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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/1/2008	.	
	.	
	.	

1 The Committee on Regulated Industries (King) recommended the
 2 following **amendment**:

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

5 Delete everything after the enacting clause
 6 and insert:

7 Section 1. Section 633.042, Florida Statutes, is created to
 8 read:

9 633.042 Reduced Cigarette Ignition Propensity Standard and
 10 Firefighter Protection Act.--

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

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

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



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18 (b) Each year in the United States, between 700 and 900
19 persons are killed and around 3,000 persons are injured in fires
20 ignited by cigarettes, while in this state 153 residential fires
21 and 5 fatalities were attributable to fires caused by cigarettes
22 in 2006.

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

25 (d) Fires caused by cigarettes result in billions of
26 dollars in property losses and damages in the United States and
27 millions of dollars in property losses and damages in this state.

28 (e) Cigarette fires unnecessarily jeopardize the safety of
29 firefighters and result in avoidable emergency response costs for
30 municipalities.

31 (f) In 2004, the State of New York implemented a cigarette
32 firesafety regulation requiring cigarettes sold in that state to
33 meet a firesafety performance standard; in 2005, Vermont and
34 California enacted cigarette firesafety laws directly
35 incorporating New York's regulation into statute; and in 2006,
36 Illinois, New Hampshire, and Massachusetts joined these states in
37 enacting similar laws.

38 (g) In 2005, Canada implemented the New York State
39 firesafety standard, becoming the first country to have a
40 nationwide cigarette firesafety standard.

41 (h) New York State's cigarette firesafety standard is based
42 upon decades of research by the National Institute of Standards
43 and Technology, Congressional research groups, and private
44 industry. This cigarette firesafety standard minimizes costs to
45 the state; minimally burdens cigarette manufacturers,
46 distributors, and retail sellers; and, therefore, should become
47 law in this state.

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48 (i) It is therefore fitting and proper for this state to
49 adopt the cigarette firesafety standard that is in effect in the
50 State of New York to reduce the likelihood that cigarettes will
51 cause fires and result in deaths, injuries, and property damages.

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

53 (a) "Agent" means any person authorized by the Division of
54 Alcoholic Beverages and Tobacco of the Department of Business and
55 Professional Regulation to purchase and affix stamps on packages
56 of cigarettes.

57 (b) "Cigarette" means:

58 1. Any roll for smoking, whether made wholly or in part of
59 tobacco or any other substance, irrespective of size or shape,
60 and whether such tobacco or substance is flavored, adulterated,
61 or mixed with any other ingredient, the wrapper or cover of which
62 is made of paper or any other substance or material other than
63 tobacco; or

64 2. Any roll for smoking that is wrapped in any substance
65 containing tobacco and that the type of tobacco used in the
66 filler, or its packaging and labeling, is likely to be offered
67 to, or purchased by, consumers as a cigarette as described in
68 subparagraph 1.

69 (c) "Division" means the Division of Alcoholic Beverages
70 and Tobacco of the Department of Business and Professional
71 Regulation.

72 (d) "Manufacturer" means:

73 1. Any entity that manufactures or produces, or causes to
74 be manufactured or produced, regardless of location, cigarettes
75 that such manufacturer intends to be sold in this state,
76 including cigarettes intended to be sold in the United States
77 through an importer;



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78 2. Any entity, regardless of location, that first purchases
79 cigarettes manufactured anywhere and not intended by the original
80 manufacturer or maker to be sold in the United States and that
81 intends to resell such cigarettes in the United States; or

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

84 (e) "Quality control and quality assurance program" means
85 laboratory procedures implemented to ensure that operator bias,
86 systematic and nonsystematic methodological errors, and
87 equipment-related problems do not affect the results of
88 laboratory testing. Such a program shall ensure that the testing
89 repeatability remains within the required repeatability values
90 stated in subparagraph (4) (a) 6. for all test trials used to
91 certify cigarettes in accordance with this section.

