

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 and the State Fire Marshal with
14 certain powers and responsibilities; providing
15 certification requirements for manufacturers; providing
16 requirements for the marking of certain cigarette
17 packaging; providing reporting requirements; providing
18 approval requirements for markings submitted to the
19 division by a manufacturer; providing notification
20 requirements; providing fines and penalties; providing the
21 division and the State Fire Marshal with rulemaking
22 authority; authorizing certain governmental entities with
23 inspection powers to examine specified documents of any
24 person in possession, control, or occupancy of any
25 premises where cigarettes are placed, stored, sold, or
26 offered for sale, as well as the stock of cigarettes on
27 the premises; providing that nothing in the act shall be
28 construed to prohibit any person or entity from

29 manufacturing or selling cigarettes that do not meet the
 30 specified requirements if such cigarettes are or will be
 31 stamped for sale in another state or are packaged for sale
 32 outside the United States; providing for repeal upon the
 33 enactment of a preemptive federal standard; prohibiting
 34 local government units from enacting and enforcing any
 35 ordinance or other local law or regulation that conflicts
 36 with, or is preempted by, any provision of the act;
 37 providing effective dates.

38

39 Be It Enacted by the Legislature of the State of Florida:

40

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

93 (b) "Cigarette" means:

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

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

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

108 (d) "Manufacturer" means:

109 1. Any entity that manufactures or produces, or causes to
110 be manufactured or produced, regardless of location, cigarettes
111 that such manufacturer intends to be sold in this state,
112 including cigarettes intended to be sold in the United States

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113 through an importer;

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

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

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

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

132 (g) "Retail dealer" means:

133 1. Any person, other than a manufacturer or wholesale
134 dealer, engaged in selling cigarettes; or

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

138 (h) "Sale" means any transfer of title or possession or
139 both, exchange or barter, conditional or otherwise, in any
140 manner or by any means whatever or any agreement therefor. In

141 addition to cash and credit sales, the giving of cigarettes as
 142 samples, prizes, or gifts and the exchanging of cigarettes for
 143 any consideration other than money are considered sales.

144 (i) "Sell" means to execute a sale or to offer or agree to
 145 execute a sale.

146 (j) "Wholesale dealer" means any person, other than a
 147 manufacturer, who sells cigarettes to retail dealers or other
 148 persons for purposes of resale.

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

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

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

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

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

168 4. The performance standard required by this subsection

169 shall only be applied to a complete test trial.

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

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

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

183 8. The State Fire Marshal may, in his or her discretion or
184 upon the request of the division, perform or sponsor testing to
185 determine a cigarette's compliance with the required performance
186 standard. Any such discretionary compliance testing by the State
187 Fire Marshal shall be conducted in accordance with this
188 subsection.

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

197 shall be at least two bands fully located at least 15
198 millimeters from the lighting end and 10 millimeters from the
199 filter end of the tobacco column, or 10 millimeters from the
200 labeled end of the tobacco column for nonfiltered cigarettes.

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

225 under this section. All other applicable requirements of this
226 subsection shall apply to the manufacturer.

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

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

245 (f) The division shall review the effectiveness of this
246 subsection and report every 3 years to the President of the
247 Senate and the Speaker of the House of Representatives the
248 division's findings and, if appropriate, recommendations for
249 legislation to improve the effectiveness of this subsection. The
250 report and legislative recommendations shall be submitted no
251 later than February 1 following the conclusion of each 3-year
252 period.

