

By the Committee on Regulated Industries; and Senator
Constantine

580-06343A-08

20082640c1

1 A bill to be entitled
2 An act relating to the Reduced Cigarette Ignition
3 Propensity Standard and Firefighter Protection Act;
4 creating s. 633.042, F.S.; providing a short title;
5 providing legislative findings and intent; providing
6 definitions; providing cigarette testing methods and
7 performance standards; providing specific testing
8 criteria; requiring manufacturers to provide certain
9 written certification; requiring cigarettes to be marked
10 in specific manners; providing for alternative testing
11 methods under certain circumstances; providing reporting
12 requirements; providing the Division of Alcoholic
13 Beverages and Tobacco with certain powers and
14 responsibilities; providing certification requirements for
15 manufacturers; providing fee; providing for the deposit of
16 certification fees into the Reduced Cigarette Ignition
17 Propensity and Firefighter Protection Enforcement Trust
18 Fund; providing requirements for the marking of certain
19 cigarette packaging; providing reporting requirements;
20 providing approval requirements for markings submitted to
21 the division by a manufacturer; providing notification
22 requirements; providing fines and penalties; providing for
23 the deposit of penalties into the Fire Prevention and
24 Public Safety Trust Fund; providing the division with
25 rulemaking authority; authorizing certain government
26 entities with inspection powers to examine specified
27 documents of any person in possession, control, or
28 occupancy of any premises where cigarettes are placed,
29 stored, sold, or offered for sale, as well as the stock of

580-06343A-08

20082640c1

30 cigarettes on the premises; providing that nothing in the
31 act shall be construed to prohibit any person or entity
32 from manufacturing or selling cigarettes that do not meet
33 the specified requirements if such cigarettes are or will
34 be stamped for sale in another state or are packaged for
35 sale outside the United States; providing for repeal upon
36 the enactment of a preemptive federal standard;
37 prohibiting local government units from enacting and
38 enforcing any ordinance or other local law or regulation
39 that conflicts with, or is preempted by, any provision of
40 the act; providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 633.042, Florida Statutes, is created to
45 read:

46 633.042 Reduced Cigarette Ignition Propensity Standard and
47 Firefighter Protection Act.--

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

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

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

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

580-06343A-08

20082640c1

59 | in 2006.

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

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

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

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

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

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

85 | (i) It is therefore fitting and proper for this state to
86 | adopt the cigarette firesafety standard that is in effect in the
87 | State of New York to reduce the likelihood that cigarettes will

580-06343A-08

20082640c1

88 cause fires and result in deaths, injuries, and property damages.

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

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

94 (b) "Cigarette" means:

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

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

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

109 (d) "Manufacturer" means:

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

115 2. Any entity, regardless of location, that first purchases
116 cigarettes manufactured anywhere and not intended by the original

580-06343A-08

20082640c1

117 manufacturer or maker to be sold in the United States and that
118 intends to resell such cigarettes in the United 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 any person, other than a
133 manufacturer or wholesale dealer, engaged in selling cigarettes.

134 (h) "Sale" means any transfer of title or possession or
135 both, exchange or barter, conditional or otherwise, in any manner
136 or by any means whatever or any agreement therefor. In addition
137 to cash and credit sales, the giving of cigarettes as samples,
138 prizes, or gifts and the exchanging of cigarettes for any
139 consideration other than money are considered sales.

140 (i) "Sell" means to execute a sale or to offer or agree to
141 execute a sale.

142 (j) "Wholesale dealer" means:

143 1. Any person other than a manufacturer who sells
144 cigarettes to retail dealers or other persons for purposes of
145 resale; or

580-06343A-08

20082640c1

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

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 for
152 sale to persons located in this state, unless the cigarettes have
153 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 paper.

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

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

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

174 6. Laboratories conducting testing in accordance with this

580-06343A-08

20082640c1

175 subsection shall implement a quality control and quality
176 assurance program that includes a procedure that will determine
177 the repeatability of the testing results. The repeatability value
178 shall be no greater than 0.19.

