

By the Committees on General Government Appropriations;
Regulated Industries; and Senator Constantine

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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

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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 effective dates.

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

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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

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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

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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:

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

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

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

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

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

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

150 (a) Except as provided in paragraph (g), no cigarettes may
151 be sold or offered for sale in this state, or sold or offered 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 be applied only 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

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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 consistently with this section for any
181 other purpose.

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

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

200 (c) A manufacturer of a cigarette that the State Fire
201 Marshal determines cannot be tested in accordance with the test
202 method prescribed in subparagraph (a)1. shall propose a test
203 method and performance standard for the cigarette to the State

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

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

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233 for each day after the 60th day that the manufacturer does not
234 make such copies available.

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

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

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

253 1. Wholesale or retail dealers from selling their existing
254 inventory of cigarettes on or after the effective date of this
255 section if the wholesale or retailer dealer can establish that
256 state tax stamps were affixed to the cigarettes prior to the
257 effective date and the wholesale or retailer dealer can establish
258 that the inventory was purchased prior to the effective date in
259 comparable quantity to the inventory purchased during the same
260 period of the prior year; or

261 2. The sale of cigarettes solely for the purpose of

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262 consumer testing. For purposes of this subparagraph, the term
263 "consumer testing" means an assessment of cigarettes that is
264 conducted by or is under the control and direction of a
265 manufacturer for the purpose of evaluating consumer acceptance of
266 such cigarettes and that uses only the quantity of cigarettes
267 that is reasonably necessary for such assessment.

268 (h) It is the intent of the Legislature by this section to
269 promote uniformity among the states in the regulation of reduced
270 cigarette ignition propensity. As a result, the resolution of
271 issues regarding the interpretation and implementation of this
272 section should be made in a manner consistent with the New York
273 Fire Safety Standards for Cigarettes, New York Executive Law,
274 Section 156-C, as amended, and Part 429 of Title 19 New York
275 Codes, Rules, and Regulations, as amended, and the interpretation
276 and implementation thereof, as they exist on March 1, 2008.

277 (5) CERTIFICATION AND PRODUCT CHANGE.--

278 (a) Each manufacturer shall submit to the division a
279 written certification attesting that:

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

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

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

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

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

288 3. Length in millimeters.

289 4. Circumference in millimeters.

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

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- 291 6. Filter or nonfilter.
- 292 7. Package description, such as soft pack or box.
- 293 8. Marking pursuant to subsection (6).
- 294 9. The name, address, and telephone number of the testing
295 laboratory, if different from the name, address, and telephone
296 number of the manufacturer that conducted the test.
- 297 10. The date the testing occurred.
- 298 (c) Each certification shall be made available to the
299 Attorney General for purposes consistent with this section and to
300 the State Fire Marshal for the purposes of ensuring compliance
301 with this subsection.
- 302 (d) Each cigarette certified under this subsection shall be
303 recertified every 3 years.
- 304 (e) If a manufacturer has certified a cigarette pursuant to
305 this subsection and thereafter makes any change to such cigarette
306 that is likely to alter its compliance with the reduced cigarette
307 ignition propensity standards required by this section, that
308 cigarette shall not be sold or offered for sale in this state
309 until the manufacturer retests the cigarette in accordance with
310 the testing standards set forth in subsection (4) and maintains
311 records of that retesting as required by subsection (4). Any
312 altered cigarette that does not meet the performance standard set
313 forth in subsection (4) may not be sold in this state.
- 314 (6) MARKING OF CIGARETTE PACKAGING.--
- 315 (a) Cigarettes that are certified by a manufacturer in
316 accordance with subsection (5) shall be marked to indicate
317 compliance with the requirements of subsection (4). The marking
318 shall be in 8-point type or larger and consist of:
- 319 1. Modification of the universal product code to include a

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320 visible mark printed at or around the area of the universal
321 product code. The mark may consist of alphanumeric or symbolic
322 characters permanently stamped, engraved, embossed, or printed in
323 conjunction with the universal product code;

324 2. Any visible combination of alphanumeric or symbolic
325 characters permanently stamped, engraved, or embossed upon the
326 cigarette package or cellophane wrap; or

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

329 (b) A manufacturer shall use only one marking and shall
330 apply this marking uniformly for all brands and all packages,
331 including, but not limited to, packs, cartons, and cases,
332 marketed by that manufacturer.

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

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

340 1. Any marking in use and approved for sale in the State of
341 New York pursuant to the New York Fire Safety Standards for
342 Cigarettes; or

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

347
348 Proposed markings shall be deemed approved if the division fails

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349 to act within 10 business days after receiving a request for
350 approval.

351 (e) No manufacturer shall modify its approved marking
352 unless the modification has been approved by the division in
353 accordance with this subsection.

354 (f) Manufacturers certifying cigarettes in accordance with
355 subsection (5) shall provide a copy of the certifications to all
356 wholesale dealers and agents to which they sell cigarettes and
357 shall also provide sufficient copies of an illustration of the
358 package marking used by the manufacturer pursuant to this
359 subsection for each retail dealer to which the wholesale dealers
360 or agents sell cigarettes. Wholesale dealers and agents shall
361 provide a copy of these package markings received from
362 manufacturers to all retail dealers to which they sell
363 cigarettes. Wholesale dealers, agents, and retail dealers shall
364 permit the division, the State Fire Marshal, the Attorney
365 General, and their employees to inspect markings of cigarette
366 packaging marked in accordance with this subsection.

367 (7) PENALTIES.--

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

375 (b) A retail dealer who knowingly sells or offers to sell
376 cigarettes in violation of subsection (4) is subject to a civil
377 penalty, not to exceed \$100 for each pack of such cigarettes sold

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378 or offered for sale. In no case shall the penalty against any
379 retail dealer exceed \$25,000 during any 30-day period.

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

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

390 (e) Any penalties collected under this subsection shall be
391 deposited into the Insurance Regulatory Trust Fund of the
392 Department of Financial Services to support costs associated with
393 the responsibilities of the State Fire Marshal under this
394 section.

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

405 (g) Whenever any law enforcement personnel or duly
406 authorized representative of the division discovers any

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

415 (8) IMPLEMENTATION.--

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

418 (b) The division, in the regular course of conducting
419 inspections of wholesale dealers, agents, and retail dealers as
420 authorized pursuant to chapter 210, may inspect such cigarettes
421 to determine if the cigarettes are marked as required by
422 subsection (6).

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

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436 authorized by this subsection.

437 (10) SALE OUTSIDE FLORIDA.--Nothing in this section shall
438 be construed to prohibit any person or entity from manufacturing
439 or selling cigarettes that do not meet the requirements of
440 subsection (4) if the cigarettes are or will be stamped for sale
441 in another state or are packaged for sale outside the United
442 States and that person or entity has taken reasonable steps to
443 ensure that such cigarettes will not be sold or offered for sale
444 to persons located in this state.

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

448 Section 2. Effective upon this act becoming a law, and
449 notwithstanding any other provision of law, local government
450 units of this state may neither enact nor enforce any ordinance
451 or other local law or regulation conflicting with, or preempted
452 by, any provision of this act or any policy of this state
453 expressed by this act, whether that policy be expressed by
454 inclusion of a provision in this act or by exclusion of that
455 subject from this act.

456 Section 3. Except as otherwise expressly provided in this
457 act and except for this section, which shall take effect upon
458 becoming a law, this act shall take effect January 1, 2010.