CHAPTER 101B

CIGARETTE FIRE SAFETY STANDARDS

Referred to in §453A.6

This chapter ceases to apply if federal fire safety standards preempting this chapter are enacted subsequent to January 1, 2009; see §101B.10

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101B.1 Short title.

This chapter shall be known and may be cited as the *"Cigarette Fire Safety Standards Act"*.

2007 Acts, ch 166, §1

101B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agent"* means a distributor as defined in section 453A.1 authorized by the department of revenue to purchase and affix stamps pursuant to section 453A.10.
2. *"Cigarette"* means cigarette as defined in section 453A.1.
3. *"Department"* means the department of public safety.
4. *"Manufacturer"* means any of the following:

a. An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced, anywhere, which cigarettes 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 of cigarettes anywhere, that intends to resell in the United States, cigarettes manufactured or produced anywhere, that the original manufacturer did not intend to be sold in the United States.

c. An entity that becomes a successor of an entity described in paragraph *"a"* or *"b"*.

5. *"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 repeatability testing, and which program ensures that the testing repeatability remains within the required repeatability values specified in section 101B.4.
6. *"Repeatability"* means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.
7. *"Retailer"* means retailer as defined in section 453A.1.
8. *"Sale"* means any transfer of title or possession, exchange or barter, in any manner or by any means or any agreement. In addition to cash and credit sales, the giving of cigarettes as a sample, prize, or gift or the exchanging of cigarettes for any consideration other than money is considered a sale.
9. *"Sell"* means to sell, or to offer or agree to sell.
10. *"Wholesaler"* means wholesaler as defined in section 453A.1.

2007 Acts, ch 166, §2

101B.3 General requirements — administration.

1. Beginning January 1, 2009, cigarettes shall not be sold or offered for sale to any person in this state unless:

a. The cigarettes have been tested in accordance with the test method prescribed in section 101B.4.

b. The cigarettes meet the performance standard specified in section 101B.4.

c. A written certification has been filed by the manufacturer with the department and in accordance with section 101B.5.

d. The cigarettes have been marked in accordance with section 101B.7.

2. This chapter shall not be construed to prohibit a wholesaler or retailer from selling the wholesaler's or retailer's inventory of cigarettes existing prior to January 1, 2009, provided that the wholesaler or retailer is able to establish both of the following:

a. Tax stamps were affixed to the cigarettes on inventory pursuant to section 453A.10 before January 1, 2009.

b. The inventory of cigarettes was purchased before January 1, 2009, in comparable quantity to the amount of inventory of cigarettes purchased during the same period of the prior year.

3. This chapter shall not be construed to prohibit any person from selling or offering for sale cigarettes that have not been certified by the manufacturer in accordance with section 101B.5 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States.

4. The department of public safety shall administer this chapter and may adopt rules pursuant to chapter 17A to administer this chapter. This chapter shall be implemented in accordance with the implementation and substance of the New York fire safety standards for cigarettes.

2007 Acts, ch 166, §3
Referred to in **§101B.8**

101B.4 Test method — performance standard — test reports.

1. *a.* Testing of cigarettes shall be conducted in accordance with ASTM (American society for testing and materials) international standard E2187-04, standard test method for measuring the ignition strength of cigarettes.

b. The department may adopt a subsequent ASTM international 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 international standard E2187-04 and the performance standard in this section.

2. Testing shall be conducted on ten layers of filter paper.

3. The performance standard shall require that no more than twenty-five percent of the cigarettes tested in a test trial shall exhibit full-length burns.

4. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

5. The performance standard required by this section shall only be applied to a complete test trial.

6. *a.* Testing shall be conducted by a laboratory that has been accredited pursuant to international organization for standardization/international electrotechnical commission standard 17025 or other comparable accreditation standard required by the department.

b. Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The testing repeatability shall be no greater than nineteen one-hundredths.

7. This section shall not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

8. Each cigarette listed in a certification submitted in accordance with section 101B.5 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard pursuant to 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 either ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

9. *a.* The manufacturer of a cigarette that the department determines cannot be tested in accordance with the test method prescribed in this section shall propose a test method and performance standard for the cigarette to the department. Upon approval of the proposed test method and a determination by the department that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in this section, the manufacturer may employ the test method and performance standard to certify the cigarette in accordance with section 101B.5.

b. 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 chapter 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 subsection, 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 under this chapter. All other applicable requirements of this chapter shall apply to the manufacturer.

