

1 A bill to be entitled
2 An act relating to the Reduced Cigarette Ignition
3 Propensity Standard and Firefighter Protection Act;
4 creating s. 633.042, F.S.; providing a short title;
5 providing legislative findings and intent; providing
6 definitions; providing cigarette testing methods and
7 performance standards; providing specific testing
8 criteria; requiring manufacturers to provide certain
9 written certification; requiring cigarettes to be marked
10 in specific manners; providing for alternative testing
11 methods under certain circumstances; providing reporting
12 requirements; providing the Division of Alcoholic
13 Beverages and Tobacco with certain powers and
14 responsibilities; providing certification requirements for
15 manufacturers; providing fee; providing requirements for
16 the marking of certain cigarette packaging; providing
17 reporting requirements; providing approval requirements
18 for markings submitted to the division by a manufacturer;
19 providing notification requirements; providing fines and
20 penalties; providing the division with rulemaking
21 authority; authorizing certain government entities with
22 inspection powers to examine specified documents of any
23 person in possession, control, or occupancy of any
24 premises where cigarettes are placed, stored, sold, or
25 offered for sale, as well as the stock of cigarettes on
26 the premises; providing that nothing in the act shall be
27 construed to prohibit any person or entity from
28 manufacturing or selling cigarettes that do not meet the

29 | specified requirements if such cigarettes are or will be
 30 | stamped for sale in another state or are packaged for sale
 31 | outside the United States; providing for repeal upon the
 32 | enactment of a preemptive federal standard; prohibiting
 33 | local government units from enacting and enforcing any
 34 | ordinance or other local law or regulation that conflicts
 35 | with, or is preempted by, any provision of the act;
 36 | providing effective dates.

37 |

38 | Be It Enacted by the Legislature of the State of Florida:

39 |

40 | Section 1. Section 633.042, Florida Statutes, is created
 41 | to read:

42 | 633.042 Reduced Cigarette Ignition Propensity Standard and
 43 | Firefighter Protection Act.--

44 | (1) SHORT TITLE.--This section may be cited as the
 45 | "Reduced Cigarette Ignition Propensity Standard and Firefighter
 46 | Protection Act."

47 | (2) LEGISLATIVE FINDINGS AND INTENT.--The Legislature
 48 | finds and declares that:

49 | (a) Cigarettes are the leading cause of fire deaths in
 50 | this state and in the nation.

51 | (b) Each year in the United States, between 700 and 900
 52 | persons are killed and around 3,000 persons are injured in fires
 53 | ignited by cigarettes, while in this state 153 residential fires
 54 | and 5 fatalities were attributable to fires caused by cigarettes
 55 | in 2006.

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56 (c) A high percentage of the victims of cigarette fires
57 are nonsmokers, including senior citizens and young children.

58 (d) Fires caused by cigarettes result in billions of
59 dollars in property losses and damages in the United States and
60 millions of dollars in property losses and damages in this
61 state.

62 (e) Cigarette fires unnecessarily jeopardize the safety of
63 firefighters and result in avoidable emergency response costs
64 for municipalities.

65 (f) In 2004, the State of New York implemented a cigarette
66 firesafety regulation requiring cigarettes sold in that state to
67 meet a firesafety performance standard; in 2005, Vermont and
68 California enacted cigarette firesafety laws directly
69 incorporating New York's regulation into statute; and in 2006,
70 Illinois, New Hampshire, and Massachusetts joined these states
71 in enacting similar laws.

72 (g) In 2005, Canada implemented the New York State
73 firesafety standard, becoming the first country to have a
74 nationwide cigarette firesafety standard.

75 (h) New York State's cigarette firesafety standard is
76 based upon decades of research by the National Institute of
77 Standards and Technology, Congressional research groups, and
78 private industry. This cigarette firesafety standard minimizes
79 costs to the state; minimally burdens cigarette manufacturers,
80 distributors, and retail sellers; and, therefore, should become
81 law in this state.