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

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

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

199 (c) A manufacturer of a cigarette that the division
200 determines cannot be tested in accordance with the test method
201 prescribed in subparagraph (a)1. shall propose a test method and
202 performance standard for the cigarette to the division. Upon
203 approval of the proposed test method and a determination by the

580-06343A-08

20082640c1

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

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

580-06343A-08

20082640c1

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

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

250 (g) The requirements of paragraph (a) shall not prohibit:
251 1. Wholesale or retail dealers from selling their existing
252 inventory of cigarettes on or after the effective date of this
253 section if the wholesale or retailer dealer can establish that
254 state tax stamps were affixed to the cigarettes prior to the
255 effective date and the wholesale or retailer dealer can establish
256 that the inventory was purchased prior to the effective date in
257 comparable quantity to the inventory purchased during the same
258 period of the prior year; or
259 2. The sale of cigarettes solely for the purpose of
260 consumer testing. For purposes of this subparagraph, the term
261 "consumer testing" means an assessment of cigarettes that is

580-06343A-08

20082640c1

262 conducted by or is under the control and direction of a
263 manufacturer for the purpose of evaluating consumer acceptance of
264 such cigarettes, that uses only the quantity of cigarettes that
265 is reasonably necessary for such assessment.

266 (h) It is the intent of the Legislature to promote
267 uniformity among the states in the regulation of cigarettes per
268 this section. As a result, the Legislature intends that the
269 resolution of issues regarding the interpretation or
270 implementation of this section be made in a manner consistent
271 with the New York Fire Safety Standards for Cigarettes, New York
272 Executive Law, Section 156-c, as amended and Part 429 of Title 19
273 New York Codes, Rules, and Regulations, as amended, that are in
274 effect on March 1, 2008.

275 (5) CERTIFICATION AND PRODUCT CHANGE.--

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

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

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

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

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

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

286 3. Length in millimeters.

287 4. Circumference in millimeters.

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

289 6. Filter or nonfilter.

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

580-06343A-08

20082640c1

291 8. Marking pursuant to subsection (6).

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

295 10. The date the testing occurred.

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

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

302 (e) At the time is submits a written certification under
303 subsection (5), a manufacturer shall pay to the division a fee of
304 \$250 for each brand family of cigarettes listed in the
305 certification. The fee paid shall apply to all cigarettes within
306 the brand family certified and shall include any new cigarette
307 certified within the brand family during the 3-year certification
308 period. Proceeds of the certification fee shall be deposited into
309 the Reduced Cigarette Ignition Propensity and Firefighter
310 Protection Enforcement Trust Fund.

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

580-06343A-08

20082640c1

320 forth in subsection (4) may not be sold in this state.

321 (6) MARKING OF CIGARETTE PACKAGING.--

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

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

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

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

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

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

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

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

580-06343A-08

20082640c1

349 Cigarettes; or

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

354

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

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

361 (f) Manufacturers certifying cigarettes in accordance with
362 subsection (5) shall provide a copy of the certifications to all
363 wholesale dealers and agents to which they sell cigarettes and
364 shall also provide sufficient copies of an illustration of the
365 package marking used by the manufacturer pursuant to this
366 subsection for each retail dealer to which the wholesale dealers
367 or agents sell cigarettes. Wholesale dealers and agents shall
368 provide a copy of these package markings received from
369 manufacturers to all retail dealers to which they sell
370 cigarettes. Wholesale dealers, agents, and retail dealers shall
371 permit the division, the Department of Revenue, the Attorney
372 General, and their employees to inspect markings of cigarette
373 packaging marked in accordance with this subsection.

374 (7) PENALTIES.--

375 (a) A manufacturer, wholesale dealer, agent, or any other
376 person or entity that knowingly sells or offers to sell
377 cigarettes, other than through retail sale, in violation of

580-06343A-08

20082640c1

378 subsection (4) shall be subject to a civil penalty not to exceed
379 \$100 for each pack of such cigarettes sold or offered for sale.
380 In no case shall the penalty against any such person or entity
381 exceed \$100,000 during any 30-day period.

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

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

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

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

406 (f) In addition to any other remedy provided by law, the

580-06343A-08

20082640c1

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

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

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

429 (8) IMPLEMENTATION.--

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

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

580-06343A-08

20082640c1

436 subsection (6)

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

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

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

462 Section 2. Effective upon this act becoming a law, and
463 notwithstanding any other provision of law, local government
464 units of this state may neither enact nor enforce any ordinance

580-06343A-08

20082640c1

465 or other local law or regulation conflicting with, or preempted
466 by, any provision of this act or any policy of this state
467 expressed by this act, whether that policy be expressed by
468 inclusion of a provision in this act or by exclusion of that
469 subject from this act.

470 Section 3. This act shall take effect January 1, 2010, if
471 SB 2584 and SB 2586, or similar legislation is adopted in the
472 same legislative session or an extension thereof and becomes law.