
ASSEMBLY BILL NO. 229—ASSEMBLYMEN OCEGUERA, CONKLIN;
AIZLEY, ATKINSON, BOBZIEN, DONDERO LOOP, HOGAN,
KIHUEN, MANENDO, MCCLAIN, MORTENSON, PIERCE,
SEGERBLOM AND SPIEGEL

MARCH 3, 2009

JOINT SPONSOR: SENATOR PARKS

Referred to Committee on Government Affairs

SUMMARY—Enacts provisions governing fire-safe cigarettes.
(BDR 42-568)

FISCAL NOTE: Effect on Local Government: Increases or Newly
Provides for Term of Imprisonment in County or City
Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to cigarettes; setting forth the testing requirements and performance standard for fire safety for cigarettes sold or offered for sale in this State; requiring a manufacturer of cigarettes to submit a written certification to the State Fire Marshal concerning the cigarettes that the manufacturer intends to sell in this State; imposing a fee for each cigarette listed in a certification; requiring packages of cigarettes to be marked to indicate compliance of the cigarettes with the testing requirements and performance standard; imposing civil penalties for various violations; creating the Cigarette Fire Safety Standard and Firefighter Protection Fund in the State Treasury; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 This bill, which is modeled on requirements first adopted in New York in 2004,
- 2 sets forth the testing requirements and performance standard for fire safety for
- 3 cigarettes sold or offered for sale in Nevada. **Section 10** of this bill prohibits the
- 4 sale of any cigarettes in Nevada which do not meet the testing requirements or



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5 performance standard for cigarettes set forth in that section and which have not
6 been certified in accordance with **section 11** of this bill or properly marked in
7 accordance with **section 12** of this bill. **Section 10** also sets forth the testing
8 requirements for cigarettes and the performance standard they must meet, using the
9 ASTM International Standard ASTM E2187-04, while allowing for alternate
10 testing methods and performance standards approved by the State Fire Marshal, and
11 sets forth other requirements manufacturers must meet, such as keeping reports of
12 testing.

13 **Section 11** of this bill requires a manufacturer of cigarettes to submit to
14 the State Fire Marshal a written certification concerning each cigarette the
15 manufacturer intends to sell in Nevada, certifying that the cigarette meets the
16 testing requirements and performance standard set forth in **section 10** of this bill,
17 and to pay a fee of \$250 to the State Fire Marshal for each cigarette listed in a
18 certification. **Section 12** of this bill requires that cigarettes which have been
19 certified be marked with the letters "FSC," signifying "Fire Standard Compliant."

20 **Section 13** of this bill provides for the imposition of a civil penalty against a
21 manufacturer, wholesale dealer, retail dealer, agent or other person who violates
22 any provision of this bill. **Section 14** of this bill authorizes the State Fire Marshal to
23 adopt regulations to carry out the provisions of this bill. **Section 15** of this bill
24 authorizes the Department of Taxation to inspect any packages of cigarettes to
25 determine if they have been properly marked as required by **section 12** of this bill.
26 **Section 16** of this bill authorizes the Attorney General, the Executive Director of
27 the Department and the State Fire Marshal, and their authorized representatives,
28 and any law enforcement officer to examine the books, papers, invoices and other
29 records of persons in possession, control or occupancy of any premises where
30 cigarettes are placed, stored, sold or offered for sale in Nevada. **Section 17** of this
31 bill creates the Cigarette Fire Safety Standard and Firefighter Protection Fund as a
32 special revenue fund in the State Treasury.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 477 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 19, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 19, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 9, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*

8 **Sec. 3.** *"Agent" means a person authorized by the*
9 *Department of Taxation to purchase and affix Nevada cigarette*
10 *revenue stamps to packages of cigarettes.*

11 **Sec. 4.** *"Cigarette" means any roll of tobacco:*

12 1. *Wrapped in paper or any other substance not containing*
13 *tobacco; or*

14 2. *Wrapped in any substance containing tobacco which,*
15 *because of its appearance, its packaging and labeling or the type*
16 *of tobacco used in the filler, is likely to be offered to or purchased*
17 *by a person as a cigarette described in subsection 1.*