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

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

97 (h) "Sale" means any transfer of title or possession or
98 both, exchange or barter, conditional or otherwise, in any manner
99 or by any means whatever or any agreement therefor. In addition
100 to cash and credit sales, the giving of cigarettes as samples,
101 prizes, or gifts and the exchanging of cigarettes for any
102 consideration other than money are considered sales.

103 (i) "Sell" means to execute a sale or to offer or agree to
104 execute a sale.

105 (j) "Wholesale dealer" means:



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106 1. Any person other than a manufacturer who sells
107 cigarettes to retail dealers or other persons for purposes of
108 resale; or

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

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

113 (a) Except as provided in paragraph (g), no cigarettes may
114 be sold or offered for sale in this state, or sold or offered for
115 sale to persons located in this state, unless the cigarettes have
116 been tested in accordance with the test method and meet the
117 performance standard specified in this subsection, a written
118 certification has been filed by the manufacturer with the
119 division in accordance with subsection (5), and the cigarettes
120 have been marked in accordance with subsection (6).

121 1. Testing of cigarettes shall be conducted in accordance
122 with the American Society for Testing and Materials standard
123 E2187-04, "Standard Test Method for Measuring the Ignition
124 Strength of Cigarettes."

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

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

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

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



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135 Standardization or another comparable accreditation standard
136 required by the division.

137 6. Laboratories conducting testing in accordance with this
138 subsection shall implement a quality control and quality
139 assurance program that includes a procedure that will determine
140 the repeatability of the testing results. The repeatability value
141 shall be no greater than 0.19.

142 7. This subsection does not require additional testing if
143 cigarettes are tested consistent with this section for any other
144 purpose.

145 8. In its discretion, the division may perform or sponsor
146 testing to determine a cigarette's compliance with the required
147 performance standard; provided, any such discretionary compliance
148 testing by the division shall be conducted in accordance with
149 this subsection.

150 (b) Each cigarette listed in a certification submitted
151 pursuant to subsection (5) that uses lowered permeability bands
152 in the cigarette paper to achieve compliance with the performance
153 standard set forth in this subsection shall have at least two
154 nominally identical bands on the paper surrounding the tobacco
155 column. At least one complete band shall be located at least 15
156 millimeters from the lighting end of the cigarette. For
157 cigarettes on which the bands are positioned by design, there
158 shall be at least two bands fully located at least 15 millimeters
159 from the lighting end and 10 millimeters from the filter end of
160 the tobacco column, or 10 millimeters from the labeled end of the
161 tobacco column for nonfiltered cigarettes.

162 (c) A manufacturer of a cigarette that the division
163 determines cannot be tested in accordance with the test method
164 prescribed in subparagraph (a)1. shall propose a test method and



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165 performance standard for the cigarette to the division. Upon
166 approval of the proposed test method and a determination by the
167 division that the performance standard proposed by the
168 manufacturer is equivalent to the performance standard prescribed
169 in subparagraph (a)3., the manufacturer may employ such test
170 method and performance standard to certify such cigarette
171 pursuant to subsection (5). If the division determines that
172 another state has enacted reduced cigarette ignition propensity
173 standards that include a test method and performance standard
174 that are the same as those contained in this section, and if the
175 division finds that the officials responsible for implementing
176 those requirements have approved the proposed alternative test
177 method and performance standard for a particular cigarette
178 proposed by a manufacturer as meeting the firesafety standards of
179 that state's law or regulation under a legal provision comparable
180 to this subsection, the division shall authorize that
181 manufacturer to employ the alternative test method and
182 performance standard to certify that cigarette for sale in this
183 state unless the division demonstrates a reasonable basis why the
184 alternative test should not be accepted under this section. All
185 other applicable requirements of this subsection shall apply to
186 the manufacturer.

187 (d) Each manufacturer shall maintain copies of the reports
188 of all tests conducted on all cigarettes offered for sale for a
189 period of 3 years and shall make copies of the reports available
190 to the division and the Attorney General upon written request.
191 Any manufacturer who fails to make copies of the reports
192 available within 60 days after receiving a written request shall
193 be subject to a civil penalty not to exceed \$10,000 for each day

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194 after the 60th day that the manufacturer does not make such
195 copies available.

