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HOUSE OF REPRESENTATIVES
144th GENERAL ASSEMBLY

HOUSE BILL NO. 149

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO REDUCED IGNITION PROPENSITY
CIGARETTES AND FIRE SAFETY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members
elected to each house thereof concurring therein):

Section 1. Amend Title 16 of the Delaware Code by adding thereto the following new Chapter:

“CHAPTER 71A. REDUCED IGNITION PROPENSITY CIGARETTES.

§ 7116. Definitions.

As used in this subchapter:

- (1) ‘Agent’ shall mean any person authorized by the State to purchase and affix tax stamps on packages of cigarettes.
- (2) ‘Cigarette’ shall mean 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 such 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, and that because of its size, appearance, the type of tobacco used in its filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette or cigarette equivalent.
- (3) ‘State Fire Marshal’ shall mean the Delaware State Fire Marshal or his Deputies.
- (4) ‘Manufacturer’ shall mean:
 - a. any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer; or
 - 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 paragraph (1) or (2) of this subdivision.

(5) 'Repeatability' shall mean the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(6) 'Retail dealer' shall mean any person other than a manufacturer or wholesale dealer engaged in selling cigarettes or tobacco products.

(7) 'Sale' shall mean 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 therefore. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts and the exchanging of cigarettes for any consideration other than money are considered sales.

(8) 'Sell' shall mean to sell or to offer or agree to do the same.

(9) 'Quality control and quality assurance program' shall mean 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. This program ensures that the testing repeatability remains within the required repeatability values stated in § 7117(5) of this Chapter for all test trials used to certify cigarettes in accordance with this law.

(10) 'Wholesale dealer' shall mean any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

§ 7117. Standards for Cigarette Fire Safety.

(a) No cigarettes may be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless such cigarettes have been tested in accordance with the test method and meet the performance standard specified in this subsection; and a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with § 7118 of this Chapter.

(1) 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'.

- (2) Testing shall be conducted on ten (10) layers of filter paper.
- (3) No more than 25 percent of the cigarettes tested in a test trial in accordance with this subsection shall exhibit full-length burns. Forty (40) replicate tests shall comprise a complete test trial for each cigarette tested.
- (4) The performance standard required by this subsection shall only be applied to a complete test trial.
- (5) Laboratories conducting testing in accordance with this subsection 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 0.19.

(b) Each cigarette list in a certification submitted pursuant to § 7118 of this Chapter 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 (1) complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design there shall be at least two (2) bands fully located at last 15 millimeter from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco column for a non-filtered cigarette.

(c) The manufacturer or manufacturers of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test method prescribed in § 7117(a) of this Chapter shall propose a test method and performance standard for such 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 or manufacturers is equivalent to the performance standard prescribed in § 7117(a) of this Chapter, the manufacturer or manufacturers may employ such test method and performance standard to certify such cigarette pursuant to § 7118 of this Chapter. All other applicable requirements of this Section shall apply to such manufacturer or manufacturers.

(d) In order to ensue compliance with the performance standard specified in § 7117(a) or (c) of this Chapter, data from testing conducted by manufacturers to comply with this performance

standard shall be kept on file by such manufacturers for a period of three (3) years and shall be sent to the State Fire Marshal upon its request, and to the Office of the Attorney General upon its request.

(e) The State Fire Marshal may adopt a subsequent ASTM Standard Test Method upon a finding that such subsequent method does not result in a decrease 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.

(f) As of January 1, 2010, and at least every three (3) years thereafter, the State Fire Marshal shall undertake a review of the performance standard set forth herein based upon but not limited to, incidents of cigarette-caused fires, advances in cigarette fire safety, including improvements in cigarette technology, and the data submitted to demonstrate compliance with the performance standard. Based upon such review the State Fire Marshal may revise the performance standard so that it is more stringent than the performance standard set forth herein to provide the public with a greater level of fire safety protection. Such revised performance standard shall be effective 180 days after the final standard is published in the State Register.

§ 7118. Certification of Compliance by Manufacturers.