253 (g) The requirements of paragraph (a) shall not prohibit:
 254 1. Wholesale or retail dealers from selling their existing
 255 inventory of cigarettes on or after the effective date of this
 256 section if the wholesale or retail dealer can establish that
 257 state tax stamps were affixed to the cigarettes prior to the
 258 effective date and the wholesale or retail dealer can establish
 259 that the inventory was purchased prior to the effective date in
 260 comparable quantity to the inventory purchased during the same
 261 period of the prior year; or
 262 2. The sale of cigarettes solely for the purpose of
 263 consumer testing. For purposes of this subparagraph, the term
 264 "consumer testing" means an assessment of cigarettes that is
 265 conducted by or is under the control and direction of a
 266 manufacturer for the purpose of evaluating consumer acceptance
 267 of such cigarettes and that uses only the quantity of cigarettes
 268 that is reasonably necessary for such assessment.
 269 (h) It is the intent of the Legislature by this section to
 270 promote uniformity among the states in the regulation of reduced
 271 cigarette ignition propensity. As a result, the resolution of
 272 issues regarding the interpretation and implementation of this
 273 section should be made in a manner consistent with the New York
 274 Fire Safety Standards for Cigarettes, New York Executive Law,
 275 Section 156-C, as amended, and Part 429 of Title 19 New York
 276 Codes, Rules, and Regulations, as amended, and the
 277 interpretation and implementation thereof, as they exist on
 278 March 1, 2008.
 279 (5) CERTIFICATION AND PRODUCT CHANGE.--
 280 (a) Each manufacturer shall submit to the division a

281 written certification attesting that:

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

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

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

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

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

290 3. Length in millimeters.

291 4. Circumference in millimeters.

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

293 6. Filter or nonfilter.

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

295 8. Marking pursuant to subsection (6).

296 9. The name, address, and telephone number of the testing
297 laboratory, if different from the name, address, and telephone
298 number of the manufacturer that conducted the test.

299 10. The date the testing occurred.

300 (c) Each certification shall be made available to the
301 Attorney General for purposes consistent with this section and
302 to the State Fire Marshal for the purposes of ensuring
303 compliance with this subsection.

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

306 (e) If a manufacturer has certified a cigarette pursuant
307 to this subsection and thereafter makes any change to such
308 cigarette that is likely to alter its compliance with the

309 reduced cigarette ignition propensity standards required by this
310 section, that cigarette shall not be sold or offered for sale in
311 this state until the manufacturer retests the cigarette in
312 accordance with the testing standards set forth in subsection
313 (4) and maintains records of that retesting as required by
314 subsection (4). Any altered cigarette that does not meet the
315 performance standard set forth in subsection (4) may not be sold
316 in this state.

317 (6) MARKING OF CIGARETTE PACKAGING.--

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

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

327 2. Any visible combination of alphanumeric or symbolic
328 characters permanently stamped, engraved, or embossed upon the
329 cigarette package or cellophane wrap; or

330 3. Printed, stamped, engraved, or embossed text that
331 indicates that the cigarettes meet the standards of this
332 section.

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

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

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

344 1. Any marking in use and approved for sale in the State
345 of New York pursuant to the New York Fire Safety Standards for
346 Cigarettes; or

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

351
352 Proposed markings shall be deemed approved if the division fails
353 to act within 10 business days after receiving a request for
354 approval.

355 (e) No manufacturer shall modify its approved marking
356 unless the modification has been approved by the division in
357 accordance with this subsection.

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

365 provide a copy of these package markings received from
366 manufacturers to all retail dealers to which they sell
367 cigarettes. Wholesale dealers, agents, and retail dealers shall
368 permit the division, the State Fire Marshal, the Attorney
369 General, and their employees to inspect markings of cigarette
370 packaging marked in accordance with this subsection.

371 (7) PENALTIES.--

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

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

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

391 (d) Any person violating any other provision of this
392 section shall be subject to a civil penalty not to exceed \$1,000

393 for a first offense and not to exceed \$5,000 for each subsequent
394 offense.

395 (e) Any penalties collected under this subsection shall be
396 deposited into the Insurance Regulatory Trust Fund of the
397 Department of Financial Services to support costs associated
398 with the responsibilities of the State Fire Marshal under this
399 section.

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

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

421 (8) IMPLEMENTATION.--

422 (a) The division and the State Fire Marshal may adopt
 423 rules to implement the provisions of this section.

424 (b) The division, in the regular course of conducting
 425 inspections of wholesale dealers, agents, and retail dealers as
 426 authorized pursuant to chapter 210, may inspect such cigarettes
 427 to determine if the cigarettes are marked as required by
 428 subsection (6).

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

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

449 reasonable steps to ensure that such cigarettes will not be sold
 450 or offered for sale to persons located in this state.

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

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

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