

By Senator Constantine

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1 A bill to be entitled

2 An act relating to cigarettes; creating s. 633.042, F.S.;

3 providing definitions; requiring that cigarettes sold in

4 this state meet certain reduced cigarette ignition

5 propensity standards; providing a test method and

6 performance standards; requiring the use of bands on the

7 paper surrounding the tobacco column of certain

8 cigarettes; requiring certain manufacturers to propose an

9 alternative test method and performance standard for

10 certain cigarettes; requiring a cigarette manufacturer to

11 maintain and make available copies of reports of all tests

12 conducted on certain cigarettes for a specified period;

13 providing a penalty; authorizing the State Fire Marshall

14 to adopt an additional standard testing method for

15 measuring the ignition strength of cigarettes upon a

16 certain finding; requiring the State Fire Marshal to

17 report findings and recommendations to the Legislature;

18 authorizing wholesale and retail dealers to sell their

19 existing inventory of cigarettes under certain

20 circumstances; requiring manufacturers to submit a written

21 certification to the State Fire Marshal; providing

22 requirements for the written certification; requiring the

23 certification to be made available to the Attorney General

24 and the Division of Alcoholic Beverages and Tobacco within

25 the Department of Business and Professional Regulation;

26 requiring recertification; requiring the manufacturer to

27 pay a certification fee; requiring recertification of an

28 altered cigarette; providing for the deposit of

29 certification fees into the Reduced Cigarette Ignition

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30 Propensity and Firefighter Protection Enforcement Trust
31 Fund; requiring the marking of cigarette packaging;
32 providing requirements for marking; requiring the State
33 Fire Marshal to approve the marking; requiring a
34 manufacturer to provide a copy of the certification and
35 copies of an illustration of the package marking to
36 wholesaler dealers and agents; requiring wholesalers and
37 agents to provide a copy of the package markings to retail
38 dealers; requiring wholesaler dealers, agents, and retail
39 dealers to allow the Attorney General to inspect markings;
40 providing for penalties; providing for the deposit of
41 penalties into the Fire Prevention and Public Safety Trust
42 Fund; requiring the State Fire Marshal to adopt rules;
43 authorizing the division to inspect the marking on
44 cigarette packages; authorizing the Attorney General, the
45 division, the State Fire Marshal, and other law
46 enforcement personnel to examine books and records of any
47 person in possession, control, or occupancy of any
48 premises where cigarettes are placed, stored, sold, or
49 offered for sale; providing an exception for compliance
50 for any person or entity who manufactures cigarettes for
51 sale outside the state; providing for the repeal of the
52 act upon adoption of federal standards for reduced
53 cigarette ignition propensity; providing that the act
54 preempts any local ordinance; providing a contingent
55 effective date.

56
57 Be It Enacted by the Legislature of the State of Florida:
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59 Section 1. Section 633.042, Florida Statutes, is created to
60 read:

61 633.042 Reduced ignition propensity standards for
62 cigarettes.--

63 (1) DEFINITIONS.--As used in this section, the term:

64 (a) "Agent" means any person authorized by the Division of
65 Alcoholic Beverages and Tobacco within the Department of Business
66 and Professional Regulation to purchase and affix adhesive or
67 meter stamps on packages of cigarettes.

68 (b) "Cigarette" means:

69 1. Any roll for smoking, whether made wholly or in part of
70 tobacco or any other substance, irrespective of size or shape,
71 and whether or not such tobacco or substance is flavored,
72 adulterated or mixed with any other ingredient, or the wrapper or
73 cover is made of paper or any other substance or material other
74 than leaf tobacco; or

75 2. Any roll for smoking wrapped in any substance containing
76 tobacco which, because of its appearance, the type of tobacco
77 used in the filler, or its packaging and labeling, is likely to
78 be offered to, or purchased by, consumers as a cigarette as
79 described in subparagraph 1.

80 (c) "Division" means the Division of Alcoholic Beverages
81 and Tobacco within the Department of Business and Professional
82 Regulation.

