



Sen. William R. Haine

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1 AMENDMENT TO SENATE BILL 2302

2 AMENDMENT NO. _____. Amend Senate Bill 2302 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Cigarette Fire Safety Standard Act.

6 Section 5. Definitions. As used in this Act:

7 "Agent" means any person licensed by the Department of
8 Revenue to purchase and affix adhesive or meter stamps on
9 packages of cigarettes.

10 "Cigarette" means any roll for smoking, whether made wholly
11 or in part of tobacco or any other substance, irrespective of
12 size or shape, and whether or not such tobacco or substance is
13 flavored, adulterated, or mixed with any other ingredient, the
14 wrapper or cover of which is made of paper or any other
15 substance or material except tobacco.

16 "Manufacturer" means:

17 (1) any entity that manufactures or otherwise produces
18 cigarettes or causes cigarettes to be manufactured or
19 produced anywhere that the manufacturer intends to be sold
20 in this State, including cigarettes intended to be sold in
21 the United States through an importer;

22 (2) the first purchaser anywhere that intends to resell
23 in the United States cigarettes manufactured anywhere that
24 the original manufacturer or maker does not intend to be

1 sold in the United States; or

2 (3) any entity that becomes a successor of an entity
3 described in items (1) or (2) of this definition.

4 "Repeatability" means the range of values within which the
5 repeat results of cigarette test trials from a single
6 laboratory will fall 95% of the time.

7 "Retail dealer" means any person, other than a wholesale
8 dealer, engaged in selling cigarettes or tobacco products.

9 "Sale" means any transfer of title or possession or both,
10 exchange or barter, conditional or otherwise, in any manner or
11 by any means whatever or any agreement therefor. In addition to
12 cash and credit sales, the giving of cigarettes as samples,
13 prizes, or gifts and the exchanging of cigarettes for any
14 consideration other than money are considered sales.

15 "Sell" means to sell, or to offer or agree to do the same.

16 "Quality control and quality assurance program" means the
17 laboratory procedures implemented to ensure that operator
18 bias, systematic and nonsystematic methodological errors, and
19 equipment-related problems do not affect the results of the
20 testing. This program ensures that the testing repeatability
21 remains within the required repeatability values stated in
22 subsection (e) of Section 15 of this Act for all test trials
23 used to certify cigarettes in accordance with this Act.

24 "Wholesale dealer" means any person who sells cigarettes or
25 tobacco products to retail dealers or other persons for
26 purposes of resale, and any person who owns, operates, or
27 maintains one or more cigarette or tobacco product vending
28 machines in, at, or upon premises owned or occupied by any
29 other person.

30 Section 10. General requirements.

31 (a) On and after the effective date of this Act, no
32 cigarettes shall be sold or offered for sale in this State
33 unless:

1 (1) the cigarettes have been tested in accordance with
2 the test method prescribed in Section 15 of this Act;

3 (2) the cigarettes meet the performance standard
4 specified in Section 20 of this Act; and

5 (3) a written certification has been filed by the
6 manufacturer with the Office of the State Fire Marshal and
7 the Office of Attorney General in accordance with Section
8 30 of this Act.

9 (b) Nothing in this Act prohibits wholesale dealers or
10 retail dealers from selling their inventory of cigarettes
11 existing on the effective date of this Act, provided that the
12 wholesale dealer or retail dealer establishes that tax stamps
13 were affixed to the cigarettes pursuant to Section 3 of the
14 Cigarette Tax Act before the effective date of this Act, and
15 provided further that the wholesale dealer or retail dealer
16 establishes that the inventory was purchased before the
17 effective date of this Act in comparable quantity to the amount
18 of inventory purchased during the same period of the prior
19 year.

20 (c) Nothing in this Act shall be construed to prohibit any
21 person or entity from selling or offering for sale cigarettes
22 that have not been certified by the manufacturer in accordance
23 with Section 30 of this Act if the cigarettes are or will be
24 stamped for sale in another state or are packaged for sale
25 outside the United States.

26 Section 15. Test method.

27 (a) Testing of cigarettes shall be conducted in accordance
28 with the American Society of Testing and Materials ("ASTM")
29 standard E2187-04, "Standard Test Method for Measuring the
30 Ignition Strength of Cigarettes". The Office of the State Fire
31 Marshal may adopt a subsequent ASTM Standard Test Method for
32 Measuring the Ignition Strength of Cigarettes upon a finding
33 that the subsequent method does not result in a change in the

1 percentage of full-length burns exhibited by any tested
2 cigarette when compared to the percentage of full-length burns
3 the same cigarette would exhibit when tested in accordance with
4 ASTM Standard E2187-04 and the performance standard in Section
5 20 of this Act.

6 (b) Testing shall be conducted on 10 layers of filter
7 paper.

8 (c) Forty replicate tests shall comprise a complete test
9 trial for each cigarette tested.

