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CS/CS/HB 1167, Engrossed 1

2008 Legislature

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 and the State Fire Marshal with
14 certain powers and responsibilities; providing
15 certification requirements for manufacturers; providing
16 requirements for the marking of certain cigarette
17 packaging; providing reporting requirements; providing
18 approval requirements for markings submitted to the
19 division by a manufacturer; providing notification
20 requirements; providing fines and penalties; providing the
21 division and the State Fire Marshal with rulemaking
22 authority; authorizing certain governmental entities with
23 inspection powers to examine specified documents of any
24 person in possession, control, or occupancy of any
25 premises where cigarettes are placed, stored, sold, or
26 offered for sale, as well as the stock of cigarettes on
27 the premises; providing that nothing in the act shall be
28 construed to prohibit any person or entity from

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 manufacturing or selling cigarettes that do not meet the
 30 specified requirements if such cigarettes are or will be
 31 stamped for sale in another state or are packaged for sale
 32 outside the United States; providing for repeal upon the
 33 enactment of a preemptive federal standard; prohibiting
 34 local government units from enacting and enforcing any
 35 ordinance or other local law or regulation that conflicts
 36 with, or is preempted by, any provision of the act;
 37 providing effective dates.

38

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

40

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

43 633.042 Reduced Cigarette Ignition Propensity Standard and
 44 Firefighter Protection Act.--

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

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

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

52 (b) Each year in the United States, between 700 and 900
 53 persons are killed and around 3,000 persons are injured in fires
 54 ignited by cigarettes, while in this state 153 residential fires
 55 and 5 fatalities were attributable to fires caused by cigarettes
 56 in 2006.

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

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

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

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

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

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

83 (i) It is therefore fitting and proper for this state to
84 adopt the cigarette firesafety standard that is in effect in the

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85 State of New York to reduce the likelihood that cigarettes will
 86 cause fires and result in deaths, injuries, and property
 87 damages.

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

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

93 (b) "Cigarette" means:

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

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

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

108 (d) "Manufacturer" means:

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

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113 through an importer;

114 2. Any entity, regardless of location, that first
 115 purchases cigarettes manufactured anywhere and not intended by
 116 the original manufacturer or maker to be sold in the United
 117 States and that intends to resell such cigarettes in the United
 118 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
 140 manner or by any means whatever or any agreement therefor. In

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141 addition to cash and credit sales, the giving of cigarettes as
 142 samples, prizes, or gifts and the exchanging of cigarettes for
 143 any 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.

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 (f), no cigarettes may
 151 be sold or offered for sale in this state, or sold or offered
 152 for sale to persons located in this state, unless the cigarettes
 153 have 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
 163 paper.

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

168 4. The performance standard required by this subsection

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169 shall only be applied to a complete test trial.

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

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

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

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

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

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197 shall be at least two bands fully located at least 15
 198 millimeters from the lighting end and 10 millimeters from the
 199 filter end of the tobacco column, or 10 millimeters from the
 200 labeled end of the tobacco column for nonfiltered cigarettes.
 201 (c) A manufacturer of a cigarette that the State Fire
 202 Marshal determines cannot be tested in accordance with the test
 203 method prescribed in subparagraph (a)1. shall propose a test
 204 method and performance standard for the cigarette to the State
 205 Fire Marshal. Upon approval of the proposed test method and a
 206 determination by the State Fire Marshal that the performance
 207 standard proposed by the manufacturer is equivalent to the
 208 performance standard prescribed in subparagraph (a)3., the
 209 manufacturer may employ such test method and performance
 210 standard to certify such cigarette pursuant to subsection (5).
 211 If the State Fire Marshal determines that another state has
 212 enacted reduced cigarette ignition propensity standards that
 213 include a test method and performance standard that are the same
 214 as those contained in this section, and if the State Fire
 215 Marshal finds that the officials responsible for implementing
 216 those requirements have approved the proposed alternative test
 217 method and performance standard for a particular cigarette
 218 proposed by a manufacturer as meeting the firesafety standards
 219 of that state's law or regulation under a legal provision
 220 comparable to this subsection, the State Fire Marshal shall
 221 authorize that manufacturer to employ the alternative test
 222 method and performance standard to certify that cigarette for
 223 sale in this state unless the State Fire Marshal demonstrates a
 224 reasonable basis why the alternative test should not be accepted

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225 under this section. All other applicable requirements of this
226 subsection shall apply to the manufacturer.

