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**HOUSE BILL NO. 1088**

House Amendments in [ ] — January 27, 2012

A *BILL to amend and reenact § 59.1-293.2 of the Code of Virginia, relating to reduced cigarette ignition propensity; sale of nonconforming cigarettes.*

Patron Prior to Engrossment—Delegate O'Bannon

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:****1. That § 59.1-293.2 of the Code of Virginia is amended and reenacted as follows:**

§ 59.1-293.2. Testing and certification of cigarettes.

A. Except as provided in subsection N, no cigarettes may be sold or offered for sale in the Commonwealth or offered for sale or sold to persons located in the Commonwealth unless:

1. The cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section;

2. The manufacturer has filed a written certification in accordance with § 59.1-293.3; and

3. The cigarettes have been marked in accordance with § 59.1-293.4.

B. The performance standard for cigarettes sold or offered for sale in the Commonwealth is stated in subdivision E 1.

C. 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." The Commissioner, in consultation with the State Fire Marshal, may adopt a subsequent ASTM 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 when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM standard E2187-04 and the performance standard of this section.

D. Testing of cigarettes shall be conducted on 10 layers of filter paper.

E. 1. No more than 25 percent of the cigarettes tested in a test trial shall exhibit full-length burns.

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

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

G. Written certifications shall be based upon 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 Commissioner.

H. Each laboratory that conducts tests in accordance with this section 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.

I. Each cigarette listed in a certification that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard of 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 15 millimeters from the lighting end of the cigarette. For a cigarette on which the bands are positioned by design, at least two bands shall be located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column. For an unfiltered cigarette, the two complete bands shall be located at least 15 millimeters from the lighting end and 10 millimeters from the labeled end of the tobacco column.

J. If the Commissioner determines that a cigarette cannot be tested in accordance with the test method required by this section, the manufacturer of the cigarette shall propose to the Commissioner a test method and performance standard for that cigarette. The Commissioner, in consultation with the State Fire Marshal, may approve a test method and performance standard that the Commissioner determines is equivalent to the requirements of this section, and the manufacturer may use that test method and performance standard for certification in accordance with § 59.1-293.3. If the Commissioner 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 Commissioner 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 reduced cigarette ignition propensity standards of that state's law or regulation under a legal provision comparable to this section, then the Commissioner shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in the Commonwealth, unless the Commissioner demonstrates a reasonable basis why the alternative

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59 test should not be accepted under this chapter. All other applicable requirements of this section shall  
60 apply to the manufacturer.

61 K. This section does not require additional testing for cigarettes that are tested in a manner consistent  
62 with the requirements of this section for any other purpose.

63 L. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes  
64 offered for sale for a period of three years, and shall make copies of these reports available to the  
65 Commissioner, State Fire Marshal, and Attorney General on written request. Any manufacturer who fails  
66 to make copies of these reports available within 60 days of receiving a written request shall be subject  
67 to a civil penalty not to exceed \$10,000 for each day after the 60th day that the manufacturer does not  
68 make such copies available.

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

71 N. The requirements of subsection A shall not prohibit:

72 1. Wholesalers or retailers from selling their existing inventory of cigarettes ~~on or after the effective~~  
73 ~~date of this chapter until [ July 1, 2012~~ January 1, 2013 ] , if the wholesaler or retailer can establish  
74 that state tax stamps were affixed to the cigarettes prior to ~~the effective date~~ January 1, 2010, and the  
75 wholesaler or retailer can establish that the inventory was purchased prior to ~~the effective date~~ January  
76 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year; or

77 2. The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subdivision,  
78 the term "consumer testing" shall mean an assessment of cigarettes that is conducted by a manufacturer,  
79 or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance  
80 of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such  
81 assessment.