82 (i) It is therefore fitting and proper for this state to
83 adopt the cigarette firesafety standard that is in effect in the

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84 State of New York to reduce the likelihood that cigarettes will
85 cause fires and result in deaths, injuries, and property
86 damages.

87 (3) DEFINITIONS.--For the purposes of this section:

88 (a) "Agent" means any person authorized by the Division of
89 Alcoholic Beverages and Tobacco of the Department of Business
90 and Professional Regulation to purchase and affix stamps on
91 packages of cigarettes.

92 (b) "Cigarette" means:

93 1. Any roll for smoking, whether made wholly or in part of
94 tobacco or any other substance, irrespective of size or shape,
95 and whether such tobacco or substance is flavored, adulterated,
96 or mixed with any other ingredient, the wrapper or cover of
97 which is made of paper or any other substance or material other
98 than leaf tobacco; or

99 2. Any roll for smoking that is wrapped in any substance
100 containing tobacco and that, because of its appearance, the type
101 of tobacco used in the filler, or its packaging and labeling, is
102 likely to be offered to, or purchased by, consumers as a
103 cigarette as described in subparagraph 1.

104 (c) "Division" means the Division of Alcoholic Beverages
105 and Tobacco of the Department of Business and Professional
106 Regulation.

107 (d) "Manufacturer" means:

108 1. Any entity that manufactures or produces, or causes to
109 be manufactured or produced, regardless of location, cigarettes
110 that such manufacturer intends to be sold in this state,

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111 including cigarettes intended to be sold in the United States
112 through an importer;

113 2. Any entity, regardless of location, that first
114 purchases cigarettes manufactured anywhere and not intended by
115 the original manufacturer or maker to be sold in the United
116 States and that intends to resell such cigarettes in the United
117 States; or

118 3. Any entity that becomes a successor of an entity
119 described in subparagraph 1. or subparagraph 2.

120 (e) "Quality control and quality assurance program" means
121 laboratory procedures implemented to ensure that operator bias,
122 systematic and nonsystematic methodological errors, and
123 equipment-related problems do not affect the results of
124 laboratory testing. Such a program shall ensure that the testing
125 repeatability remains within the required repeatability values
126 stated in subparagraph (4)(a)6. for all test trials used to
127 certify cigarettes in accordance with this section.

128 (f) "Repeatability" means the range of values within which
129 the results of repeated cigarette test trials from a single
130 laboratory will fall 95 percent of the time.

131 (g) "Retail dealer" means any person, other than a
132 manufacturer or wholesale dealer, engaged in selling cigarettes.

133 (h) "Sale" means any transfer of title or possession or
134 both, exchange or barter, conditional or otherwise, in any
135 manner or by any means whatever or any agreement therefor. In
136 addition to cash and credit sales, the giving of cigarettes as
137 samples, prizes, or gifts and the exchanging of cigarettes for
138 any consideration other than money are considered sales.

139 (i) "Sell" means to execute a sale or to offer or agree to
 140 execute a sale.

141 (j) "Wholesale dealer" means:

142 1. Any person other than a manufacturer who sells
 143 cigarettes to retail dealers or other persons for purposes of
 144 resale; or

145 2. Any person who owns, operates, or maintains one or more
 146 cigarette or tobacco-product vending machines in, at, or upon
 147 premises owned or occupied by any other person.

148 (4) TEST METHOD AND PERFORMANCE STANDARD.--

149 (a) Except as provided in paragraph (g), no cigarettes may
 150 be sold or offered for sale in this state, or sold or offered
 151 for sale to persons located in this state, unless the cigarettes
 152 have been tested in accordance with the test method and meet the
 153 performance standard specified in this subsection, a written
 154 certification has been filed by the manufacturer with the
 155 division in accordance with subsection (5), and the cigarettes
 156 have been marked in accordance with subsection (6).

