SB311

106625-2

By Senator Mitchem

RFD: Governmental Affairs

First Read: 05-FEB-09
ENROLLED, An Act,

To establish and support reduced cigarette ignition propensity standards; and to establish civil penalties for violations.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as the "Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act."

Section 2. As used in this act, the following terms shall have the following meanings:

(1) AGENT. Any person authorized by the Department of Revenue to purchase and affix stamps on packages of cigarettes.

(2) CIGARETTE. Any of the following:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

b. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, 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 described in paragraph a.

(3) MANUFACTURER. Any of the following:
a. Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer.

b. Any entity that becomes a successor of an entity described in paragraph a.

(4) QUALITY CONTROL AND QUALITY ASSURANCE PROGRAM. The laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. The program ensures that the testing repeatability remains within the required repeatability values stated in subdivision (6) of subsection (a) of Section 3 for all test trials used to certify cigarettes in accordance with this act.

(5) REPEATABILITY. The range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(6) RETAIL DEALER. Any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(7) SALE. 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.

(8) SELL. To sell or to offer or agree to do the same.

(9) WHOLESALE DEALER. Any person, other than a manufacturer, who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and 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.

Section 3. (a) Except as provided in subsection (g), no cigarettes may be sold or offered for sale in this state or offered for sale or sold 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 section, a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with Section 4, and the cigarettes have been marked in accordance with Section 5.


(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 section 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 section 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 (ISO), or other comparable accreditation standard required by the State Fire Marshal.

(6) Laboratories conducting testing in accordance with this section 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 section does not require additional testing if cigarettes are tested consistent with this act for any other purpose.

(8) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.

(b) Each cigarette listed in a certification submitted pursuant to Section 4 that uses lowered permeability...
bands in the cigarette paper to achieve compliance with the performance standard set forth in this section 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 non-filtered cigarettes.

(c) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test method prescribed in subdivision (1) of subsection (a) 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 subdivision (3) of subsection (a), the manufacturer may employ the test method and performance standard to certify the cigarette pursuant to Section 4. 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 act, and the State Fire
Marshall 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 reduced cigarette
ignition propensity standards of that state's law or
regulation under a legal provision comparable to this section,
then 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 act. All
other applicable requirements of this section 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 three years, and shall make copies of
these reports available to the State Fire Marshal and the
Attorney General upon written request. Any manufacturer who
fails to make copies of these reports available within 60 days
of receiving a written request shall be subject to a civil
penalty not to exceed ten thousand dollars ($10,000) for each
day after the 60th day that the manufacturer does not make the
copies available.
(e) The State Fire Marshal may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the 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 ASTM Standard E2187-04 and the performance standard in subdivision (3) of subsection (a).

(f) The State Fire Marshal shall review the effectiveness of this section and report every three years to the Legislature the State Fire Marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this act. The report and legislative recommendations shall be submitted no later than June 30th following the conclusion of each three-year period.

(g) The requirements of subsection (a) shall not prohibit any of the following:

(1) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this act 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.

(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" shall mean an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer), for the purpose of evaluating consumer acceptance of the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for the assessment.

(h) This act shall be so interpreted and construed as to effectuate its general purpose to make uniform this act with the laws of those states that have enacted reduced cigarette ignition propensity laws as of the effective date of this act.

Section 4. (a) Each manufacturer shall submit to the State Fire Marshal a written certification attesting to each of the following:

(1) Each cigarette listed in the certification has been tested in accordance with Section 3.

(2) Each cigarette listed in the certification meets the performance standard set forth in Section 3.

(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 non-filter.
(7) Package description, such as soft pack or box.
(8) Marking pursuant to Section 5.
(9) The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test.
(10) The date that the testing occurred.
(c) The State Fire Marshal shall make the certifications available to the Attorney General for purposes consistent with this act and the Department of Revenue for the purposes of ensuring compliance with this section.
(d) Each cigarette certified under this section shall be recertified every three years.
(e) At the time a manufacturer submits a written certification under this section, the manufacturer shall pay to the State Fire Marshal a fee of one thousand dollars ($1,000) for each brand family of cigarettes identified in the certification. The fee paid shall apply to all cigarettes listed in the brand family identified in the certification and
shall include any new cigarette certified within the brand
family during the three-year certification period.

(f) If a manufacturer has certified a cigarette
pursuant to this section, and thereafter makes any change to
the cigarette that is likely to alter its compliance with the
reduced cigarette ignition propensity standards required by
this act, 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 Section 3
and maintains records of that retesting as required by Section
3. Any altered cigarette which does not meet the performance
standard set forth in Section 3 may not be sold in this state.

Section 5. (a) Cigarettes that are certified by a
manufacturer in accordance with Section 4 shall be marked to
indicate compliance with the requirements of Section 3. The
marking shall be in eight point type or larger and consist of
the letters "FSC," which signifies Fire Standards Compliant,
permanently printed, stamped, engraved, or embossed on the
package at or near the UPC Code.