83 (d) "Manufacturer" means:

84 1. Any entity that manufactures or otherwise produces
85 cigarettes or causes cigarettes to be manufactured or produced
86 which the manufacturer intends to be sold in this state,
87 including cigarettes intended to be sold in the United States

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88 through an importer; or

89 2. The first purchaser anywhere that intends to resell in
90 the United States cigarettes manufactured anywhere that the
91 original manufacturer or maker does not intend to be sold in the
92 United States; or

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

95 (e) "Quality control and quality assurance program" means
96 the laboratory procedures implemented to ensure that operator
97 bias, systematic and nonsystematic methodological errors, and
98 equipment-related problems do not affect the results of the
99 testing. This program ensures that the testing repeatability
100 remains within the required repeatability values stated in
101 subparagraph (2) (a) 6. for all test trials used to certify
102 cigarettes in accordance with this section.

103 (f) "Repeatability" means the range of values within which
104 the repeat results of cigarette test trials from a single
105 laboratory will fall 95 percent of the time.

106 (g) "Retail dealer" means any person, other than a
107 manufacturer or wholesale dealer, engaged in selling cigarettes
108 or tobacco products.

109 (h) "Sale" means any transfer of title or possession or
110 both, exchange or barter, conditional or otherwise, in any manner
111 or by any means whatever or any agreement therefor. In addition
112 to cash and credit sales, the giving of cigarettes as samples,
113 prizes, or gifts and the exchanging of cigarettes for any
114 consideration other than money are considered sales.

115 (i) "Sell" means to sell or to offer or agree to do the
116 same.

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117 (j) "Wholesale dealer" means any person other than a
118 manufacturer who sells cigarettes or tobacco products to retail
119 dealers or other persons for purposes of resale, and any person
120 who owns, operates, or maintains one or more cigarette or tobacco
121 product vending machines in, at, or upon premises owned or
122 occupied by any other person.

123 (2) TEST METHOD AND PERFORMANCE STANDARD.--

124 (a) Except as provided in paragraph (g), cigarettes may not
125 be sold or offered for sale in this state or offered for sale or
126 sold to persons located in this state unless the cigarettes have
127 been tested in accordance with the test method and meet the
128 performance standard specified in this subsection, a written
129 certification has been filed by the manufacturer with the State
130 Fire Marshal in accordance with subsection (3), and the
131 cigarettes have been marked in accordance with subsection (4).

132 1. Testing of cigarettes shall be conducted in accordance
133 with the American Society of Testing and Materials (ASTM)
134 standard E2187-04, "Standard Test Method for Measuring the
135 Ignition Strength of Cigarettes."

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

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

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

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

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146 Standardization, or other comparable accreditation standard
147 required by the State Fire Marshal.

148 6. Laboratories conducting testing in accordance with this
149 subsection shall implement a quality control and quality
150 assurance program that includes a procedure that will determine
151 the repeatability of the testing results. The repeatability value
152 shall be no greater than 0.19.

153 7. This subsection does not require additional testing if
154 cigarettes are tested consistent with this section for any other
155 purpose.

156 8. Testing performed or sponsored by the State Fire Marshal
157 to determine a cigarette's compliance with the performance
158 standard required shall be conducted in accordance with this
159 subsection.

160 (b) Each cigarette listed in a certification submitted
161 pursuant to subsection (3) which uses lowered permeability bands
162 in the cigarette paper to achieve compliance with the performance
163 standard set forth in this subsection shall have at least two
164 nominally identical bands on the paper surrounding the tobacco
165 column. At least one complete band shall be located at least 15
166 millimeters from the lighting end of the cigarette. For
167 cigarettes on which the bands are positioned by design, there
168 shall be at least two bands fully located at least 15 millimeters
169 from the lighting end and 10 millimeters from the filter end of
170 the tobacco column, or 10 millimeters from the labeled end of the
171 tobacco column for non-filtered cigarettes.