157 1. Testing of cigarettes shall be conducted in accordance
 158 with the American Society for Testing and Materials standard
 159 E2187-04, "Standard Test Method for Measuring the Ignition
 160 Strength of Cigarettes."

161 2. Testing shall be conducted on 10 layers of filter
 162 paper.

163 3. No more than 25 percent of the cigarettes tested in a
 164 test trial in accordance with this subsection shall exhibit
 165 full-length burns. Forty replicate tests shall comprise a
 166 complete test trial for each cigarette tested.

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167 4. The performance standard required by this subsection
168 shall only be applied to a complete test trial.

169 5. Written certifications shall be based upon testing
170 conducted by a laboratory that has been accredited pursuant to
171 standard ISO/IEC 17025 of the International Organization for
172 Standardization or another comparable accreditation standard
173 required by the division.

174 6. Laboratories conducting testing in accordance with this
175 subsection shall implement a quality control and quality
176 assurance program that includes a procedure that will determine
177 the repeatability of the testing results. The repeatability
178 value shall be no greater than 0.19.

179 7. This subsection does not require additional testing if
180 cigarettes are tested consistent with this section for any other
181 purpose.

182 8. Testing performed or sponsored by the division to
183 determine a cigarette's compliance with the required performance
184 standard shall be conducted in accordance with this subsection.

185 (b) Each cigarette listed in a certification submitted
186 pursuant to subsection (5) that uses lowered permeability bands
187 in the cigarette paper to achieve compliance with the
188 performance standard set forth in this subsection shall have at
189 least two nominally identical bands on the paper surrounding the
190 tobacco column. At least one complete band shall be located at
191 least 15 millimeters from the lighting end of the cigarette. For
192 cigarettes on which the bands are positioned by design, there
193 shall be at least two bands fully located at least 15
194 millimeters from the lighting end and 10 millimeters from the

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195 filter end of the tobacco column, or 10 millimeters from the
196 labeled end of the tobacco column for nonfiltered cigarettes.

197 (c) A manufacturer of a cigarette that the division
198 determines cannot be tested in accordance with the test method
199 prescribed in subparagraph (a)1. shall propose a test method and
200 performance standard for the cigarette to the division. Upon
201 approval of the proposed test method and a determination by the
202 division that the performance standard proposed by the
203 manufacturer is equivalent to the performance standard
204 prescribed in subparagraph (a)3., the manufacturer may employ
205 such test method and performance standard to certify such
206 cigarette pursuant to subsection (5). If the division determines
207 that another state has enacted reduced cigarette ignition
208 propensity standards that include a test method and performance
209 standard that are the same as those contained in this section,
210 and if the division finds that the officials responsible for
211 implementing those requirements have approved the proposed
212 alternative test method and performance standard for a
213 particular cigarette proposed by a manufacturer as meeting the
214 firesafety standards of that state's law or regulation under a
215 legal provision comparable to this subsection, the division
216 shall authorize that manufacturer to employ the alternative test
217 method and performance standard to certify that cigarette for
218 sale in this state unless the division demonstrates a reasonable
219 basis why the alternative test should not be accepted under this
220 section. All other applicable requirements of this subsection
221 shall apply to the manufacturer.

222 (d) Each manufacturer shall maintain copies of the reports

223 of all tests conducted on all cigarettes offered for sale for a
 224 period of 3 years and shall make copies of the reports available
 225 to the division and the Attorney General upon written request.
 226 Any manufacturer who fails to make copies of the reports
 227 available within 60 days after receiving a written request shall
 228 be subject to a civil penalty not to exceed \$10,000 for each day
 229 after the 60th day that the manufacturer does not make such
 230 copies available.

