

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 governmental 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.

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
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 tobacco; or

99 2. Any roll for smoking that is wrapped in any substance
100 containing tobacco and that, because of the type of tobacco used
101 in the filler or its packaging and labeling, is likely to be
102 offered to, or purchased by, consumers as a cigarette as
103 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,
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.
 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 consistently with this section for any
181 other purpose.

182 8. The division may, in its discretion, perform or sponsor
183 testing to determine a cigarette's compliance with the required
184 performance standard. Any such discretionary compliance testing
185 by the division shall be conducted in accordance with this
186 subsection.

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

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

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

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

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

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

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

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

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

259 2. The sale of cigarettes solely for the purpose of
260 consumer testing. For purposes of this subparagraph, the term
261 "consumer testing" means an assessment of cigarettes that is
262 conducted by or is under the control and direction of a
263 manufacturer for the purpose of evaluating consumer acceptance
264 of such cigarettes and that uses only the quantity of cigarettes
265 that is reasonably necessary for such assessment.

266 (h) It is the intent of the Legislature by this section to
267 promote uniformity among the states in the regulation of reduced
268 cigarette ignition propensity. As a result, the resolution of
269 issues regarding the interpretation and implementation of this
270 section should be made in a manner consistent with the New York
271 Fire Safety Standards for Cigarettes, New York Executive Law,
272 Section 156-C, as amended, and Part 429 of Title 19 New York
273 Codes, Rules, and Regulations, as amended, and the
274 interpretation and implementation thereof, as they exist on
275 March 1, 2008.

276 (5) CERTIFICATION AND PRODUCT CHANGE.--

277 (a) Each manufacturer shall submit to the division a
278 written certification attesting that:

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

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

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

285 1. Brand, or trade name, on the package.

286 2. Style, such as light or ultra light.

287 3. Length in millimeters.

288 4. Circumference in millimeters.

289 5. Flavor, such as menthol or chocolate, if applicable.

290 6. Filter or nonfilter.

291 7. Package description, such as soft pack or box.

292 8. Marking pursuant to subsection (6).

293 9. The name, address, and telephone number of the testing
 294 laboratory, if different from the name, address, and telephone
 295 number of the manufacturer that conducted the test.

296 10. The date the testing occurred.

297 (c) Each certification shall be made available to the
 298 Attorney General for purposes consistent with this section and
 299 to the Department of Revenue for the purposes of ensuring
 300 compliance with this subsection.

301 (d) Each cigarette certified under this subsection shall
 302 be recertified every 3 years.

303 (e) At the time it submits a written certification under
 304 this subsection, a manufacturer shall pay to the division a fee
 305 of \$250 for each brand of cigarettes listed in the
 306 certification. The fee paid shall apply to all cigarettes within
 307 the brand certified and to any new cigarette certified within
 308 the brand during the 3-year certification period.

309 (f) If a manufacturer has certified a cigarette pursuant
310 to this subsection and thereafter makes any change to such
311 cigarette that is likely to alter its compliance with the
312 reduced cigarette ignition propensity standards required by this
313 section, that cigarette shall not be sold or offered for sale in
314 this state until the manufacturer retests the cigarette in
315 accordance with the testing standards set forth in subsection
316 (4) and maintains records of that retesting as required by
317 subsection (4). Any altered cigarette that does not meet the
318 performance standard set forth in subsection (4) may not be sold
319 in this state.

320 (6) MARKING OF CIGARETTE PACKAGING.--

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

325 1. Modification of the universal product code to include a
326 visible mark printed at or around the area of the universal
327 product code. The mark may consist of alphanumeric or symbolic
328 characters permanently stamped, engraved, embossed, or printed
329 in conjunction with the universal product code;

330 2. Any visible combination of alphanumeric or symbolic
331 characters permanently stamped, engraved, or embossed upon the
332 cigarette package or cellophane wrap; or

333 3. Printed, stamped, engraved, or embossed text that
334 indicates that the cigarettes meet the standards of this
335 section.

336 (b) A manufacturer shall use only one marking and shall

337 apply this marking uniformly for all brands and all packages,
338 including, but not limited to, packs, cartons, and cases,
339 marketed by that manufacturer.

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

342 (d) Prior to the certification of any cigarette, a
343 manufacturer shall present its proposed marking to the division
344 for approval. Upon receipt of the request, the division shall
345 approve or disapprove the marking offered, except that the
346 division shall approve:

347 1. Any marking in use and approved for sale in the State
348 of New York pursuant to the New York Fire Safety Standards for
349 Cigarettes; or

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

354
355 Proposed markings shall be deemed approved if the division fails
356 to act within 10 business days after receiving a request for
357 approval.