1 **Sec. 5. “Manufacturer” means:**

2 1. *A person who manufactures or otherwise produces*
3 *cigarettes or causes cigarettes to be manufactured or produced in*
4 *any location and who intends the cigarettes to be sold in this State,*
5 *including, without limitation, cigarettes intended to be sold in the*
6 *United States through an importer; or*

7 2. *The successor in interest of any person described in*
8 *subsection 1.*

9 **Sec. 6. “Retail dealer” means any person, other than a**
10 *manufacturer or wholesale dealer, engaged in selling cigarettes or*
11 *other tobacco products.*

12 **Sec. 7. “Sale” means any transfer of title or possession,**
13 *conditional or otherwise, in any manner or by any means or*
14 *agreement. The term includes, without limitation, cash and credit*
15 *sales, the giving of cigarettes as samples, prizes or gifts and the*
16 *exchanging of cigarettes for consideration other than money.*

17 **Sec. 8. “Sell” means to make a sale or to offer or agree to**
18 *make a sale.*

19 **Sec. 9. “Wholesale dealer” means:**

20 1. *Any person other than a manufacturer who sells cigarettes*
21 *or other tobacco products to retail dealers or other persons for*
22 *purposes of resale; and*

23 2. *Any person who owns, operates or maintains one or more*
24 *vending machines which dispense cigarettes or other tobacco*
25 *products and which are located on premises owned or occupied by*
26 *another person.*

27 **Sec. 10. 1. Except as otherwise provided in this section, a**
28 *person shall not sell or offer to sell any cigarettes in this State*
29 *unless:*

30 (a) *The cigarettes have been tested in accordance with this*
31 *section and meet the performance standard required by this*
32 *section;*

33 (b) *The manufacturer has submitted to the State Fire Marshal,*
34 *pursuant to section 11 of this act, a written certification in which*
35 *the cigarettes are listed; and*

36 (c) *The packages that contain the cigarettes have been marked*
37 *pursuant to section 12 of this act.*

38 2. *Except as otherwise provided in this section, all cigarettes*
39 *that are sold or offered for sale in this State must comply with the*
40 *following method of testing and performance standard:*

41 (a) *The cigarettes must be tested in accordance with the ASTM*
42 *International Standard ASTM E2187-04, “Standard Test Method*
43 *for Measuring the Ignition Strength of Cigarettes.”*

44 (b) *The testing must be conducted on 10 layers of filter paper.*



1 (c) *The testing must be conducted by a laboratory which has*
2 *been accredited pursuant to standard ISO/IEC 17025 of the*
3 *International Organization for Standardization or which meets*
4 *any other comparable accreditation standard required by the State*
5 *Fire Marshal.*

6 (d) *The laboratory conducting the testing must have a program*
7 *for quality control that includes a procedure for determining the*
8 *repeatability of the test results. The repeatability value must not*
9 *exceed 0.19.*

10 (e) *Not more than 25 percent of the cigarettes tested in a test*
11 *trial may exhibit full-length burns in the test trial. Compliance*
12 *with the performance standard required by this paragraph must be*
13 *determined based on a complete test trial consisting of 40 replicate*
14 *tests for each cigarette tested.*

15 3. *This section does not require additional testing if the*
16 *cigarettes have been tested for any other purpose in a manner that*
17 *is consistent with this section.*

18 4. *Any testing performed or caused to be performed by the*
19 *State Fire Marshal to determine the compliance of a cigarette with*
20 *the performance standard required by this section must be*
21 *conducted in accordance with this section.*