231 (e) The division may adopt a subsequent American Society
 232 for Testing and Materials Standard Test Method for Measuring the
 233 Ignition Strength of Cigarettes upon a finding that such
 234 subsequent method does not result in a change in the percentage
 235 of full-length burns exhibited by any tested cigarette when
 236 compared to the percentage of full-length burns the same
 237 cigarette would exhibit when tested in accordance with American
 238 Society for Testing and Materials Standard E2187-04 and the
 239 performance standard in subparagraph (a)3.

240 (f) The division shall review the effectiveness of this
 241 subsection and report every 3 years to the President of the
 242 Senate and the Speaker of the House of Representatives the
 243 division's findings and, if appropriate, recommendations for
 244 legislation to improve the effectiveness of this subsection. The
 245 report and legislative recommendations shall be submitted no
 246 later than June 13 following the conclusion of each 3-year
 247 period.

248 (g) The requirements of paragraph (a) shall not prohibit:
 249 1. Wholesale or retail dealers from selling their existing
 250 inventory of cigarettes on or after the effective date of this

251 section if the wholesale or retailer dealer can establish that
 252 state tax stamps were affixed to the cigarettes prior to the
 253 effective date and the wholesale or retailer dealer can
 254 establish that the inventory was purchased prior to the
 255 effective date in comparable quantity to the inventory purchased
 256 during the same period of the prior year; or

257 2. The sale of cigarettes solely for the purpose of
 258 consumer testing. For purposes of this subparagraph, the term
 259 "consumer testing" means an assessment of cigarettes that is
 260 conducted by or is under the control and direction of a
 261 manufacturer for the purpose of evaluating consumer acceptance
 262 of such cigarettes, that uses only the quantity of cigarettes
 263 that is reasonably necessary for such assessment, and that is
 264 conducted in a controlled setting where the cigarettes are
 265 either consumed on site or returned to the testing
 266 administrators at the conclusion of the testing.

267 (h) This section shall be implemented in accordance with
 268 the implementation and substance of the New York Fire Safety
 269 Standards for Cigarettes.

270 (5) CERTIFICATION AND PRODUCT CHANGE.--

271 (a) Each manufacturer shall submit to the division a
 272 written certification attesting that:

273 1. Each cigarette listed in the certification has been
 274 tested in accordance with subsection (4).

275 2. Each cigarette listed in the certification meets the
 276 performance standard set forth in subsection (4).

277 (b) Each cigarette listed in the certification shall be
 278 described with the following information:

- 279 | 1. Brand, or trade name, on the package.
- 280 | 2. Style, such as light or ultra light.
- 281 | 3. Length in millimeters.
- 282 | 4. Circumference in millimeters.
- 283 | 5. Flavor, such as menthol or chocolate, if applicable.
- 284 | 6. Filter or nonfilter.
- 285 | 7. Package description, such as soft pack or box.
- 286 | 8. Marking pursuant to subsection (6).
- 287 | 9. The name, address, and telephone number of the testing
- 288 | laboratory, if different from the name, address, and telephone
- 289 | number of the manufacturer that conducted the test.
- 290 | 10. The date the testing occurred.

291 | (c) Each certification shall be made available to the
 292 | Attorney General for purposes consistent with this section and
 293 | to the Department of Revenue for the purposes of ensuring
 294 | compliance with this subsection.

295 | (d) Each cigarette certified under this subsection shall
 296 | be recertified every 3 years.

297 | (e) For each cigarette listed in a certification, a
 298 | manufacturer shall pay to the division a fee of \$250. The
 299 | division is authorized to adjust this fee annually to ensure
 300 | that it defrays the actual costs of the processing, testing,
 301 | enforcement, and oversight activities required by this section.

302 | (f) If a manufacturer has certified a cigarette pursuant
 303 | to this subsection and thereafter makes any change to such
 304 | cigarette that is likely to alter its compliance with the
 305 | reduced cigarette ignition propensity standards required by this
 306 | section, that cigarette shall not be sold or offered for sale in

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307 this state until the manufacturer retests the cigarette in
308 accordance with the testing standards set forth in subsection
309 (4) and maintains records of that retesting as required by
310 subsection (4). Any altered cigarette that does not meet the
311 performance standard set forth in subsection (4) may not be sold
312 in this state.