358 (e) No manufacturer shall modify its approved marking
359 unless the modification has been approved by the division in
360 accordance with this subsection.

361 (f) Manufacturers certifying cigarettes in accordance with
362 subsection (5) shall provide a copy of the certifications to all
363 wholesale dealers and agents to which they sell cigarettes and
364 shall also provide sufficient copies of an illustration of the

365 package marking used by the manufacturer pursuant to this
366 subsection for each retail dealer to which the wholesale dealers
367 or agents sell cigarettes. Wholesale dealers and agents shall
368 provide a copy of these package markings received from
369 manufacturers to all retail dealers to which they sell
370 cigarettes. Wholesale dealers, agents, and retail dealers shall
371 permit the division, the Department of Revenue, the Attorney
372 General, and their employees to inspect markings of cigarette
373 packaging marked in accordance with this subsection.

374 (7) PENALTIES.--

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

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

388 (c) In addition to any penalty prescribed by law, any
389 corporation, partnership, sole proprietor, limited partnership,
390 or association engaged in the manufacture of cigarettes that
391 knowingly makes a false certification pursuant to subsection (5)
392 shall be subject to a civil penalty of at least \$75,000 and not

393 to exceed \$250,000 for each such false certification.

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

398 (e) Any cigarettes that have been sold or offered for sale
399 that do not comply with the performance standard required by
400 subsection (4) shall be subject to forfeiture following a
401 hearing pursuant to chapter 120 at which the true holder of the
402 trademark rights in the cigarette brand may appear and present
403 evidence. Cigarettes forfeited pursuant to this paragraph shall
404 be destroyed; however, prior to destruction of any such
405 cigarette, the true holder of the trademark rights in the
406 cigarette brand shall be permitted to inspect the cigarette.

407 (f) In addition to any other remedy provided by law, the
408 division or the Attorney General may file an action in circuit
409 court for a violation of this section, including petitioning for
410 injunctive relief or to recover any costs or damages suffered by
411 the state because of a violation of this section, including
412 enforcement costs relating to the specific violation and
413 attorney's fees. Each violation of this section or of rules
414 adopted under this section constitutes a separate civil
415 violation for which the division or the Attorney General may
416 obtain relief.

417 (g) Whenever any law enforcement personnel or duly
418 authorized representative of the division discovers any
419 cigarettes that have not been marked in the manner required by
420 subsection (6), such personnel or representative is authorized

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421 and empowered to seize and take possession of such cigarettes.
422 Such cigarettes shall be turned over to the Department of
423 Revenue and shall be forfeited to the state. Cigarettes seized
424 pursuant to this paragraph shall be destroyed; however, prior to
425 the destruction of any such cigarette, the true holder of the
426 trademark rights in the cigarette brand shall be permitted to
427 inspect the cigarette.

428 (8) IMPLEMENTATION.--

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

431 (b) The division, in the regular course of conducting
432 inspections of wholesale dealers, agents, and retail dealers as
433 authorized pursuant to chapter 210, may inspect such cigarettes
434 to determine if the cigarettes are marked as required by
435 subsection (6).

436 (9) INSPECTION.--To enforce the provisions of this
437 section, the Attorney General, the Department of Revenue, the
438 division, and their duly authorized representatives and other
439 law enforcement personnel are authorized to examine the books,
440 papers, invoices, and other records of any person in possession,
441 control, or occupancy of any premises where cigarettes are
442 placed, stored, sold, or offered for sale, as well as the stock
443 of cigarettes on the premises. Every person in the possession,
444 control, or occupancy of any premises where cigarettes are
445 placed, sold, or offered for sale is directed and required to
446 give the Attorney General, the Department of Revenue, the
447 division, and their duly authorized representatives and other
448 law enforcement personnel the means, facilities, and opportunity

449 for the examinations authorized by this subsection.

450 (10) SALE OUTSIDE OF FLORIDA.--Nothing in this section
451 shall be construed to prohibit any person or entity from
452 manufacturing or selling cigarettes that do not meet the
453 requirements of subsection (4) if the cigarettes are or will be
454 stamped for sale in another state or are packaged for sale
455 outside the United States and that person or entity has taken
456 reasonable steps to ensure that such cigarettes will not be sold
457 or offered for sale to persons located in this state.

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

461 Section 2. Effective upon this act becoming a law, and
462 notwithstanding any other provision of law, local government
463 units of this state may neither enact nor enforce any ordinance
464 or other local law or regulation conflicting with, or preempted
465 by, any provision of this act or any policy of this state
466 expressed by this act, whether that policy be expressed by
467 inclusion of a provision in this act or by exclusion of that
468 subject from this act.

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