22 5. *Any cigarette listed in a certification submitted to the State*
23 *Fire Marshal pursuant to section 11 of this act which uses lowered*
24 *permeability bands in the cigarette paper to achieve compliance*
25 *with the performance standard required by this section must have*
26 *not less than two nominally identical bands on the paper*
27 *surrounding the tobacco column, at least one of which must be*
28 *located not less than 15 millimeters from the lighting end of the*
29 *cigarette. For cigarettes on which the bands are positioned by*
30 *design, there must be at least two bands, one of which is located*
31 *not less than 13 millimeters from the lighting end of the cigarette*
32 *and one of which is located not less than 10 millimeters from:*

33 (a) *The filter end of the tobacco column if the cigarette is*
34 *filtered; or*

35 (b) *The labeled end of the tobacco column if the cigarette is*
36 *nonfiltered.*

37 6. *If the State Fire Marshal:*

38 (a) *Determines that a cigarette cannot be tested in accordance*
39 *with the requirements of subsection 2, the manufacturer of the*
40 *cigarette shall propose an alternative method of testing and*
41 *performance standard to the State Fire Marshal for approval and,*
42 *if the State Fire Marshal approves the alternative method of*
43 *testing and determines that the alternative performance standard*
44 *proposed by the manufacturer is substantially equivalent to the*
45 *performance standard set forth in paragraph (e) of subsection 2,*



1 *the alternative method of testing and performance standard may*
2 *be used to certify the cigarette pursuant to section 11 of this act; or*

3 *(b) Determines that:*

4 *(1) Another state has enacted requirements which are*
5 *substantially similar to those set forth in this section for the fire*
6 *safety of cigarettes and which include a method of testing and a*
7 *performance standard that are substantially similar to those set*
8 *forth in subsection 2; and*

9 *(2) The officials responsible for carrying out those*
10 *requirements in the other state have approved the alternative*
11 *method of testing and performance standard for a particular*
12 *cigarette that the manufacturer has proposed as meeting the fire*
13 *safety standards of the law of that state under a provision similar*
14 *to this subsection,*

15 *↳ the State Fire Marshal shall authorize the manufacturer to use*
16 *the alternative method of testing and performance standard to*
17 *certify that cigarette for sale in this State, unless the State Fire*
18 *Marshal has a reasonable basis for denying the authorization.*

19 *7. Each manufacturer shall maintain copies of the reports of*
20 *all tests conducted on all cigarettes sold or offered for sale in this*
21 *State for a period of 3 years after the completion of the testing and*
22 *shall make copies of the reports available to the State Fire*
23 *Marshal and the Attorney General upon written request. Any*
24 *manufacturer that fails to make such copies available to the State*
25 *Fire Marshal or Attorney General within 60 days after receiving a*
26 *written request therefor is subject to a civil penalty not to exceed*
27 *\$10,000 for each day after the 60th day that the manufacturer fails*
28 *to make the copies available.*

29 *8. The State Fire Marshal may, by regulation, adopt by*
30 *reference a subsequent ASTM International Standard Test*
31 *Method for Measuring the Ignition Strength of Cigarettes if he*
32 *determines that the subsequent method of testing does not result in*
33 *a change in the percentage of full-length burns exhibited by any*
34 *tested cigarette when compared to the percentage of full-length*
35 *burns the same cigarette would exhibit when tested in accordance*
36 *with the ASTM International Standard ASTM E2187-04 and the*
37 *performance standard set forth in paragraph (e) of subsection 2. If*
38 *the State Fire Marshal adopts the subsequent method of testing, it*
39 *may be used as an alternative method for the certification of*
40 *cigarettes.*

41 *9. This section does not prohibit:*

42 *(a) A wholesale dealer or retail dealer from selling his existing*
43 *inventory of cigarettes on or after the effective date of this section*
44 *if the wholesale dealer or retail dealer can establish that Nevada*
45 *cigarette revenue stamps were affixed to the packages of cigarettes*



1 before the effective date of this section and the cigarettes were
2 purchased by the wholesale dealer or retail dealer before the
3 effective date of this section in a quantity comparable to the
4 inventory purchased by the wholesale dealer or retail dealer
5 during the same period of the immediately preceding year.