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

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

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

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

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253 period of the prior year; or

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

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

271 (5) CERTIFICATION AND PRODUCT CHANGE.--

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

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

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

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

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

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- 281 2. Style, such as light or ultra light.
- 282 3. Length in millimeters.
- 283 4. Circumference in millimeters.
- 284 5. Flavor, such as menthol or chocolate, if applicable.
- 285 6. Filter or nonfilter.
- 286 7. Package description, such as soft pack or box.
- 287 8. Marking pursuant to subsection (6).
- 288 9. The name, address, and telephone number of the testing
 289 laboratory, if different from the name, address, and telephone
 290 number of the manufacturer that conducted the test.

291 10. The date the testing occurred.

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

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

298 (e) If a manufacturer has certified a cigarette pursuant
 299 to this subsection and thereafter makes any change to such
 300 cigarette that is likely to alter its compliance with the
 301 reduced cigarette ignition propensity standards required by this
 302 section, that cigarette shall not be sold or offered for sale in
 303 this state until the manufacturer retests the cigarette in
 304 accordance with the testing standards set forth in subsection
 305 (4) and maintains records of that retesting as required by
 306 subsection (4). Any altered cigarette that does not meet the
 307 performance standard set forth in subsection (4) may not be sold
 308 in this state.

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309 (6) MARKING OF CIGARETTE PACKAGING.--
 310 (a) Cigarettes that are certified by a manufacturer in
 311 accordance with subsection (5) shall be marked to indicate
 312 compliance with the requirements of subsection (4). The marking
 313 shall be in 8-point type or larger and consist of:
 314 1. Modification of the universal product code to include a
 315 visible mark printed at or around the area of the universal
 316 product code. The mark may consist of alphanumeric or symbolic
 317 characters permanently stamped, engraved, embossed, or printed
 318 in conjunction with the universal product code;
 319 2. Any visible combination of alphanumeric or symbolic
 320 characters permanently stamped, engraved, or embossed upon the
 321 cigarette package or cellophane wrap; or
 322 3. Printed, stamped, engraved, or embossed text that
 323 indicates that the cigarettes meet the standards of this
 324 section.
 325 (b) A manufacturer shall use only one marking and shall
 326 apply this marking uniformly for all brands and all packages,
 327 including, but not limited to, packs, cartons, and cases,
 328 marketed by that manufacturer.
 329 (c) The division shall be notified as to the marking that
 330 is selected.
 331 (d) Prior to the certification of any cigarette, a
 332 manufacturer shall present its proposed marking to the division
 333 for approval. Upon receipt of the request, the division shall
 334 approve or disapprove the marking offered, except that the
 335 division shall approve:
 336 1. Any marking in use and approved for sale in the State

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337 of New York pursuant to the New York Fire Safety Standards for
 338 Cigarettes; or

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

343
 344 Proposed markings shall be deemed approved if the division fails
 345 to act within 10 business days after receiving a request for
 346 approval.

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

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

363 (7) PENALTIES.--

364 (a) A manufacturer, wholesale dealer, agent, or any other

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365 person or entity that knowingly sells or offers to sell
366 cigarettes, other than through retail sale, in violation of
367 subsection (4) shall be subject to a civil penalty not to exceed
368 \$100 for each pack of such cigarettes sold or offered for sale.
369 In no case shall the penalty against any such person or entity
370 exceed \$100,000 during any 30-day period.

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

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

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

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

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

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

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

413 (8) IMPLEMENTATION.--

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

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

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

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

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

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

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449 or other local law or regulation conflicting with, or preempted
450 by, any provision of this act or any policy of this state
451 expressed by this act, whether that policy be expressed by
452 inclusion of a provision in this act or by exclusion of that
453 subject from this act.

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