313 (6) MARKING OF CIGARETTE PACKAGING.--

314 (a) Cigarettes that are certified by a manufacturer in
315 accordance with subsection (5) shall be marked to indicate
316 compliance with the requirements of subsection (4). The marking
317 shall be in 8-point type or larger and consist of:

318 1. Modification of the universal product code to include a
319 visible mark printed at or around the area of the universal
320 product code. The mark may consist of alphanumeric or symbolic
321 characters permanently stamped, engraved, embossed, or printed
322 in conjunction with the universal product code;

323 2. Any visible combination of alphanumeric or symbolic
324 characters permanently stamped, engraved, or embossed upon the
325 cigarette package or cellophane wrap; or

326 3. Printed, stamped, engraved, or embossed text that
327 indicates that the cigarettes meet the standards of this
328 section.

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

333 (c) The division shall be notified as to the marking that
334 is selected.

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335 (d) Prior to the certification of any cigarette, a
336 manufacturer shall present its proposed marking to the division
337 for approval. Upon receipt of the request, the division shall
338 approve or disapprove the marking offered, except that the
339 division shall approve:

340 1. Any marking in use and approved for sale in the State
341 of New York pursuant to the New York Fire Safety Standards for
342 Cigarettes; or

343 2. The letters "FSC," which signify "Fire Standards
344 Compliant," appearing in 8-point type or larger and permanently
345 printed, stamped, engraved, or embossed on the package at or
346 near the universal product code.

347
348 Proposed markings shall be deemed approved if the division fails
349 to act within 10 business days after receiving a request for
350 approval.

351 (e) No manufacturer shall modify its approved marking
352 unless the modification has been approved by the division in
353 accordance with this subsection.

354 (f) Manufacturers certifying cigarettes in accordance with
355 subsection (5) shall provide a copy of the certifications to all
356 wholesale dealers and agents to which they sell cigarettes and
357 shall also provide sufficient copies of an illustration of the
358 package marking used by the manufacturer pursuant to this
359 subsection for each retail dealer to which the wholesale dealers
360 or agents sell cigarettes. Wholesale dealers and agents shall
361 provide a copy of these package markings received from
362 manufacturers to all retail dealers to which they sell

363 cigarettes. Wholesale dealers, agents, and retail dealers shall
 364 permit the division, the Department of Revenue, the Attorney
 365 General, and their employees to inspect markings of cigarette
 366 packaging marked in accordance with this subsection.

367 (7) PENALTIES.--

368 (a) A manufacturer, wholesale dealer, agent, or any other
 369 person or entity that knowingly sells or offers to sell
 370 cigarettes, other than through retail sale, in violation of
 371 subsection (4) shall be subject to a civil penalty not to exceed
 372 \$100 for each pack of such cigarettes sold or offered for sale.
 373 In no case shall the penalty against any such person or entity
 374 exceed \$100,000 during any 30-day period.

375 (b) A retail dealer who knowingly sells or offers to sell
 376 cigarettes in violation of subsection (4) shall be subject to a
 377 civil penalty not to exceed \$100 for each pack of such
 378 cigarettes sold or offered for sale. In no case shall the
 379 penalty against any retail dealer exceed \$25,000 during any 30-
 380 day period.

381 (c) In addition to any penalty prescribed by law, any
 382 corporation, partnership, sole proprietor, limited partnership,
 383 or association engaged in the manufacture of cigarettes that
 384 knowingly makes a false certification pursuant to subsection (5)
 385 shall be subject to a civil penalty of at least \$75,000 and not
 386 to exceed \$250,000 for each such false certification.

