



350768

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: FAV	.	
4/21/2008	.	
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	.	

1 The Committee on Judiciary (Diaz de la Portilla) recommended the
2 following **amendment**:

3
4 **Senate Amendment (with title amendment)**

5 Delete line(s) 132-450

6 and insert:

7 (g) "Retail dealer" means:

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

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

13 (h) "Sale" means any transfer of title or possession or
14 both, exchange or barter, conditional or otherwise, in any manner
15 or by any means whatever or any agreement therefor. In addition
16 to cash and credit sales, the giving of cigarettes as samples,



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17 prizes, or gifts and the exchanging of cigarettes for any
18 consideration other than money are considered sales.

19 (i) "Sell" means to execute a sale or to offer or agree to
20 execute a sale.

21 (j) "Wholesale dealer" means any person other than a
22 manufacturer who sells cigarettes to retail dealers or other
23 persons for purposes of resale.

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

25 (a) Except as provided in paragraph (g), no cigarettes may
26 be sold or offered for sale in this state, or sold or offered for
27 sale to persons located in this state, unless the cigarettes have
28 been tested in accordance with the test method and meet the
29 performance standard specified in this subsection, a written
30 certification has been filed by the manufacturer with the
31 division in accordance with subsection (5), and the cigarettes
32 have been marked in accordance with subsection (6).

33 1. Testing of cigarettes shall be conducted in accordance
34 with the American Society for Testing and Materials standard
35 E2187-04, "Standard Test Method for Measuring the Ignition
36 Strength of Cigarettes."

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

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

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

44 5. Written certifications shall be based upon testing
45 conducted by a laboratory that has been accredited pursuant to
46 standard ISO/IEC 17025 of the International Organization for



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47 Standardization or another comparable accreditation standard
48 required by the division.

49 6. Laboratories conducting testing in accordance with this
50 subsection shall implement a quality control and quality
51 assurance program that includes a procedure that will determine
52 the repeatability of the testing results. The repeatability value
53 shall be no greater than 0.19.

54 7. This subsection does not require additional testing if
55 cigarettes are tested consistently with this section for any
56 other purpose.

57 8. The State Fire Marshal may, in his or her discretion or
58 upon the request of the division, perform or sponsor testing to
59 determine a cigarette's compliance with the required performance
60 standard. Any such discretionary compliance testing by the State
61 Fire Marshal shall be conducted in accordance with this
62 subsection.

63 (b) Each cigarette listed in a certification submitted
64 pursuant to subsection (5) which uses lowered permeability bands
65 in the cigarette paper to achieve compliance with the performance
66 standard set forth in this subsection shall have at least two
67 nominally identical bands on the paper surrounding the tobacco
68 column. At least one complete band shall be located at least 15
69 millimeters from the lighting end of the cigarette. For
70 cigarettes on which the bands are positioned by design, there
71 shall be at least two bands fully located at least 15 millimeters
72 from the lighting end and 10 millimeters from the filter end of
73 the tobacco column, or 10 millimeters from the labeled end of the
74 tobacco column for nonfiltered cigarettes.

75 (c) A manufacturer of a cigarette that the State Fire
76 Marshal determines cannot be tested in accordance with the test



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77 method prescribed in subparagraph (a)1. shall propose a test
78 method and performance standard for the cigarette to the State
79 Fire Marshal. Upon approval of the proposed test method and a
80 determination by the State Fire Marshal that the performance
81 standard proposed by the manufacturer is equivalent to the
82 performance standard prescribed in subparagraph (a)3., the
83 manufacturer may employ such test method and performance standard
84 to certify such cigarette pursuant to subsection (5). If the
85 State Fire Marshal determines that another state has enacted
86 reduced cigarette ignition propensity standards that include a
87 test method and performance standard that are the same as those
88 contained in this section, and if the State Fire Marshal finds
89 that the officials responsible for implementing those
90 requirements have approved the proposed alternative test method
91 and performance standard for a particular cigarette proposed by a
92 manufacturer as meeting the firesafety standards of that state's
93 law or regulation under a legal provision comparable to this
94 subsection, the State Fire Marshal shall authorize that
95 manufacturer to employ the alternative test method and
96 performance standard to certify that cigarette for sale in this
97 state unless the State Fire Marshal demonstrates a reasonable
98 basis why the alternative test should not be accepted under this
99 section. All other applicable requirements of this subsection
100 shall apply to the manufacturer.

101 (d) Each manufacturer shall maintain copies of the reports
102 of all tests conducted on all cigarettes offered for sale for a
103 period of 3 years and shall make copies of the reports available
104 to the division, the State Fire Marshal, and the Attorney General
105 upon written request. Any manufacturer who fails to make copies
106 of the reports available within 60 days after receiving a written



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107 request shall be subject to a civil penalty not to exceed \$10,000
108 for each day after the 60th day that the manufacturer does not
109 make such copies available.