196 (e) The division may adopt a subsequent American Society
197 for Testing and Materials Standard Test Method for Measuring the
198 Ignition Strength of Cigarettes upon a finding that such
199 subsequent method does not result in a change in the percentage
200 of full-length burns exhibited by any tested cigarette when
201 compared to the percentage of full-length burns the same
202 cigarette would exhibit when tested in accordance with American
203 Society for Testing and Materials Standard E2187-04 and the
204 performance standard in subparagraph (a)3.

205 (f) The division shall review the effectiveness of this
206 subsection and report every 3 years to the President of the
207 Senate and the Speaker of the House of Representatives the
208 division's findings and, if appropriate, recommendations for
209 legislation to improve the effectiveness of this subsection. The
210 report and legislative recommendations shall be submitted no
211 later than June 13 following the conclusion of each 3-year
212 period.

213 (g) The requirements of paragraph (a) shall not prohibit:

214 1. Wholesale or retail dealers from selling their existing
215 inventory of cigarettes on or after the effective date of this
216 section if the wholesale or retailer dealer can establish that
217 state tax stamps were affixed to the cigarettes prior to the
218 effective date and the wholesale or retailer dealer can establish
219 that the inventory was purchased prior to the effective date in
220 comparable quantity to the inventory purchased during the same
221 period of the prior year; or

222 2. The sale of cigarettes solely for the purpose of
223 consumer testing. For purposes of this subparagraph, the term

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224 "consumer testing" means an assessment of cigarettes that is
225 conducted by or is under the control and direction of a
226 manufacturer for the purpose of evaluating consumer acceptance of
227 such cigarettes, that uses only the quantity of cigarettes that
228 is reasonably necessary for such assessment.

229 (h) It is the intent of the Legislature to promote
230 uniformity among the states in the regulation of cigarettes per
231 this section. As a result, the Legislature intends that the
232 resolution of issues regarding the interpretation or
233 implementation of this section be made in a manner consistent
234 with the New York Fire Safety Standards for Cigarettes, New York
235 Executive Law, Section 156-c, as amended and Part 429 of Title 19
236 New York Codes, Rules, and Regulations, as amended, that are in
237 effect on March 1, 2008.

238 (5) CERTIFICATION AND PRODUCT CHANGE.--

239 (a) Each manufacturer shall submit to the division a
240 written certification attesting that:

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

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

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

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

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

249 3. Length in millimeters.

250 4. Circumference in millimeters.

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

252 6. Filter or nonfilter.

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



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254 8. Marking pursuant to subsection (6).

255 9. The name, address, and telephone number of the testing
256 laboratory, if different from the name, address, and telephone
257 number of the manufacturer that conducted the test.

258 10. The date the testing occurred.

259 (c) Each certification shall be made available to the
260 Attorney General for purposes consistent with this section and to
261 the Department of Revenue for the purposes of ensuring compliance
262 with this subsection.

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

265 (e) At the time is submits a written certification under
266 subsection (5), a manufacturer shall pay to the division a fee of
267 \$250 dollars for each brand family of cigarettes listed in the
268 certification. The fee paid shall apply to all cigarettes within
269 the brand family certified and shall include any new cigarette
270 certified within the brand family during the three-year
271 certification period. Proceeds of the certification fee shall be
272 deposited into the Reduced Cigarette Ignition Propensity and
273 Firefighter Protection Enforcement Trust Fund.

274 (f) If a manufacturer has certified a cigarette pursuant to
275 this subsection and thereafter makes any change to such cigarette
276 that is likely to alter its compliance with the reduced cigarette
277 ignition propensity standards required by this section, that
278 cigarette shall not be sold or offered for sale in this state
279 until the manufacturer retests the cigarette in accordance with
280 the testing standards set forth in subsection (4) and maintains
281 records of that retesting as required by subsection (4). Any
282 altered cigarette that does not meet the performance standard set
283 forth in subsection (4) may not be sold in this state.