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

(c) Manufacturers certifying cigarettes in
accordance with Section 4 shall provide a copy of the
certifications to all wholesale dealers and agents to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the State Fire Marshal, the Department of Revenue, the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

Section 6. (a) A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Section 3, shall be subject to a civil penalty not to exceed one hundred dollars ($100) for each pack of the cigarettes sold or offered for sale provided that in no case shall the penalty against a person or entity for that violation exceed one hundred thousand dollars ($100,000) during any 30-day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of Section 3 shall be subject to a civil penalty not to exceed one hundred dollars ($100) for each pack of the cigarettes sold or offered for sale, provided that in no case shall the penalty against any retail dealer exceed twenty-five thousand dollars ($25,000) for sales or offers to sell 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 Section 4 shall be subject to a civil penalty of at least seventy-five thousand dollars ($75,000) and not to exceed two hundred fifty thousand dollars ($250,000) for each false certification.

(d) Any person violating any other provision in this act shall be subject to a civil penalty for a first offense not to exceed one thousand dollars ($1,000), and for a subsequent offense subject to a civil penalty not to exceed five thousand dollars ($5,000) for each violation.

(e) Whenever any law enforcement personnel or duly authorized representative of the State Fire Marshal shall discover any cigarettes (i) for which no certification has been filed as required by Section 4, or (ii) that have not been marked in the manner required by Section 5, such personnel is hereby authorized and empowered to seize and take possession of the cigarettes. Cigarettes seized pursuant to this section shall be destroyed, provided, however, that prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(f) In addition to any other remedy provided by law, the Attorney General may file an action in circuit court for a violation of this act, including petitioning (i) for preliminary or permanent injunctive relief against any
manufacturer, importer, wholesale dealer, retail dealer,
agent, or any other person or entity to enjoin such entity
from selling, offering to sell, or affixing tax stamps to any
cigarette that does not comply with the requirements of this
act, or (ii) to recover any costs or damages suffered by the
state because of a violation of this act, including
enforcement costs relating to the specific violation and
attorney's fees. Each violation of this act or rules adopted
under this act constitutes a separate civil violation for
which the State Fire Marshal or Attorney General may obtain
relief. Upon obtaining judgment for injunctive relief under
this section, the State Fire Marshal or Attorney General shall
provide a copy of the judgment to all wholesale dealers and
agents to which the cigarette has been sold.

Section 7. (a) The State Fire Marshal may promulgate
rules pursuant to the Alabama Administrative Procedure Act
necessary to effectuate the purposes of this act.

(b) The Department of Revenue in the regular course
of conducting inspections of wholesale dealers, agents, and
retail dealers, as authorized under Section 40-2-11, Code of
Alabama 1975, may inspect the cigarettes to determine if the
cigarettes are marked as required by Section 5. If the
cigarettes are not marked as required, the Department of
Revenue shall notify the State Fire Marshal.
Section 8. To enforce the provisions of this act, the Attorney General, the Department of Revenue, the State Fire Marshal, their duly authorized representatives, and other law enforcement personnel are hereby 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 hereby directed and required to give the Attorney General, the Department of Revenue, the State Fire Marshal, their duly authorized representatives, and other law enforcement personnel the means, facilities, and opportunity for the examinations authorized by this section.

Section 9. There is hereby established in the State Treasury a special fund to be known as the "Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Fund." The fund shall consist of all certification fees paid under Section 4 and monies recovered as penalties under Section 6. The monies shall be deposited to the credit of the fund and shall, in addition to any other monies made available for that purpose, be made available to the State Fire Marshal to support fire safety and prevention programs. All payments from the Reduced Cigarette Ignition Propensity Standards and
Firefighter Protection Act Fund shall be made on the audit and warrant of the state Comptroller on vouchers certified and submitted by the State Fire Marshal.

Section 10. Nothing in this act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 3 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 the cigarettes will not be sold or offered for sale to persons located in this state.

Section 11. This act shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this act is adopted and becomes effective.

Section 12. This act preempts any local law, ordinance, or regulation that conflicts with any provision of this act or any policy of the state implemented in accordance with this act and, notwithstanding any other provision of law, a governmental unit of this state may not enact or enforce an ordinance, local law, or rule conflicting with or preempted by this act.

Section 13. This act shall become effective on January 1, 2010; provided, however, subsection (a) of Section 7 and Section 12 shall become effective immediately following
its passage and approval by the Governor, or its otherwise becoming law.
SB311

Senate 17-FEB-09
I hereby certify that the within Act originated in and passed the Senate.

McDowell Lee
Secretary

House of Representatives
Passed: 14-MAY-09

By: Senator Mitchem

APPROVED May 21, 2009
TIME 7:28 a.m.

Bo RILEY
GOVERNOR

Alabama Secretary Of State
Act Num....: 2009-630
Bill Num....: S-311
Recvd 05/21/09 02:35pm JJB