387 (d) Any person violating any other provision of this
 388 section shall be subject to a civil penalty not to exceed \$1,000
 389 for a first offense and not to exceed \$5,000 for each subsequent
 390 offense.

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391 (e) Any cigarettes that have been sold or offered for sale
392 that do not comply with the performance standard required by
393 subsection (4) shall be subject to forfeiture pursuant to
394 chapter 210. Cigarettes forfeited pursuant to this paragraph
395 shall be destroyed; however, prior to destruction of any such
396 cigarette, the true holder of the trademark rights in the
397 cigarette brand shall be permitted to inspect the cigarette.

398 (f) In addition to any other remedy provided by law, the
399 division or the Attorney General may file an action in circuit
400 court for a violation of this section, including petitioning for
401 injunctive relief or to recover any costs or damages suffered by
402 the state because of a violation of this section, including
403 enforcement costs relating to the specific violation and
404 attorney's fees. Each violation of this section or of rules
405 adopted under this section constitutes a separate civil
406 violation for which the division or the Attorney General may
407 obtain relief.

408 (g) Whenever any law enforcement personnel or duly
409 authorized representative of the division discovers any
410 cigarettes that have not been marked in the manner required by
411 subsection (6), such personnel or representative is authorized
412 and empowered to seize and take possession of such cigarettes.
413 Such cigarettes shall be turned over to the Department of
414 Revenue and shall be forfeited to the state. Cigarettes seized
415 pursuant to this paragraph shall be destroyed; however, prior to
416 the destruction of any such cigarette, the true holder of the
417 trademark rights in the cigarette brand shall be permitted to
418 inspect the cigarette.

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419 (8) IMPLEMENTATION.--

420 (a) The division may adopt rules to implement the
421 provisions of this section.

422 (b) The Department of Revenue, in the regular course of
423 conducting inspections of wholesale dealers, agents, and retail
424 dealers as authorized pursuant to chapter 210, may inspect such
425 cigarettes to determine if the cigarettes are marked as required
426 by subsection (6). If the cigarettes are not marked as required,
427 the Department of Revenue shall notify the division.

428 (9) INSPECTION.--To enforce the provisions of this
429 section, the Attorney General, the Department of Revenue, the
430 division, and their duly authorized representatives and other
431 law enforcement personnel are authorized to examine the books,
432 papers, invoices, and other records of any person in possession,
433 control, or occupancy of any premises where cigarettes are
434 placed, stored, sold, or offered for sale, as well as the stock
435 of cigarettes on the premises. Every person in the possession,
436 control, or occupancy of any premises where cigarettes are
437 placed, sold, or offered for sale is directed and required to
438 give the Attorney General, the Department of Revenue, the
439 division, and their duly authorized representatives and other
440 law enforcement personnel the means, facilities, and opportunity
441 for the examinations authorized by this subsection.

442 (10) SALE OUTSIDE OF FLORIDA.--Nothing in this section
443 shall be construed to prohibit any person or entity from
444 manufacturing or selling cigarettes that do not meet the
445 requirements of subsection (4) if the cigarettes are or will be
446 stamped for sale in another state or are packaged for sale

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447 outside the United States and that person or entity has taken
448 reasonable steps to ensure that such cigarettes will not be sold
449 or offered for sale to persons located in this state.

450 (11) PREEMPTION.--This section shall be repealed if a
451 federal reduced cigarette ignition propensity standard that
452 preempts this section is adopted and becomes effective.

453 Section 2. Effective upon this act becoming a law, and
454 notwithstanding any other provision of law, local government
455 units of this state may neither enact nor enforce any ordinance
456 or other local law or regulation conflicting with, or preempted
457 by, any provision of this act or any policy of this state
458 expressed by this act, whether that policy be expressed by
459 inclusion of a provision in this act or by exclusion of that
460 subject from this act.

461 Section 3. Except as otherwise expressly provided in this
462 act, this act shall take effect January 1, 2010.