

Council Substitute for
Committee Substitute for House Bill No. 1167

An act relating to the Reduced Cigarette Ignition Propensity Standard and Firefighter Protection Act; creating s. 633.042, F.S.; providing a short title; providing legislative findings and intent; providing definitions; providing cigarette testing methods and performance standards; providing specific testing criteria; requiring manufacturers to provide certain written certification; requiring cigarettes to be marked in specific manners; providing for alternative testing methods under certain circumstances; providing reporting requirements; providing the Division of Alcoholic Beverages and Tobacco and the State Fire Marshal with certain powers and responsibilities; providing certification requirements for manufacturers; providing requirements for the marking of certain cigarette packaging; providing reporting requirements; providing approval requirements for markings submitted to the division by a manufacturer; providing notification requirements; providing fines and penalties; providing the division and the State Fire Marshal with rulemaking authority; authorizing certain governmental entities with inspection powers to examine specified documents of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises; providing that nothing in the act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the specified requirements if such cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States; providing for repeal upon the enactment of a preemptive federal standard; prohibiting local government units from enacting and enforcing any ordinance or other local law or regulation that conflicts with, or is preempted by, any provision of the act; providing effective dates.

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

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

633.042 Reduced Cigarette Ignition Propensity Standard and Firefighter Protection Act.—

(1) SHORT TITLE.—This section may be cited as the “Reduced Cigarette Ignition Propensity Standard and Firefighter Protection Act.”

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds and declares that:

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

(b) Each year in the United States, between 700 and 900 persons are killed and around 3,000 persons are injured in fires ignited by cigarettes,

while in this state 153 residential fires and 5 fatalities were attributable to fires caused by cigarettes in 2006.

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

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

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

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

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

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

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

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

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

(b) "Cigarette" means:

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

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

(c) “Division” means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(d) “Manufacturer” means:

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

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

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

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

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

(g) “Retail dealer” means:

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

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

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

(i) “Sell” means to execute a sale or to offer or agree to execute a sale.

(j) “Wholesale dealer” means any person, other than a manufacturer, who sells cigarettes to retail dealers or other persons for purposes of resale.

(4) TEST METHOD AND PERFORMANCE STANDARD.—

(a) Except as provided in paragraph (f), no cigarettes may be sold or offered for sale in this state, or sold or offered for sale to persons located in

this state, unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this subsection, a written certification has been filed by the manufacturer with the division in accordance with subsection (5), and the cigarettes have been marked in accordance with subsection (6).

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

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

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

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

5. Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization or another comparable accreditation standard required by the State Fire Marshal.

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

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

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

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

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

method and a determination by the State Fire Marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subparagraph (a)3., the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to subsection (5). If the State Fire Marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this section, and if the State Fire Marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the firesafety standards of that state's law or regulation under a legal provision comparable to this subsection, the State Fire Marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state unless the State Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under this section. All other applicable requirements of this subsection shall apply to the manufacturer.

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

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

(f) The requirements of paragraph (a) shall not prohibit:

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

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

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

(5) CERTIFICATION AND PRODUCT CHANGE.—

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

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

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

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

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

2. Style, such as light or ultra light.

3. Length in millimeters.

4. Circumference in millimeters.

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

6. Filter or nonfilter.

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

8. Marking pursuant to subsection (6).

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

10. The date the testing occurred.

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

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

(e) If a manufacturer has certified a cigarette pursuant to this subsection and thereafter makes any change to such cigarette that is likely to alter its

compliance with the reduced cigarette ignition propensity standards required by this section, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in subsection (4) and maintains records of that retesting as required by subsection (4). Any altered cigarette that does not meet the performance standard set forth in subsection (4) may not be sold in this state.

(6) MARKING OF CIGARETTE PACKAGING.—

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

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

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

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

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

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

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

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

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

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

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

(f) Manufacturers certifying cigarettes in accordance with subsection (5) shall provide a copy of the certifications to all wholesale dealers and agents

to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking used by the manufacturer pursuant to this subsection for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the division, the State Fire Marshal, the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this subsection.

(7) PENALTIES.—

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

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

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

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

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

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

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

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

(8) IMPLEMENTATION.—

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

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

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

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

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

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

Section 3. Except as otherwise expressly provided in this act, this act shall take effect January 1, 2010.

Approved by the Governor June 10, 2008.

Filed in Office Secretary of State June 10, 2008.