

Unofficial Draft Copy

As of: September 5, 2012 (1:04pm)

LC1j07

**** Bill No. ****

Introduced By *****

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act eliminating from statute the state fire prevention and investigation advisory council; clarifying the duties and reporting requirement of the domestic violence fatality review commission; eliminating the cigarette standards report to the legislature; amending sections 2-15-2005, 2-15-2017 and 50-65-102, MCA; and repealing section 2-15-2005, MCA."

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

Section 1. Section 2-15-2005, MCA, is amended to read:

"2-15-2005. State fire prevention and investigation section -- advisory council. (1) There is a state fire prevention and investigation section in the department of justice and under the supervision and control of the attorney general.

(2) A person appointed to administer the fire prevention and investigation section shall represent the state of Montana as the state fire marshal and must be a person qualified by experience, training, and high professional competence in matters of fire service and safety.

~~(3) The attorney general shall create a fire prevention and investigation advisory council in accordance with procedures provided in 2-15-122."~~

{ *Internal References to 2-15-2005:*
x50-3-101 }

Section 2. Section 2-15-2017, MCA, is amended to read:

"2-15-2017. Domestic violence fatality review commission -- confidentiality of meetings and records -- criminal liability for unauthorized disclosure -- report to legislature. (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

(a) examine the trends and patterns of domestic violence-related fatalities in Montana;

(b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and

(c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

(a) representatives from state departments that are involved in issues of domestic abuse;

(b) representatives of private organizations that are involved in issues of domestic abuse;

(c) medical and mental health care providers who are involved in issues of domestic abuse;

(d) representatives from law enforcement, the judiciary, and the state bar of Montana;

(e) representatives of Montana Indian tribes;

(f) other concerned citizens; and

(g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.

(4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.

(5) The commission shall review ~~fatalities that are not under investigation and fatalities in cases that have been adjudicated and have received a final judgment~~ closed domestic homicide cases selected by the attorney general to provide the commission with the best opportunity to fulfill its duties under this section.

(6) Upon written request from the commission, a person who possesses information or records that are necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.

(7) The meetings and proceedings of the commission are

confidential and are exempt from the provisions of Title 2, chapter 3.

(8) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).

(9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.

(10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than \$500.

(11) The commission shall report its findings and recommendations in writing to the ~~legislature~~ law and justice interim committee, the attorney general, the governor, and the chief justice of the Montana supreme court ~~no later than the~~

~~third Tuesday in January of each year in which the legislature meets in prior to each regular legislative session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report."~~

{*Internal References to 2-15-2017: None.*}

Section 3. Section 50-65-102, MCA, is amended to read:

"50-65-102. Cigarette test method and performance standard -- conditions on sale -- alternative test method and performance standard. (1) Except as provided in subsection (8), cigarettes may not be sold or offered for sale in this state or sold or offered for sale to persons located in this state unless:

(a) the cigarettes have been tested in accordance with the test method provided in this section;

(b) the cigarettes meet the performance standard specified in this section;

(c) the manufacturer has filed a written certification with the state fire marshal in accordance with 50-65-103; and

(d) the cigarettes have been marked in accordance with 50-65-104.

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

(b) Testing must be conducted on 10 layers of filter paper.

(c) No more than 25% of the cigarettes tested in a test

trial in accordance with this section may exhibit full-length burns. Forty replicate tests compose a complete test trial for each cigarette used.

(d) The performance standards required in subsection (2)(c) may be applied only to a complete test trial.

(e) Written certifications must 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 another comparable accreditation standard required by the state fire marshal.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure for determining the repeatability of the testing results. The repeatability value may not be greater than 0.19.

(g) This section does not require additional testing if cigarettes are tested for any other purpose in a manner that is consistent with this chapter.

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

(3) Each cigarette listed in a certification submitted pursuant to 50-65-103 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard provided in this section must have at least two nominally identical bands on the paper surrounding the tobacco

column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or, for nonfiltered cigarettes, 10 millimeters from the labeled end of the tobacco column.

(4) (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in subsection (2)(a) shall propose a test method and performance standard for the cigarette to the state fire marshal.

(b) Upon 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 (2)(c), the manufacturer may employ that test method and performance standard to certify a cigarette pursuant to 50-65-103.

(c) 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 contained in 50-65-102 and the state fire marshal determines 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 provisions comparable to this section,

the state fire marshal shall authorize the manufacturer to employ the alternative test method and performance standard to certify the cigarette for sale in this state unless the state fire marshal demonstrates a reasonable basis why the alternative test is unacceptable. All other applicable provisions of this section apply to the manufacturer even if the alternative test method and performance standard are authorized.

(5) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of 3 years and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. A manufacturer who fails to make copies of the reports available within 60 days of receipt of a written request is subject to a civil penalty not to exceed \$10,000 for each day after the 60th day that the manufacturer does not make the copies available.

(6) The state fire marshal may adopt a subsequent American society for testing and materials 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 that the same cigarette would exhibit when tested in accordance with the standard provided in subsection (2)(a) and the performance standard in subsection (2)(c).

~~(7) The department of justice shall review the effectiveness of this section and report every 4 years to the~~

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~~legislature the state fire marshal's findings and, if appropriate, submit recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations may be submitted no later than January 1 of each 4-year period.~~

~~(8)~~ The requirements of subsection (1) do not prohibit a wholesale dealer or retail dealer from selling the wholesale dealer's or retail dealer's existing inventory of cigarettes on or after May 1, 2008, if the wholesale dealer or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to May 1, 2008, and if the wholesale dealer or retail dealer establishes that the inventory was purchased prior to May 1, 2008, in comparable quantity to the inventory purchased during the same period of the prior year.

~~(9)~~(8) Because this chapter is based on New York law, it is the intent of the legislature that this chapter be implemented in accordance with the implementation and substance of the New York executive law section 156-c, fire safety standards for cigarettes."

{ Internal References to 50-65-102:

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{ Name : Sheri S. Scurr
Title : Research Analyst
Agency : Legislative Services Division
Phone : (406) 444-3596
E-Mail : sscurr@mt.gov }