10. A manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of the reports available to the department and the office of the attorney general upon written request.

11. Testing performed or sponsored by the department to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

2007 Acts, ch 166, §4; 2008 Acts, ch 1032, §18
Referred to in **§101B.2**, **§101B.3**, **§101B.5**, **§101B.8**

101B.5 Certification.

1. Each manufacturer shall submit a written certification to the department attesting to all of the following:

a. Each cigarette listed in the certification has been tested in accordance with section 101B.4.

b. Each cigarette listed in the certification meets the performance standard pursuant to section 101B.4.

2. Each cigarette listed in the certification shall be described with the following information:

a. The brand or trade name on the package.

b. The style of cigarette, such as light or ultra light.

c. The length of the cigarette in millimeters.

d. The circumference of the cigarette in millimeters.

e. The flavor of the cigarette, such as menthol or chocolate, if applicable.

f. Whether the cigarette is filtered or nonfiltered.

g. The type of cigarette package, such as soft pack or box.

h. The marking approved in accordance with section 101B.7.

i. The name, address, and telephone number of the laboratory, if different than the manufacturer, that conducted the test.

j. The date the testing was performed.

3. Each cigarette certified under this section shall be recertified every three years.

4. The manufacturer shall, upon request, make a copy of the written certification available to the office of the attorney general and the department of revenue for purposes of ensuring compliance with this chapter.

5. For each cigarette listed in a certification, a manufacturer shall pay a fee of one hundred dollars to the department. The department shall deposit all fees received pursuant to this subsection with the treasurer of state for credit to the general fund of the state.

6. If a manufacturer has certified a cigarette pursuant to this section, and makes any change to the cigarette thereafter that is likely to alter the cigarette's compliance with the

reduced cigarette ignition propensity standards mandated by this chapter, prior to the cigarette being sold or offered for sale in this state, the manufacturer shall retest the cigarette in accordance with the testing standards specified in section 101B.4 and shall maintain records of the retesting as required pursuant to section 101B.4. Any altered cigarette that does not meet the performance standard specified in section 101B.4 shall not be sold in this state.

2007 Acts, ch 166, §5; 2013 Acts, ch 139, §41
Referred to in §101B.3, §101B.4, §101B.6, §101B.7, §101B.8

101B.6 Notification of certification.

1. A manufacturer certifying cigarettes in accordance with section 101B.5 shall provide a copy of the certification to all wholesalers and agents to whom the manufacturer sells cigarettes, and shall also provide sufficient copies of an illustration of the cigarette packaging marking used by the manufacturer in accordance with section 101B.7 for each retailer to whom the wholesalers or agents sell cigarettes.

2. A wholesaler or agent shall provide a copy of the cigarette packaging markings received from a manufacturer to all retailers to whom the wholesaler or agent sells cigarettes. A wholesaler, agent, or retailer shall permit the state fire marshal, department of revenue, or the office of the attorney general to inspect markings of cigarette packaging marked in accordance with section 101B.7.

2007 Acts, ch 166, §6

101B.7 Marking of cigarette packaging.

1. Cigarettes that have been certified by a manufacturer in accordance with section 101B.5 shall be marked to indicate compliance with the requirements of this chapter. The marking shall be in eight point type or larger and consist of one of the following:

a. Modification of the product's universal product code to include a visible mark printed at or around the area of the universal product code. The mark may consist of an alphanumeric or symbolic character or characters permanently stamped, engraved, embossed, or printed in conjunction with the universal product code.

b. Any visible alphanumeric or symbolic character or combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap.

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

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

3. The manufacturer shall notify the department of the marking selected.

4. Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the department for approval. Upon receipt of the request, the department shall approve or disapprove the marking offered. A marking in use and approved for the sale of cigarettes in the state of New York shall be deemed approved. A proposed marking shall be deemed approved if the department fails to act within ten business days of receiving a request for approval.

5. A manufacturer shall not modify its approved marking until the modification has been approved by the department in accordance with this section.