6 (b) The sale of cigarettes solely for the purpose of consumer
7 testing. As used in this paragraph, "consumer testing" means an
8 assessment of cigarettes that is conducted by a manufacturer, or
9 under the control and direction of a manufacturer, to evaluate
10 consumer acceptance of the cigarettes, using only the number of
11 cigarettes that is reasonably necessary for that assessment.

12 10. As used in this section, unless the context otherwise
13 requires:

14 (a) "Program for quality control" means a program pursuant
15 to which laboratory procedures are established to ensure that:

16 (1) The test results are not affected by operator bias,
17 systematic and nonsystematic methodological errors or equipment-
18 related problems; and

19 (2) The repeatability of the test results remains within the
20 required repeatability value set forth in paragraph (d) of
21 subsection 2 for all test trials used to certify cigarettes.

22 (b) "Repeatability value" means the range of values within
23 which the repeat results of cigarette test trials conducted by a
24 single laboratory will fall 95 percent of the time.

25 **Sec. 11. 1.** Each manufacturer shall submit to the State
26 Fire Marshal a written certification of the cigarettes that the
27 manufacturer intends to sell in this State attesting that each
28 cigarette listed in the certification has been tested in accordance
29 with and meets the applicable performance standard set forth in
30 section 10 of this act.

31 2. The description of each cigarette listed in the certification
32 must include, without limitation:

33 (a) The brand or trade name on the package;

34 (b) The style, such as light or ultra light;

35 (c) The length in millimeters;

36 (d) The circumference in millimeters;

37 (e) The flavor, such as menthol or chocolate, if applicable;

38 (f) Whether the cigarette is filtered or nonfiltered;

39 (g) The package description, such as soft pack or box;

40 (h) The marking pursuant to section 12 of this act;

41 (i) The name, address and telephone number of the laboratory
42 that conducted the testing of the cigarette; and

43 (j) The date that the testing occurred.

44 3. The State Fire Marshal shall make the certifications that
45 are submitted to him pursuant to this section available to the



1 *Attorney General for purposes consistent with sections 2 to 19,*
2 *inclusive, of this act and to the Executive Director of the*
3 *Department of Taxation for the purpose of ensuring compliance*
4 *with this section.*

5 *4. Each cigarette certified under this section must be*
6 *recertified every 3 years.*

7 *5. A manufacturer shall pay to the State Fire Marshal a fee*
8 *of \$1,000 for each brand family of cigarettes listed in the*
9 *certification. The fee paid shall apply to all cigarettes within the*
10 *brand family certified and shall include any new cigarettes*
11 *certified within the brand family during the 3-year certification*
12 *period. All fees collected pursuant to this section must be deposited*
13 *in the Cigarette Fire Safety Standard and Firefighter Protection*
14 *Fund created by section 17 of this act.*

15 *6. If a manufacturer has certified a cigarette pursuant to this*
16 *section and subsequently makes any change to the cigarette that is*
17 *likely to alter its compliance with the performance standard*
18 *required by section 10 of this act, the cigarette must not be sold or*
19 *offered for sale in this State unless the manufacturer retests the*
20 *cigarette pursuant to section 10 of this act and maintains the*
21 *reports of the retesting in accordance with that section. Any*
22 *altered cigarette that does not meet the applicable performance*
23 *standard set forth in section 10 of this act must not be sold or*
24 *offered for sale in this State.*

25 **Sec. 12.** *1. Packages that contain cigarettes which have*
26 *been certified by a manufacturer in accordance with section 11 of*
27 *this act must be marked to indicate compliance with section 10 of*
28 *this act. The marking must be set forth in not less than 8-point*
29 *type and consist of the letters "FSC," signifying "Fire Standard*
30 *Compliant," and be permanently printed, stamped, engraved or*
31 *embossed on the package at or near the UPC label.*

32 *2. A manufacturer shall use only one marking and shall*
33 *apply the marking uniformly for all packages, including, without*
34 *limitation, packs, cartons, cases and brands marketed by that*
35 *manufacturer.*