110 (e) The State Fire Marshal may adopt a subsequent American
111 Society for Testing and Materials Standard Test Method for
112 Measuring the Ignition Strength of Cigarettes upon a finding that
113 such subsequent method does not result in a change in the
114 percentage of full-length burns exhibited by any tested cigarette
115 when compared to the percentage of full-length burns the same
116 cigarette would exhibit when tested in accordance with American
117 Society for Testing and Materials Standard E2187-04 and the
118 performance standard in subparagraph (a)3.

119 (f) The division shall review the effectiveness of this
120 subsection and report every 3 years to the President of the
121 Senate and the Speaker of the House of Representatives the
122 division's findings and, if appropriate, recommendations for
123 legislation to improve the effectiveness of this subsection. The
124 report and legislative recommendations shall be submitted no
125 later than February 1 following the conclusion of each 3-year
126 period.

127 (g) The requirements of paragraph (a) shall not prohibit:
128 1. Wholesale or retail dealers from selling their existing
129 inventory of cigarettes on or after the effective date of this
130 section if the wholesale or retailer dealer can establish that
131 state tax stamps were affixed to the cigarettes prior to the
132 effective date and the wholesale or retailer dealer can establish
133 that the inventory was purchased prior to the effective date in
134 comparable quantity to the inventory purchased during the same
135 period of the prior year; or



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136 2. The sale of cigarettes solely for the purpose of
137 consumer testing. For purposes of this subparagraph, the term
138 "consumer testing" means an assessment of cigarettes that is
139 conducted by or is under the control and direction of a
140 manufacturer for the purpose of evaluating consumer acceptance of
141 such cigarettes and that uses only the quantity of cigarettes
142 that is reasonably necessary for such assessment.

143 (h) It is the intent of the Legislature by this section to
144 promote uniformity among the states in the regulation of reduced
145 cigarette ignition propensity. As a result, the resolution of
146 issues regarding the interpretation and implementation of this
147 section should be made in a manner consistent with the New York
148 Fire Safety Standards for Cigarettes, New York Executive Law,
149 Section 156-C, as amended, and Part 429 of Title 19 New York
150 Codes, Rules, and Regulations, as amended, and the interpretation
151 and implementation thereof, as they exist on March 1, 2008.

152 (5) CERTIFICATION AND PRODUCT CHANGE.--

153 (a) Each manufacturer shall submit to the division a
154 written certification attesting that:

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

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

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

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

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

163 3. Length in millimeters.

164 4. Circumference in millimeters.

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



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166 6. Filter or nonfilter.

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

168 8. Marking pursuant to subsection (6).

169 9. The name, address, and telephone number of the testing
170 laboratory, if different from the name, address, and telephone
171 number of the manufacturer that conducted the test.

172 10. The date the testing occurred.

173 (c) Each certification shall be made available to the
174 Attorney General for purposes consistent with this section and to
175 the State Fire Marshal for the purposes of ensuring compliance
176 with this subsection.

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

179 (e) If a manufacturer has certified a cigarette pursuant to
180 this subsection and thereafter makes any change to such cigarette
181 that is likely to alter its compliance with the reduced cigarette
182 ignition propensity standards required by this section, that
183 cigarette shall not be sold or offered for sale in this state
184 until the manufacturer retests the cigarette in accordance with
185 the testing standards set forth in subsection (4) and maintains
186 records of that retesting as required by subsection (4). Any
187 altered cigarette that does not meet the performance standard set
188 forth in subsection (4) may not be sold in this state.

189 (6) MARKING OF CIGARETTE PACKAGING.--

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

194 1. Modification of the universal product code to include a
195 visible mark printed at or around the area of the universal



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196 product code. The mark may consist of alphanumeric or symbolic
197 characters permanently stamped, engraved, embossed, or printed in
198 conjunction with the universal product code;

199 2. Any visible combination of alphanumeric or symbolic
200 characters permanently stamped, engraved, or embossed upon the
201 cigarette package or cellophane wrap; or

202 3. Printed, stamped, engraved, or embossed text that
203 indicates that the cigarettes meet the standards of this section.

204 (b) A manufacturer shall use only one marking and shall
205 apply this marking uniformly for all brands and all packages,
206 including, but not limited to, packs, cartons, and cases,
207 marketed by that manufacturer.

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

210 (d) Prior to the certification of any cigarette, a
211 manufacturer shall present its proposed marking to the division
212 for approval. Upon receipt of the request, the division shall
213 approve or disapprove the marking offered, except that the
214 division shall approve:

215 1. Any marking in use and approved for sale in the State of
216 New York pursuant to the New York Fire Safety Standards for
217 Cigarettes; or

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

222
223 Proposed markings shall be deemed approved if the division fails
224 to act within 10 business days after receiving a request for
225 approval.



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226 (e) No manufacturer shall modify its approved marking
227 unless the modification has been approved by the division in
228 accordance with this subsection.

229 (f) Manufacturers certifying cigarettes in accordance with
230 subsection (5) shall provide a copy of the certifications to all
231 wholesale dealers and agents to which they sell cigarettes and
232 shall also provide sufficient copies of an illustration of the
233 package marking used by the manufacturer pursuant to this
234 subsection for each retail dealer to which the wholesale dealers
235 or agents sell cigarettes. Wholesale dealers and agents shall
236 provide a copy of these package markings received from
237 manufacturers to all retail dealers to which they sell
238 cigarettes. Wholesale dealers, agents, and retail dealers shall
239 permit the division, the State Fire Marshal, the Attorney
240 General, and their employees to inspect markings of cigarette
241 packaging marked in accordance with this subsection.