(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 in accordance with § 7117 of this Chapter;

(2) each cigarette listed in the certification meets the performance standard set forth under § 7117 of this Chapter;

(3) each cigarette listed in the certification shall be described with the following information:

- a. brand (i.e., the trade name on the package);
- b. style (i.e., light, ultra light);
- c. length in millimeters;
- d. circumference in millimeters;
- e. flavor (e.g., menthol, chocolate), if applicable;
- f. filter or non-filter;

g. package description (e.g., soft pack, box); and

h. marking approved in accordance with § 7119 of this Chapter.

(b) Such certifications shall be made available to the Attorney General and the Division of Revenue for the purposes of ensuring compliance with this Section. Each cigarette certified under this Section shall be re-certified every three (3) years.

(c) For each cigarette listed in a certification a manufacturer shall pay to the State Fire Marshal a \$1,000 fee. The State Fire Marshal shall have the power to adjust this fee to an amount sufficient only to provide for processing, testing, enforcement and oversight activities related to this Chapter.

(d) There is hereby established in the custody of the State Comptroller a special fund to be known as the 'Cigarette Fire Safety and Firefighter Protection Act Enforcement Fund'. Such fund shall consist of all certification fees submitted by manufacturers, and shall, in addition to any other monies made available for such purpose, be available to the State Fire Marshal's Office and shall be used solely to support State processing testing, enforcement and oversight activities related to this Chapter. All payments from the Cigarette Fire Safety and Firefighter Protection Act Enforcement Fund shall be made on the audit and warrant of the State Treasurer on vouchers certified and submitted by the State Fire Marshal.

§ 7119. Package Markings.

(a) Cigarettes that are certified by a manufacturer in accordance with § 7118 of this Chapter shall be marked to indicate compliance with the requirements of § 7117 of this Chapter. Such marking shall be in eight (8) point font type or larger and consist of:

(1) modification of the product UPC Code to indicate a visible mark printed at or around the area of the UPC Code. Such mark may consist of alphanumeric or symbolic character(s) permanently stamped, engraved, embossed or printed in conjunction with the UPC; or

(2) any visible combination of alphanumeric or symbolic character(s) permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(3) printed, stamped, engraved or embossed test that indicates that the cigarettes meet the standards of this Section.

(b) A manufacturer must use only one (1) marking and must apply this marking uniformly for all packages (including, but not limited to, packs, cartons and cases) and brands marketed by that manufacturer.

(c) The State Fire Marshal must be notified as to the marking that is selected.

(d) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the State Fire Marshal for approval. Upon receipt of the request, the State Fire Marshal shall approve or disapprove the marking offered, except that the State Fire Marshal shall approve any marking in use and approved for sale in New York State pursuant to its fire safety regulations, unless the State Fire Marshal determines that cigarettes approved for sale in New York State do not meet the requirements for certification pursuant to § 7118 of this Chapter. Proposed markings shall be deemed approved if the State Fire Marshal fails to act within ten (10) business days of receiving a request for approval.

(e) No manufacturer shall modify its approved marking unless the modification has been approved by the State Fire Marshall in accordance with § 7119 of this Chapter.

(f) Manufacturers certifying cigarettes in accordance with § 7118 of this Chapter shall provide a copy of such certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the package markings utilized by the manufacturer pursuant to § 7119 of this Chapter for each retailer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents and retail dealers shall permit the State Fire Marshal, the Director of the Division of Revenue, the Office of the Attorney General, or employees thereof, to inspect markings of cigarette packaging marked in accordance with this Section.

§ 7120. Enforcement and Penalties.