36 *3. A manufacturer that certifies a cigarette in accordance*
37 *with section 11 of this act shall provide a copy of the certification*
38 *to each wholesale dealer and agent to whom the manufacturer*
39 *sells cigarettes. A wholesale dealer, retail dealer or agent shall*
40 *allow the State Fire Marshal, the Executive Director of the*
41 *Department of Taxation and the Attorney General, and their*
42 *respective employees, to inspect the markings of cigarette*
43 *packaging marked in accordance with this section.*

44 **Sec. 13.** *1. Any manufacturer, wholesale dealer, agent or*
45 *other person that knowingly sells cigarettes in this State, other*



1 *than through retail sale, in violation of section 10 of this act is*
2 *subject to a civil penalty not to exceed \$100 for each pack of such*
3 *cigarettes sold, except that the penalty against the person must not*
4 *exceed \$100,000 during any 30-day period.*

5 *2. A retail dealer that knowingly sells cigarettes in this State*
6 *in violation of section 10 of this act is subject to a civil penalty not*
7 *to exceed \$100 for each pack of such cigarettes sold, except that*
8 *the penalty against the retail dealer must not exceed \$25,000*
9 *during any 30-day period.*

10 *3. In addition to any other penalty prescribed by law, any*
11 *manufacturer of cigarettes that knowingly makes a false*
12 *certification pursuant to section 11 of this act is subject to a civil*
13 *penalty of not less than \$75,000 or more than \$250,000 for each*
14 *false certification.*

15 *4. A person who violates any other provision of sections 2 to*
16 *19, inclusive, of this act is subject to a civil penalty of not more*
17 *than \$1,000 for the first offense and not more than \$5,000 for*
18 *each subsequent offense.*

19 *5. A law enforcement officer or authorized representative of*
20 *the State Fire Marshal who discovers any cigarettes for sale in this*
21 *State for which no certification has been submitted pursuant to*
22 *section 11 of this act or which are not marked pursuant to section*
23 *12 of this act may seize the cigarettes. Cigarettes seized pursuant*
24 *to this section must be destroyed after the true holder of the*
25 *trademark rights in the cigarette brand is allowed to inspect the*
26 *cigarettes.*

27 *6. Each violation of any provision of sections 2 to 19,*
28 *inclusive, of this act or any regulation adopted pursuant thereto*
29 *constitutes a separate civil violation for which the State Fire*
30 *Marshal or the Attorney General may obtain relief. In addition to*
31 *any other remedy provided by law, the Attorney General may file*
32 *an action in a court of competent jurisdiction concerning a*
33 *violation of any provision of sections 2 to 19, inclusive, of this act*
34 *or any regulation adopted pursuant thereto, including, without*
35 *limitation, petitioning for:*

36 *(a) Preliminary or permanent injunctive relief against any*
37 *manufacturer, importer, wholesale dealer, retail dealer, agent or*
38 *other person to enjoin the person from selling or affixing Nevada*
39 *cigarette revenue stamps to any package of cigarettes that contains*
40 *cigarettes which do not comply with the requirements of sections 2*
41 *to 19, inclusive, of this act. Upon obtaining judgment for*
42 *injunctive relief, the State Fire Marshal or Attorney General shall*
43 *provide a copy of the judgment to all wholesale dealers and agents*
44 *to whom the cigarette has been sold.*



1 **(b) The recovery of any civil penalty authorized by the**
2 **provisions of sections 2 to 19, inclusive, of this act.**

3 **(c) The recovery of any costs or damages incurred by this State**
4 **because of a violation of sections 2 to 19, inclusive, of this act,**
5 **including, without limitation, enforcement costs relating to a**
6 **specific violation and attorney's fees.**

7 **7. All money collected pursuant to this section must be**
8 **deposited in the Cigarette Fire Safety Standard and Firefighter**
9 **Protection Fund created by section 17 of this act.**

10 **Sec. 14. The State Fire Marshal may adopt such regulations**
11 **as he determines necessary to carry out the provisions of sections**
12 **2 to 19, inclusive, of this act.**