172 (c) A manufacturer of a cigarette that the State Fire
173 Marshal determines cannot be tested in accordance with the test
174 method prescribed in subparagraph (a)1. shall propose a test

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175 method and performance standard for the cigarette to the State
176 Fire Marshal. Upon approval of the proposed test method and a
177 determination by the State Fire Marshal that the performance
178 standard proposed by the manufacturer is equivalent to the
179 performance standard prescribed in subparagraph (a)3., the
180 manufacturer may employ such test method and performance standard
181 to certify such cigarette pursuant to subsection (3). If the
182 State Fire Marshal determines that another state has enacted
183 reduced cigarette ignition propensity standards that include a
184 test method and performance standard that are the same as those
185 contained in this section, and the State Fire Marshal finds that
186 the officials responsible for implementing those requirements
187 have approved the proposed alternative test method and
188 performance standard for a particular cigarette proposed by a
189 manufacturer as meeting the fire safety standards of that state's
190 law or rules under a legal provision comparable to this
191 subsection, the State Fire Marshal shall authorize that
192 manufacturer to employ the alternative test method and
193 performance standard to certify that cigarette for sale in this
194 state, unless the State Fire Marshal demonstrates a reasonable
195 basis why the alternative test should not be accepted under this
196 section. All other applicable requirements of this subsection
197 shall apply to the manufacturer.

198 (d) Each manufacturer shall maintain copies of the reports
199 of all tests conducted on all cigarettes offered for sale for a
200 period of 3 years and shall make copies of these reports
201 available to the State Fire Marshal and the Attorney General upon
202 written request. Any manufacturer who fails to make copies of
203 these reports available within 60 days after receiving a written

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

207 (e) The State Fire Marshal may adopt a subsequent ASTM
208 standard test method for measuring the ignition strength of
209 cigarettes upon a finding that such subsequent method does not
210 result in a change in the percentage of full-length burns
211 exhibited by any tested cigarette when compared to the percentage
212 of full-length burns the same cigarette would exhibit when tested
213 in accordance with ASTM Standard E2187-04 and the performance
214 standard in subparagraph (a)3.

215 (f) The State Fire Marshal shall review the effectiveness
216 of this section and report every 3 years to the President of the
217 Senate and the Speaker of the House of Representatives the State
218 Fire Marshal's findings and, if appropriate, recommendations for
219 legislation to improve the effectiveness of this section. The
220 report and legislative recommendations shall be submitted by July
221 1 of each 3-year period.

222 (g) The requirements of paragraph (a) do not prohibit:

223 1. A wholesale or retail dealer from selling his or her
224 existing inventory of cigarettes on or after July 1, 2008, if the
225 wholesale or retailer dealer can establish that state tax stamps
226 were affixed to the cigarettes before July 1, 2008, and the
227 wholesale or retailer dealer can establish that the inventory was
228 purchased before July 1, 2008, in comparable quantity to the
229 inventory purchased during the same period of the prior year.

230 2. The sale of cigarettes solely for the purpose of
231 consumer testing. For purposes of this subsection, the term
232 "consumer testing" means an assessment of cigarettes which is

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233 conducted by a manufacturer, or under the control and direction
234 of a manufacturer, for the purpose of evaluating consumer
235 acceptance of such cigarettes using only the quantity of
236 cigarettes that is reasonably necessary for such assessment, and
237 in a controlled setting where the cigarettes are consumed on-site
238 or returned to the testing administrators at the conclusion of
239 the testing.

240 (3) CERTIFICATION AND PRODUCT CHANGE.--

241 (a) Each manufacturer shall submit to the State Fire
242 Marshal a written certification attesting that:

243 1. Each cigarette listed in the certification has been
244 tested in accordance with subsection (2); and

245 2. Each cigarette listed in the certification meets the
246 performance standard set forth in subparagraph (2) (a)3.

