10 whether that policy is expressed by inclusion of a provision in this  
11 chapter or by exclusion of that subject from this chapter.

12        NEW SECTION.    **Sec. 13.**    Sections 1 through 8 and 10 through 12 of  
13 this act constitute a new chapter in Title 19 RCW.

14        NEW SECTION.    **Sec. 14.**    This act takes effect August 1, 2008.

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