2007 Acts, ch 166, §7
Referred to in §101B.3, §101B.5, §101B.6, §101B.8

101B.8 Penalties — enforcement.

1. A manufacturer, wholesaler, agent, or other person who knowingly sells cigarettes at wholesale in violation of section 101B.3 is subject to the following:

a. For a first offense, a civil penalty not to exceed five thousand dollars for each sale of the cigarettes.

b. For each subsequent offense, a civil penalty not to exceed ten thousand dollars for each

sale of the cigarettes, provided that the total penalty assessed against any such person shall not exceed fifty thousand dollars in any thirty-day period.

2. A retailer who knowingly sells cigarettes in violation of section 101B.3, is subject to the following:

a. For a first offense, a civil penalty not to exceed five hundred dollars for each sale or offer for sale of the cigarettes, and for each subsequent offense a civil penalty not to exceed two thousand dollars for each sale or offer for sale of the cigarettes, provided that the total number of cigarettes sold or offered for sale in such sale does not exceed one thousand cigarettes.

b. For a first offense, a civil penalty not to exceed one thousand dollars for each sale or offer for sale of the cigarettes, and for each subsequent offense a civil penalty not to exceed five thousand dollars for each sale or offer for sale of the cigarettes, provided that the total number of cigarettes sold or offered for sale in such sale exceeds one thousand cigarettes, and provided that the penalty against the retailer does not exceed twenty-five thousand dollars in any thirty-day period.

3. A manufacturer who fails to maintain test reports or who fails to make copies of the reports available to the department or the office of the attorney general within sixty days of receiving a written request pursuant to section 101B.4, is subject to a civil penalty not to exceed ten thousand dollars for each day beyond the sixtieth day that the manufacturer fails to provide the test reports.

4. In addition to any penalty prescribed by law, any corporation, partnership, sole proprietorship, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to section 101B.5 is subject to the following:

a. For a first offense, a civil penalty of at least twenty-five thousand dollars.

b. For a second or subsequent offense, a civil penalty not to exceed one hundred thousand dollars for each false certification.

5. Any person violating any other provision of this chapter is subject to the following:

a. For a first offense, a civil penalty not to exceed one thousand dollars.

b. For a second or subsequent offense, a civil penalty not to exceed five thousand dollars for each violation.

6. Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required pursuant to section 101B.4 shall be subject to forfeiture. However, prior to the destruction of any cigarettes forfeited, the holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

7. In addition to any other remedy provided by law, the department of public safety or the office of the attorney general may file an action in district court for a violation of this chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney fees. Each violation of the chapter or of rules adopted under this chapter constitutes a separate civil violation for which the department of public safety or the office of the attorney general may seek relief.

8. The department of revenue in the regular course of conducting inspections of a wholesaler, agent, or retailer may inspect cigarettes in the possession or control of the wholesaler, agent, or retailer or on the premises of any wholesaler, agent, or retailer to determine if the cigarettes are marked as required pursuant to section 101B.7. If the cigarettes are not marked as required, the department of revenue shall notify the department of public safety.

9. To enforce the provisions of this chapter, the department of public safety and the office of the attorney general may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, including the stock of cigarettes on the premises.

10. The department shall deposit any moneys received from civil penalties assessed pursuant to this section with the treasurer of state for credit to the general fund of the state.

2007 Acts, ch 166, §8; 2013 Acts, ch 139, §42

101B.9 Cigarette fire safety standard fund. Repealed by 2013 Acts, ch 139, §44.
2013 amendment to this section by 2013 Acts, ch 139, §43, took effect June 20, 2013, and applied retroactively to July 1, 2007; 2013 Acts, ch 139, §46, 47

101B.10 Applicability — preemption.

1. This chapter shall cease to be applicable if federal fire safety standards for cigarettes that preempt this chapter are enacted and take effect subsequent to January 1, 2009, and the state fire marshal shall notify the secretary of state and the Code editor if such federal fire safety standards for cigarettes are enacted.

2. Notwithstanding any law to the contrary, political subdivisions shall not adopt or enforce any ordinance, rule, or regulation that conflicts with any provision of this chapter, or with any policy of the state expressed by this chapter, whether the policy is expressed by inclusion of or exclusion from this chapter.

2007 Acts, ch 166, §10