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284 (6) MARKING OF CIGARETTE PACKAGING.--

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

289 1. Modification of the universal product code to include a
290 visible mark printed at or around the area of the universal
291 product code. The mark may consist of alphanumeric or symbolic
292 characters permanently stamped, engraved, embossed, or printed in
293 conjunction with the universal product code;

294 2. Any visible combination of alphanumeric or symbolic
295 characters permanently stamped, engraved, or embossed upon the
296 cigarette package or cellophane wrap; or

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

299 (b) A manufacturer shall use only one marking and shall
300 apply this marking uniformly for all brands and all packages,
301 including, but not limited to, packs, cartons, and cases,
302 marketed by that manufacturer.

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

305 (d) Prior to the certification of any cigarette, a
306 manufacturer shall present its proposed marking to the division
307 for approval. Upon receipt of the request, the division shall
308 approve or disapprove the marking offered, except that the
309 division shall approve:

310 1. Any marking in use and approved for sale in the State of
311 New York pursuant to the New York Fire Safety Standards for
312 Cigarettes; or



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

317
318 Proposed markings shall be deemed approved if the division fails
319 to act within 10 business days after receiving a request for
320 approval.

321 (e) No manufacturer shall modify its approved marking
322 unless the modification has been approved by the division in
323 accordance with this subsection.

324 (f) Manufacturers certifying cigarettes in accordance with
325 subsection (5) shall provide a copy of the certifications to all
326 wholesale dealers and agents to which they sell cigarettes and
327 shall also provide sufficient copies of an illustration of the
328 package marking used by the manufacturer pursuant to this
329 subsection for each retail dealer to which the wholesale dealers
330 or agents sell cigarettes. Wholesale dealers and agents shall
331 provide a copy of these package markings received from
332 manufacturers to all retail dealers to which they sell
333 cigarettes. Wholesale dealers, agents, and retail dealers shall
334 permit the division, the Department of Revenue, the Attorney
335 General, and their employees to inspect markings of cigarette
336 packaging marked in accordance with this subsection.

337 (7) PENALTIES.--

338 (a) A manufacturer, wholesale dealer, agent, or any other
339 person or entity that knowingly sells or offers to sell
340 cigarettes, other than through retail sale, in violation of
341 subsection (4) shall be subject to a civil penalty not to exceed
342 \$100 for each pack of such cigarettes sold or offered for sale.



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343 In no case shall the penalty against any such person or entity
344 exceed \$100,000 during any 30-day period.

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

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

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

360 (e) Any cigarettes that have been sold or offered for sale
361 that do not comply with the performance standard required by
362 subsection (4) shall be subject to forfeiture following a hearing
363 undertaken pursuant to chapter 120 at which the true holder of
364 the trademark rights in the cigarette brand may appear and
365 present evidence. Cigarettes forfeited pursuant to this paragraph
366 shall be destroyed; however, prior to destruction of any such
367 cigarette, the true holder of the trademark rights in the
368 cigarette brand shall be permitted to inspect the cigarette.

369 (f) In addition to any other remedy provided by law, the
370 division or the Attorney General may file an action in circuit
371 court for a violation of this section, including petitioning for
372 injunctive relief or to recover any costs or damages suffered by



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373 the state because of a violation of this section, including
374 enforcement costs relating to the specific violation and
375 attorney's fees. Each violation of this section or of rules
376 adopted under this section constitutes a separate civil violation
377 for which the division or the Attorney General may obtain relief.

378 (g) Whenever any law enforcement personnel or duly
379 authorized representative of the division discovers any
380 cigarettes that have not been marked in the manner required by
381 subsection (6), such personnel or representative is authorized
382 and empowered to seize and take possession of such cigarettes.
383 Such cigarettes shall be turned over to the Department of Revenue
384 and shall be forfeited to the state. Cigarettes seized pursuant
385 to this paragraph shall be destroyed; however, prior to the
386 destruction of any such cigarette, the true holder of the
387 trademark rights in the cigarette brand shall be permitted to
388 inspect the cigarette.

389 (h) Penalties collected under this subsection shall be
390 deposited into the Fire Prevention and Public Safety Trust Fund
391 within the Department of Financial Services.