10 (d) The performance standard required by Section 20 of this
11 Act shall only be applied to a complete test trial.

12 (e) Laboratories conducting testing in accordance with
13 this Section shall implement a quality control and quality
14 assurance program that includes a procedure that will determine
15 the repeatability of the testing results. The repeatability
16 value shall be no greater than 0.19 pursuant to Section 20 of
17 this Act.

18 (f) This Section does not require additional testing if
19 cigarettes are tested consistent with this Act for any other
20 purpose.

21 Section 20. Performance standard.

22 (a) When tested in accordance with Section 15 of this Act,
23 no more than 25% of the cigarettes tested in a test trial shall
24 exhibit full length burns.

25 (b) Each cigarette listed in a certification submitted in
26 accordance with Section 30 of this Act that uses lowered
27 permeability bands in the cigarette paper to achieve compliance
28 with the performance standard set forth in subsection (a) of
29 this Section shall have at least 2 nominally identical bands on
30 the paper surrounding the tobacco column. At least one complete
31 band shall be located at least 15 millimeters from the lighting
32 end of the cigarette. For cigarettes on which the bands are
33 positioned by design, there shall be at least 2 bands fully

1 located at least 15 millimeters from the lighting end and
2 either (i) 10 millimeters from the filter end of the tobacco
3 column, or (ii) 10 millimeters from the labeled end of the
4 tobacco column for non-filtered cigarettes.

5 (c) The manufacturer or manufacturers of a cigarette that
6 the Office of the State Fire Marshal determines cannot be
7 tested in accordance with the test method prescribed in Section
8 15 of this Act shall propose a test method and performance
9 standard for such cigarette to the Office of the State Fire
10 Marshal. Upon approval of the proposed test method and a
11 determination by the Office of the State Fire Marshal that the
12 performance standard proposed by the manufacturer or
13 manufacturers is equivalent to the performance standard
14 prescribed in subsection (a) of this Section, the manufacturer
15 or manufacturers may employ such test method and performance
16 standard to certify such cigarette in accordance with Section
17 30 of this Act. If the State Fire Marshal determines that
18 another state has enacted reduced cigarette ignition
19 propensity standards that include a test method and performance
20 standard, and that are at least as stringent in reducing
21 cigarette ignition propensity as those contained in this Act,
22 and the State Fire Marshal finds that the officials responsible
23 for implementing those requirements have made an independent
24 analysis and approved the proposed alternative test method and
25 performance standard for a particular cigarette proposed by a
26 manufacturer as meeting the fire safety standards of that
27 state's law or regulation under a legal provision comparable to
28 this subsection (c), then the State Fire Marshal shall
29 authorize that manufacturer to employ the alternative test
30 method and performance standard to certify that cigarette for
31 sale in this State, unless the State Fire Marshal demonstrates
32 a reasonable basis why the alternative test should not be
33 accepted under this Act. All other applicable requirements of
34 this Act shall apply to such manufacturer or manufacturers.

1 (d) This Act shall be implemented in accordance with the
2 implementation and substance of the New York Fire Safety
3 Standards for Cigarettes.

4 Section 25. Test data. To ensure compliance with the
5 performance standard specified in Section 20 of this Act, data
6 from testing conducted by manufacturers to comply with this
7 performance standard shall be kept on file by the manufacturers
8 for a period of 3 years and shall be sent to the Office of the
9 State Fire Marshal upon its request and to the Office of the
10 Attorney General upon its request.

11 Section 30. Certification.

12 (a) Each manufacturer shall submit a written certification
13 attesting that:

14 (1) each cigarette listed in the certification has been
15 tested in accordance with Section 15 of this Act; and

16 (2) each cigarette listed in the certification meets
17 the performance standard set forth in Section 20 of this
18 Act.

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

21 (1) brand (i.e., the trade name on the package);

22 (2) style (e.g., light, ultra light);

23 (3) length in millimeters;

24 (4) circumference in millimeters;

25 (5) flavor (e.g., menthol, chocolate) if applicable;

26 (6) filter or non-filter;

27 (7) package description (e.g., soft pack, box); and

28 (8) marking approved in accordance with Section 40 of
29 this Act.

30 (c) Each cigarette certified under this Section shall be
31 re-certified every 3 years.

1 Section 35. Notification of certification. Manufacturers
2 certifying cigarettes in accordance with Section 30 of this Act
3 shall provide a copy of the certifications to all wholesale
4 dealers and agents to which they sell cigarettes, and shall
5 also provide sufficient copies of an illustration of the
6 cigarette packaging marking used by the manufacturer in
7 accordance with Section 40 of this Act for each retail dealer
8 to which the wholesale dealers and agents sell cigarettes.
9 Wholesale dealers and agents shall provide a copy of these
10 cigarette packaging markings received from manufacturers to
11 all retail dealers to which they sell cigarettes. Wholesale
12 dealers, agents, and retail dealers shall permit the Office of
13 the State Fire Marshal to inspect markings of cigarette
14 packaging marked in accordance with Section 40 of this Act.