13 **Sec. 15. The Department of Taxation, in the regular course**
14 **of conducting inspections of wholesale dealers, retail dealers and**
15 **agents pursuant to NRS 370.001 to 370.530, inclusive, may inspect**
16 **any packages of cigarettes to determine if they have been marked**
17 **in accordance with section 12 of this act. If the packages of**
18 **cigarettes are not marked as required, the Executive Director of**
19 **the Department of Taxation shall notify the State Fire Marshal.**

20 **Sec. 16. The Attorney General, the Executive Director of the**
21 **Department of Taxation and the State Fire Marshal, and their**
22 **authorized representatives, and any law enforcement officer may**
23 **examine the books, papers, invoices and other records of any**
24 **person in possession, control or occupancy of any premises where**
25 **cigarettes are placed, stored, sold or offered for sale in this State,**
26 **including, without limitation, any stock of cigarettes on the**
27 **premises. Each person in possession, control or occupancy of any**
28 **premises where cigarettes are placed, stored, sold or offered for**
29 **sale in this State shall cooperate in any such examination.**

30 **Sec. 17. 1. The Cigarette Fire Safety Standard and**
31 **Firefighter Protection Fund is hereby created in the State**
32 **Treasury as a special revenue fund. All money received for the use**
33 **of the Fund pursuant to sections 2 to 19, inclusive, of this act or**
34 **from any other source must be deposited in the Fund.**

35 **2. The interest and income earned on the money in the Fund,**
36 **after deducting any applicable charges, must be credited to the**
37 **Fund. All claims against the Fund must be paid as other claims**
38 **against the State are paid.**

39 **3. The State Fire Marshal shall administer the Fund and may**
40 **expend any money in the Fund to support fire safety and fire**
41 **prevention programs.**

42 **Sec. 18. On or before January 30 of each odd-numbered**
43 **year, the State Fire Marshal shall submit to the Director of the**
44 **Legislative Counsel Bureau for transmittal to the next regular**
45 **session of the Legislature a written report concerning the**



1 *effectiveness of the provisions of sections 2 to 19, inclusive, of this*
2 *act and any recommendations for legislation to improve the*
3 *effectiveness of sections 2 to 19, inclusive, of this act.*

4 **Sec. 19.** 1. *The provisions of sections 2 to 19, inclusive, of*
5 *this act must, to the extent practicable, be interpreted and*
6 *construed to effectuate the general purpose of those provisions to*
7 *make uniform the laws of those states that have enacted similar*
8 *legislation.*

9 2. *The provisions of sections 2 to 19, inclusive, of this act*
10 *must not be construed to prohibit any person from manufacturing*
11 *or selling cigarettes that do not meet the requirements of section*
12 *10 of this act if the cigarettes are or will be stamped for sale in*
13 *another state or are packaged for sale outside the United States*
14 *and that person has taken reasonable steps to ensure that the*
15 *cigarettes will not be sold or offered for sale in this State.*

16 **Sec. 20.** 1. Any ordinance or regulation adopted by a local
17 government which conflicts with any provision of sections 2 to 19,
18 inclusive, of this act or any regulation adopted pursuant thereto is
19 void and must not be given effect to the extent of the conflict.

20 2. Notwithstanding any specific statute to the contrary, no local
21 government may adopt any ordinance or regulation which conflicts
22 with any provision of sections 2 to 19, inclusive, of this act or any
23 regulation adopted pursuant thereto.

24 3. As used in this section, "local government" means any
25 political subdivision of this State, including, without limitation, a
26 county, city or town.

27 **Sec. 21.** 1. This section and sections 1, 14 and 20 of this act
28 become effective upon passage and approval.

29 2. Sections 2 to 13, inclusive, and 15 to 19, inclusive, of this
30 act become effective 1 year after passage and approval.

31 3. This section and sections 2 to 16, inclusive, 18, 19 and 20 of
32 this act expire by limitation on the date upon which a federal law
33 establishing standards for fire-safe cigarettes becomes effective.