242 (7) PENALTIES.--

243 (a) A manufacturer, wholesale dealer, agent, or any other
244 person or entity that knowingly sells or offers to sell
245 cigarettes, other than through retail sale, in violation of
246 subsection (4) is subject to a civil penalty, not to exceed \$100
247 for each pack of such cigarettes sold or offered for sale. In no
248 case shall the penalty against any such person or entity exceed
249 \$100,000 during any 30-day period.

250 (b) A retail dealer who knowingly sells or offers to sell
251 cigarettes in violation of subsection (4) is subject to a civil
252 penalty, not to exceed \$100 for each pack of such cigarettes sold
253 or offered for sale. In no case shall the penalty against any
254 retail dealer exceed \$25,000 during any 30-day period.



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255 (c) In addition to any penalty prescribed by law, any
256 corporation, partnership, sole proprietor, limited partnership,
257 or association engaged in the manufacture of cigarettes which
258 knowingly makes a false certification pursuant to subsection (5)
259 is subject to a civil penalty of at least \$75,000 and not to
260 exceed \$250,000 for each such false certification.

261 (d) Any person violating any other provision of this
262 section is subject to a civil penalty, not to exceed \$1,000 for a
263 first offense and not to exceed \$5,000 for each subsequent
264 offense.

265 (e) Any penalties collected under this subsection shall be
266 deposited into the Insurance Regulatory Trust Fund of the
267 Department of Financial Services to support costs associated with
268 the responsibilities of the State Fire Marshal under this
269 section.

270 (f) In addition to any other remedy provided by law, the
271 division, the State Fire Marshal, or the Attorney General may
272 file an action in circuit court for a violation of this section,
273 including petitioning for injunctive relief or to recover any
274 costs or damages suffered by the state because of a violation of
275 this section, including enforcement costs relating to the
276 specific violation and attorney's fees. Each violation of this
277 section or of rules adopted under this section constitutes a
278 separate civil violation for which the division, the State Fire
279 Marshal, or the Attorney General may obtain relief.

280 (g) Whenever any law enforcement personnel or duly
281 authorized representative of the division discovers any
282 cigarettes that have not been marked in the manner required by
283 subsection (6), such personnel or representative is authorized
284 and empowered to seize and take possession of such cigarettes.



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285 Such cigarettes shall be turned over to the division and shall be
286 forfeited to the state. Cigarettes seized pursuant to this
287 paragraph shall be destroyed; however, prior to the destruction
288 of any such cigarette, the true holder of the trademark rights in
289 the cigarette brand shall be permitted to inspect the cigarette.

290 (8) IMPLEMENTATION.--

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

293 (b) The division, in the regular course of conducting
294 inspections of wholesale dealers, agents, and retail dealers as
295 authorized pursuant to chapter 210, may inspect such cigarettes
296 to determine if the cigarettes are marked as required by
297 subsection (6).

298 (9) INSPECTION.--To enforce the provisions of this section,
299 the Attorney General, the State Fire Marshal, the division, and
300 their duly authorized representatives and other law enforcement
301 personnel are authorized to examine the books, papers, invoices,
302 and other records of any person in possession, control, or
303 occupancy of any premises where cigarettes are placed, stored,
304 sold, or offered for sale, as well as the stock of cigarettes on
305 the premises. Every person in the possession, control, or
306 occupancy of any premises where cigarettes are placed, sold, or
307 offered for sale is directed and required to give the Attorney
308 General, the State Fire Marshal, the division, and their duly
309 authorized representatives and other law enforcement personnel
310 the means, facilities, and opportunity for the examinations
311 authorized by this subsection.

312
313 ===== T I T L E A M E N D M E N T =====

314 And the title is amended as follows:



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315 Delete line(s) 15-40
316 and insert:
317 manufacturers; providing requirements for the marking of
318 certain cigarette packaging; providing reporting
319 requirements; providing approval requirements for markings
320 submitted to the division by a manufacturer; providing
321 notification requirements; providing fines and penalties;
322 providing for the deposit of penalties into the Insurance
323 Regulatory Trust Fund within the Department of Financial
324 Services; providing the division with rulemaking
325 authority; authorizing certain government entities with
326 inspection powers to examine specified documents of any
327 person in possession, control, or occupancy of any
328 premises where cigarettes are placed, stored, sold, or
329 offered for sale, as well as the stock of cigarettes on
330 the premises; providing that nothing in the act shall be
331 construed to prohibit any person or entity from
332 manufacturing or selling cigarettes that do not meet the
333 specified requirements if such cigarettes are or will be
334 stamped for sale in another state or are packaged for sale
335 outside the United States; providing for repeal upon the
336 enactment of a preemptive federal standard; prohibiting
337 local government units from enacting and enforcing any
338 ordinance or other local law or regulation that conflicts
339 with, or is preempted by, any provision of the act;
340 providing effective dates.