15 Section 40. Marking of cigarette packaging.

16 (a) Cigarettes that have been certified by a manufacturer
17 in accordance with Section 30 of this Act shall be marked to
18 indicate compliance with the requirements of this Act. The
19 marking shall be in 8-point type or larger and consist of:

20 (1) modification of the product UPC Code to include a
21 visible mark printed at or around the area of the UPC Code.
22 The mark may consist of alphanumeric or symbolic characters
23 permanently stamped, engraved, embossed, or printed in
24 conjunction with the UPC Code;

25 (2) any visible combination of alphanumeric or
26 symbolic characters permanently stamped, engraved, or
27 embossed upon the cigarette package or cellophane wrap; or

28 (3) printed, stamped, engraved, or embossed text that
29 indicates that the cigarettes meet the standards of this
30 Act.

31 (b) A manufacturer must use only one marking, and must
32 apply this marking uniformly for all packages including, but
33 not limited to, packs, cartons, and cases and to brands

1 marketed by that manufacturer.

2 (c) The Office of the State Fire Marshal must be notified
3 as to the marking that is selected.

4 (d) Prior to the certification of any cigarette, a
5 manufacturer shall present its proposed marking to the Office
6 of the State Fire Marshal for approval. Upon receipt of the
7 request, the Office of the State Fire Marshal shall approve or
8 disapprove the marking offered. A marking in use and approved
9 for the sale of cigarettes in the State of New York shall be
10 deemed approved. Proposed markings shall be deemed approved if
11 the Office of the State Fire Marshal fails to act within 10
12 business days of receiving a request for approval.

13 (e) No manufacturer shall modify its approved marking
14 unless the modification has been approved by the Office of the
15 State Fire Marshal in accordance with this Section.

16 Section 45. Penalties; Cigarette Fire Safety Standard Act
17 Fund.

18 (a) Any wholesale dealer, agent, or other person or entity
19 who knowingly sells cigarettes wholesale in violation of item
20 (3) of subsection (a) of Section 10 of this Act shall be
21 subject to a civil penalty not to exceed \$10,000 for each sale
22 of the cigarettes. Any retail dealer who knowingly sells
23 cigarettes in violation of Section 10 of this Act shall be
24 subject to the following: (i) a civil penalty not to exceed
25 \$500 for each sale or offer for sale of cigarettes, provided
26 that the total number of cigarettes sold or offered for sale in
27 such sale does not exceed 1,000 cigarettes; (ii) a civil
28 penalty not to exceed \$1,000 for each sale or offer for sale of
29 the cigarettes, provided that the total number of cigarettes
30 sold or offered for sale in such sale exceeds 1,000 cigarettes.

31 (b) In addition to any penalty prescribed by law, any
32 corporation, partnership, sole proprietor, limited
33 partnership, or association engaged in the manufacture of

1 cigarettes that knowingly makes a false certification pursuant
2 to Section 30 of this Act shall be subject to a civil penalty
3 not to exceed \$10,000 for each false certification.

4 (c) Upon discovery by the Office of the State Fire Marshal,
5 the Department of Revenue, the Office of the Attorney General,
6 or a law enforcement agency that any person offers, possesses
7 for sale, or has made a sale of cigarettes in violation of
8 Section 10 of this Act, the Office of the State Fire Marshal,
9 the Department of Revenue, the Office of the Attorney General,
10 or the law enforcement agency may seize those cigarettes
11 possessed in violation of this Act.

12 (d) The Cigarette Fire Safety Standard Act Fund is
13 established as a special fund in the State treasury. The Fund
14 shall consist of all moneys recovered by the Attorney General
15 from the assessment of civil penalties authorized by this
16 Section. The moneys in the Fund shall, in addition to any
17 moneys made available for such purpose, be available, subject
18 to appropriation, to the Office of the State Fire Marshal for
19 the purpose of fire safety and prevention programs.

20 Section 50. Enforcement. To enforce the provisions of this
21 Act, the Attorney General may bring an action on behalf of the
22 people of this State to enjoin acts in violation of this Act
23 and to recover civil penalties authorized under Section 45 of
24 this Act.

25 Section 55. Administration. The Office of the State Fire
26 Marshal shall be responsible for administering the provisions
27 of this Act.

28 Section 60. Applicability. This Act shall cease to be
29 applicable if federal fire safety standards for cigarettes that
30 preempt this Act are enacted and take effect subsequent to the
31 effective date of this Act and the State Fire Marshal so

1 notifies the Secretary of State.

2 Section 900. The State Finance Act is amended by adding
3 Section 5.663 as follows:

4 (30 ILCS 105/5.663 new)

5 Sec. 5.663. The Cigarette Fire Safety Standard Act Fund.

6 Section 999. Effective date. This Act takes effect January
7 1, 2008.".