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

249 1. Brand or trade name on the package;

250 2. Style, such as light or ultra light;

251 3. Length in millimeters;

252 4. Circumference in millimeters;

253 5. Flavor, such as menthol or chocolate, if applicable;

254 6. Filter or nonfilter;

255 7. Package description, such as soft pack or box;

256 8. Marking approved in accordance with subsection (4);

257 9. The name, address, and telephone number of the

258 laboratory, if different than the manufacturer that conducted the
259 test; and

260 10. The date that the testing occurred.

261 (c) The certifications shall be made available to the

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262 Attorney General for purposes consistent with this section and
263 the division for the purposes of ensuring compliance with this
264 subsection.

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

267 (e) For each cigarette listed in a certification, a
268 manufacturer shall pay to the State Fire Marshal a fee that may
269 not exceed \$250. The State Fire Marshal may annually adjust this
270 fee, not to exceed \$500 per cigarette listed in a certification,
271 to ensure it defrays the actual costs of the processing, testing,
272 enforcement, and oversight activities required by this section.
273 Proceeds of the certification fee shall be deposited into the
274 Cigarette Ignition Propensity and Firefighter Protection
275 Enforcement Trust Fund.

276 (f) If a manufacturer has certified a cigarette pursuant to
277 this subsection and thereafter makes any change to such cigarette
278 which is likely to alter its compliance with the reduced
279 cigarette ignition propensity standards required by this section,
280 that cigarette may not be sold or offered for sale in this state
281 until the manufacturer retests the cigarette in accordance with
282 the testing standards set forth in subsection (2) and maintains
283 records of that retesting. Any altered cigarette that does not
284 meet the performance standard set forth in subsection (2) may not
285 be sold in this state.

286 (4) MARKING OF CIGARETTE PACKAGING.--

287 (a) Cigarettes that are certified by a manufacturer in
288 accordance with subsection (3) shall be marked to indicate
289 compliance with the requirements of subsection (2). The marking
290 shall be in 8-point type or larger and consist of:

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

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

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

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

305 (c) The State Fire Marshal shall be notified as to the
306 marking that is selected.

307 (d) Before the certification of any cigarette, a
308 manufacturer shall present its proposed marking to the State Fire
309 Marshal for approval. Upon receipt of the request, the State Fire
310 Marshal shall approve or disapprove the marking offered, except
311 that the State Fire Marshal shall approve a marking with the
312 letters "FSC," that signifies Fire Standards Compliant, appearing
313 in 8-point type or larger and permanently printed, stamped,
314 engraved, or embossed on the package at or near the UPC bar code.
315 Proposed markings shall be deemed approved if the State Fire
316 Marshal fails to act within 10 business days after receiving a
317 request for approval.

318 (e) A manufacturer may not modify its approved marking
319 unless the modification has been approved by the State Fire

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320 Marshal in accordance with this subsection.

321 (f) A manufacturer certifying a cigarette in accordance
322 with subsection (3) shall provide a copy of the certification to
323 each wholesale dealer and agent to which he or she sells
324 cigarettes and shall also provide sufficient copies of an
325 illustration of the package marking used by the manufacturer
326 pursuant to this subsection for each retail dealer to which the
327 wholesale dealer or agent sells cigarettes. Each wholesale dealer
328 and agent shall provide a copy of these package markings received
329 from a manufacturer to each retail dealer to which he or she
330 sells cigarettes. Wholesale dealers, agents, and retail dealers
331 shall allow the State Fire Marshal, the division, the Attorney
332 General, and each agency's respective employees to inspect
333 markings of cigarette packaging marked in accordance with this
334 subsection.

335 (5) PENALTIES.--

336 (a) A manufacturer, wholesale dealer, agent, or any other
337 person or entity that knowingly sells or offers to sell
338 cigarettes, other than through retail sale, in violation of
339 subsection (2), shall pay a civil penalty not to exceed \$100 for
340 each pack of such cigarettes sold or offered for sale. The
341 penalty against any such person or entity may not exceed \$100,000
342 during any 30-day period.

343 (b) A retail dealer who knowingly sells or offers to sell
344 cigarettes in violation of subsection (2) shall pay a civil
345 penalty not to exceed \$100 for each pack of such cigarettes sold
346 or offered for sale. The penalty against any such person or
347 entity may not exceed \$25,000 for sales or offers to sell during
348 any 30-day period.