392 (8) IMPLEMENTATION.--

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

395 (b) The division, in the regular course of conducting
396 inspections of wholesale dealers, agents, and retail dealers as
397 authorized pursuant to chapter 210, may inspect such cigarettes
398 to determine if the cigarettes are marked as required by
399 subsection (6)

400 (9) INSPECTION.--To enforce the provisions of this section,
401 the Attorney General, the Department of Revenue, the division,
402 and their duly authorized representatives and other law

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403 enforcement personnel are authorized to examine the books,
404 papers, invoices, and other records of any person in possession,
405 control, or occupancy of any premises where cigarettes are
406 placed, stored, sold, or offered for sale, as well as the stock
407 of cigarettes on the premises. Every person in the possession,
408 control, or occupancy of any premises where cigarettes are
409 placed, sold, or offered for sale is directed and required to
410 give the Attorney General, the Department of Revenue, the
411 division, and their duly authorized representatives and other law
412 enforcement personnel the means, facilities, and opportunity for
413 the examinations authorized by this subsection.

414 (10) SALE OUTSIDE OF FLORIDA.--Nothing in this section
415 shall be construed to prohibit any person or entity from
416 manufacturing or selling cigarettes that do not meet the
417 requirements of subsection (4) if the cigarettes are or will be
418 stamped for sale in another state or are packaged for sale
419 outside the United States and that person or entity has taken
420 reasonable steps to ensure that such cigarettes will not be sold
421 or offered for sale to persons located in this state.

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

425 Section 2. Effective upon this act becoming a law, and
426 notwithstanding any other provision of law, local government
427 units of this state may neither enact nor enforce any ordinance
428 or other local law or regulation conflicting with, or preempted
429 by, any provision of this act or any policy of this state
430 expressed by this act, whether that policy be expressed by
431 inclusion of a provision in this act or by exclusion of that
432 subject from this act.



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433 Section 3. This act shall take effect July 1, 2008, if SB
 434 2584 and SB 2586, or similar legislation are adopted in the same
 435 legislative session or an extension thereof and becomes law.

436
 437
 438 ===== T I T L E A M E N D M E N T =====

439 And the title is amended as follows:

440 Delete everything before the enacting clause
 441 and insert:

442 A bill to be entitled
 443 An act relating to the Reduced Cigarette Ignition
 444 Propensity Standard and Firefighter Protection Act;
 445 creating s. 633.042, F.S.; providing a short title;
 446 providing legislative findings and intent; providing
 447 definitions; providing cigarette testing methods and
 448 performance standards; providing specific testing
 449 criteria; requiring manufacturers to provide certain
 450 written certification; requiring cigarettes to be marked
 451 in specific manners; providing for alternative testing
 452 methods under certain circumstances; providing reporting
 453 requirements; providing the Division of Alcoholic
 454 Beverages and Tobacco with certain powers and
 455 responsibilities; providing certification requirements for
 456 manufacturers; providing fee; providing for the deposit of
 457 certification fees into the Reduced Cigarette Ignition
 458 Propensity and Firefighter Protection Enforcement Trust
 459 Fund; providing requirements for the marking of certain
 460 cigarette packaging; providing reporting requirements;
 461 providing approval requirements for markings submitted to
 462 the division by a manufacturer; providing notification



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463 requirements; providing fines and penalties; providing for
464 the deposit of penalties into the Fire Prevention and
465 Public Safety Trust Fund; providing the division with
466 rulemaking authority; authorizing certain government
467 entities with inspection powers to examine specified
468 documents of any person in possession, control, or
469 occupancy of any premises where cigarettes are placed,
470 stored, sold, or offered for sale, as well as the stock of
471 cigarettes on the premises; providing that nothing in the
472 act shall be construed to prohibit any person or entity
473 from manufacturing or selling cigarettes that do not meet
474 the specified requirements if such cigarettes are or will
475 be stamped for sale in another state or are packaged for
476 sale outside the United States; providing for repeal upon
477 the enactment of a preemptive federal standard;
478 prohibiting local government units from enacting and
479 enforcing any ordinance or other local law or regulation
480 that conflicts with, or is preempted by, any provision of
481 the act; providing effective dates.