(a) Any manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells cigarettes, other than through retail sale, in violation of § 7117 of this Chapter shall, for a first offense, be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) per each such

sale of such cigarettes, and for a subsequent offense be subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per each such sale of cigarettes. Any retail dealer who knowingly sells cigarettes in violation of § 7117 of this Chapter shall be subject to the following:

- (1) for a first offense be subject to a civil penalty not to exceed five hundred dollars (\$500), and for a subsequent offense be subject to a civil penalty not to exceed two thousand dollars (\$2,000), per each such sale or offer for sale of cigarettes, provided that the total number of cigarettes sold or offered for sale in such sale does not exceed one thousand (1,000) cigarettes; and
- (2) for a first offense be subject to a civil penalty not to exceed one thousand dollars (\$1,000), and for a subsequent offense be subject to a civil penalty not to exceed five thousand dollars (\$5,000), per each such sale or offer for sale of such cigarettes, provided that the total number of cigarettes sold or offered for sale in such sale exceeds one thousand (1,000) cigarettes.

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 § 7118 of this Chapter shall for a first offense be subject to a civil penalty not to exceed ten thousand dollars (\$10,000), and for a subsequent offense a civil penalty not to exceed twenty-five thousand dollars (\$25,000), for each such false certification. Any person violating any other provision in this Section shall be subject to a civil penalty for a first offense not to exceed one thousand dollars (\$1,000), and for a subsequent offense subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each such violation. Any cigarettes that have been sold or offered for sale that do not comply with the safety standard required by § 7117 of this Chapter shall be deemed contraband and subject to seizure and disposal by the State.

- (b) The State Fire Marshal is authorized to enforce this legislation and to promulgate regulations as necessary to implement and administer this law.
- (c) The State Fire Marshal may, in consultation with the Director of the Division of Revenue and/or the Attorney General, promulgate regulations to conduct random inspections of wholesale dealers, agents, and retail dealers to ensure that only cigarettes complying with this Chapter are sold in the State.

(d) In addition to any other remedy provided by the law, the Attorney General may file an action in State Court for a violation of this Chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the State government because of a violation of this Section, including enforcement costs relating to the specific isolation and attorney's fees. In any such action, the Attorney General shall have the same authority to investigate and to obtain remedies if the action were brought (under authorizing statutes and authorities). Each violation of the rules adopted under this Section constitutes a separate civil violation for which the Attorney General may obtain relief.

§ 7121. Fire Prevention and Public Safety Fund.

- (a) The State Fire Marshal shall assess all civil penalties as outlined in this Chapter.
- (b) All civil penalties will be paid within thirty (30) days of assessment.
- (c) The monies derived from the civil penalties will be split equally between the State Fire Marshal for enforcement of this Section, and the Fire Detection Fund pursuant to § 6637 of this Title.

§ 7122. Exemptions.

This Chapter shall not be construed to affect the making or manufacturing of cigarillos. A cigarillo shall mean a small cigar or cigarette wrapped in tobacco instead of paper.

§ 7123. Effective Date.

This Act shall take effect on January 1, 2009, and the requirement that only cigarettes certified as compliant with the performance standard herein may be sold shall not prohibit wholesale dealers or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2009, if the wholesale dealer or retailer can establish that State tax stamps were affixed to the cigarettes prior to January 1, 2009, and if such wholesale dealer or retailer can establish that such inventory was purchased prior to January 1, 2009, in comparable quantity to the inventory purchased during the same period of the prior year. Nothing in this Act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of § 7117 of this Chapter if such cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this State.

222 § 7124. Effect of Federal Regulation.

223 This Act shall be preempted if a Federal cigarette fire safety performance standard becomes effective, and
224 the State Fire Marshal makes a determination that such standard provides equal or stronger protections against
225 cigarette-started fires than this Act. Portions of this Act shall only be preempted to the extent expressly preempted
226 by Federal law.

SYNOPSIS

This Bill was brought about by House Resolution No. 34 which directed the State Fire Marshal's office to investigate the development and implementation of a reduced ignition propensity cigarette. This Bill is a result of the State Fire Marshal's investigation. This Bill establishes definitions and standards for the reduced ignition propensity cigarettes and cigarette fire safety. All cigarettes will have to be tested and meet the standards of this Bill. There shall be a \$1,000 fee for cigarette certification paid by the manufacturer. All cigarette packages shall be appropriately marked that they are certified. Penalty for the first violation is not to exceed \$10,000, and subsequent offenses will not exceed a fine of \$25,000. This Bill will be effective January 1, 2009.