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349 (c) In addition to any penalty prescribed by law, any
350 corporation, partnership, sole proprietor, limited partnership,
351 or association engaged in the manufacture of cigarettes which
352 knowingly makes a false certification pursuant to subsection (3)
353 shall pay a civil penalty of at least \$75,000, not to exceed
354 \$250,000 for each such false certification.

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

359 (e) Any cigarettes that have been sold or offered for sale
360 which do not comply with the performance standard required by
361 subsection (2) are subject to forfeiture in accordance with
362 chapter 210. Cigarettes forfeited pursuant to this section shall
363 be destroyed. Before destruction of any cigarette forfeited
364 pursuant to this paragraph, the true holder of the trademark
365 rights in the cigarette brand shall be allowed to inspect the
366 cigarettes.

367 (f) In addition to any other remedy provided by law, the
368 State Fire Marshal or the Attorney General may file an action in
369 circuit court, including petitioning for injunctive relief and
370 recovery for any costs or damages suffered by the state because
371 of a violation of this section, including enforcement costs
372 relating to the specific violation and attorney's fees. Each
373 violation of this section or rules adopted by the division under
374 this section constitutes a separate civil violation for which the
375 State Fire Marshal or Attorney General may obtain relief.

376 (g) Whenever any law enforcement personnel or duly
377 authorized representative of the State Fire Marshal discovers any

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378 cigarettes that have not been marked in the manner required by
379 section (4), such personnel may seize and take possession of such
380 cigarettes. Such cigarettes shall be turned over to the division
381 and shall be forfeited to the state. Cigarettes seized pursuant
382 to this section shall be destroyed; however, before the
383 destruction of any cigarette seized pursuant to this paragraph,
384 the true holder of the trademark rights in the cigarette brand
385 shall be allowed to inspect the cigarette.

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

389 (6) IMPLEMENTATION.--

390 (a) The State Fire Marshal may adopt rules pursuant to ss.
391 120.536(1) and 120.54 to administer this section.

392 (b) The division, in the regular course of conducting
393 inspections of wholesale dealers, agents, and retail dealers, as
394 authorized under chapter 569, may inspect cigarettes to determine
395 if the cigarettes are marked as required by subsection (4). If
396 the cigarettes are not marked as required, the division shall
397 notify the State Fire Marshal.

398 (7) INSPECTION.--In order to enforce the provisions of this
399 section, the Attorney General, the division, and the State Fire
400 Marshal, their duly authorized representatives, and other law
401 enforcement personnel may examine the books, papers, invoices,
402 and other records of any person in possession, control, or
403 occupancy of any premises where cigarettes are placed, stored,
404 sold, or offered for sale, as well as the stock of cigarettes on
405 the premises. Each person in the possession, control, or
406 occupancy of any premises where cigarettes are placed, sold, or

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407 offered for sale shall give the Attorney General, the division,
408 the State Fire Marshal, the authorized representatives of each
409 respective agency, or other law enforcement personnel the means,
410 facilities, and opportunity for the examinations authorized by
411 this subsection.

412 (8) SALE OUTSIDE THE STATE.--This section does not prohibit
413 any person or entity from manufacturing or selling cigarettes
414 that do not meet the requirements of subsection (2) if the
415 cigarettes are or will be stamped for sale in another state or
416 are packaged for sale outside the United States and that person
417 or entity has taken reasonable steps to ensure that such
418 cigarettes will not be sold or offered for sale to persons
419 located in this state.

420 (10) PREEMPTION.--This section shall be repealed if a
421 federal reduced cigarette ignition propensity standard that
422 preempts this section is adopted and becomes effective. However,
423 this section supersedes any municipality or county ordinance on
424 the subject.

425 Section 2. This act shall take effect July 1, 2008, if SB
426 ____ and SB _____, or similar legislation are adopted in the
427 same legislative session or an extension thereof and becomes law.