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Amendment No. 2 to SB2306

**McNally
Signature of Sponsor**

AMEND Senate Bill No. 2306

House Bill No. 2343*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. This act shall be known and may be cited as the “Fire Safety Standard and Firefighter Protection Act.”

SECTION 2. Tennessee Code Annotated, Title 68, Chapter 102, is amended by adding Sections 3 through 13 of this act as a new, appropriately designated part thereto.

SECTION 3. As used in this part, unless the context otherwise requires:

(1) “Agent” means any person authorized by the commissioner of revenue to purchase and affix stamps on packages of cigarettes;

(2) “Cigarette” means all rolled, shredded, or cut tobacco, or any substitute thereof, wrapped in paper, or substitute thereof, and all rolled, shredded or cut tobacco, or any substitute thereof, wrapped in homogenized tobacco wrapper, and being within customary cigarette sizes and marketed in cigarette-type packages;

(3) “Manufacturer” means:

(A) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer; or

(B) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker did not intend to be sold in the United States; or

(C) Any entity that becomes a successor of an entity described in subdivision (3)(A) or (B);

(4) "Quality control and quality assurance program" means 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. Such a program ensures that the testing repeatability remains within the required repeatability values required by subdivision (a)(6) of Section 4 for all test trials used to certify cigarettes in accordance with this part;

(5) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time;

(6) "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products;

(7) "Sale" means, in addition to its usual meaning, any sale, use, transfer, exchange, barter, gift or offer for sale and distribution, in any manner or by any means whatsoever;

(8) "Sell" means to sell, or to offer or agree to do the same; and

(9) "Wholesale dealer" means 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 (1) or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

SECTION 4.

(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 5, and the cigarettes have been marked in accordance with Section 6.

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

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

(3) No more than twenty-five percent (25%) of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty (40) 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 nineteen-hundredths of one percent (0.19).

(7) This section does not require additional testing if cigarettes are tested consistent with this part 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 5 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 (2) nominally

identical bands on the paper surrounding the tobacco column. At least one (1) complete band shall be located at least fifteen millimeters (15 mm) from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two (2) bands fully located at least fifteen millimeters (15 mm) from the lighting end and ten millimeters (10 mm) from the filter end of the tobacco column, or ten (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 (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 subdivision (a)(3), the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to Section 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 part, and 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 fire safety 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 part. 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 (3) years, and shall make copies of these reports available to the state fire marshal and the attorney general and reporter upon written request. Any manufacturer who fails to make copies of these reports available within sixty (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 sixtieth (60th) day that the manufacturer does not make such copies available.

(e) The state fire marshal may promulgate a subsequent ASTM 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 ASTM Standard E2187-04 and the performance standard in subdivision (a)(3).

(f) The state fire marshal shall review the effectiveness of this section and report findings every three (3) years to the speaker of the senate and the house and, if appropriate, recommendations for legislation to improve the effectiveness of this part. The report and legislative recommendations shall be submitted no later than February 1 of each three-year period.

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

(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 retailer dealer can establish that state tax stamps were affixed to the cigarettes prior to the effective date of this act, and if the wholesale or retailer dealer can establish that the inventory was purchased prior to the effective date of this act 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 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 such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment, and in a controlled setting where the cigarettes are either consumed on-site or returned to the testing administrators at the conclusion of the testing.

(h) This act may be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.

SECTION 5.

(a) Each manufacturer shall submit to the state fire marshal a written certification attesting that:

(1) Each cigarette listed in the certification has been tested in accordance with Section 4; and

(2) Each cigarette listed in the certification meets the performance standard set forth in subdivision (a)(3) of Section 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 non-filter;

(7) Package description, such as soft pack or box;

(8) Marking approved in accordance with Section 6;

(9) The name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and

(10) The date that the testing occurred.

(c) The certifications shall be made available to the attorney general and reporter for purposes consistent with this part and the commissioner of revenue for the purposes of ensuring compliance with this section.

(d) Each cigarette certified under this section shall be re-certified every three (3) years.

(e) For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a two hundred fifty dollar (\$250) fee. The state fire marshal is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement and oversight activities required by this part.

(f) There is established in the state treasury a separate, nonreverting fund to be known as the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund." The fund shall consist of all certification fees submitted by manufacturers, and shall, in addition to any other monies made available for such purpose, be available to the state fire marshal solely to support processing, testing, enforcement and oversight activities under this part.

(g) If a manufacturer has certified a cigarette pursuant to this section, 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 part, 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 4 and maintains records of that retesting as required by Section 4. Any altered cigarette which does not meet the performance standard set forth in Section 4 may not be sold in this state.

SECTION 6.

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

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

(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 part.

(b) A manufacturer shall use only one (1) marking, and shall apply this marking uniformly for all packages, including, but not limited to, packs, cartons, and cases, and brands marketed by that manufacturer.

(c) The state fire marshal 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 state fire marshal for approval. Upon receipt of the request, the state fire marshal shall approve or disapprove the marking offered, except that the state fire marshal shall approve:

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

(2) The letters "FSC", which signifies Fire Standards Compliant, appearing in eight (8) point type or larger, if permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

Proposed markings shall be deemed approved if the state fire marshal fails to act within ten (10) business days of receiving a request for approval.

(e) No manufacturer shall modify its approved marking unless the modification has been approved by the state fire marshal in accordance with this section.

(f) Manufacturers certifying cigarettes in accordance with Section 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 utilized by the manufacturer pursuant to this section 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 state fire marshal, the commissioner of revenue, the attorney general and reporter and their employees to inspect markings of cigarette packaging marked in accordance with this section.

SECTION 7.

(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 4, shall be liable for a civil penalty not to exceed one hundred dollars (\$100) for each pack of such cigarettes sold or offered for sale; provided, that in no case shall the penalty against any such person or entity exceed one hundred thousand dollars (\$100,000) during any thirty-day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of Section 4 shall be liable for a civil penalty not to exceed one hundred dollars (\$100) for each pack of such cigarettes sold or offered for sale; provided, that the penalty against any retail dealer shall not exceed twenty-five thousand dollars (\$25,000) for sales or offers to sell during any thirty-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 5 shall be liable for 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 such false certification.

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

(e) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by Section 4 shall be subject to forfeiture and, upon forfeiture, destroyed; provided, however, that prior to the destruction of any cigarette pursuant to this section, 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 state fire marshal or attorney general and reporter may file an action in circuit court for a violation of this part, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this part, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this part or of rules or regulations adopted under this part constitutes a separate civil violation for which the state fire marshal or attorney general and reporter may obtain relief.

(g) Whenever any law enforcement personnel or duly authorized representative of the state fire marshal shall discover any cigarettes that have not been marked in the manner required by Section 6, such personnel is hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the commissioner of revenue, and shall be forfeited to the state. 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.

SECTION 8.

(a) The state fire marshal may promulgate rules and regulations, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, necessary to effectuate the purposes of this part.

(b) The commissioner of revenue in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, as authorized under title 67, chapter 4, part 10, may inspect such cigarettes to determine if the cigarettes are marked as required by Section 6. If the cigarettes are not marked as required, the commissioner of revenue shall notify the state fire marshal.

SECTION 9.

To enforce the provisions of this part, the attorney general and reporter and the state fire marshal 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 and reporter and the state fire marshal the means, facilities and opportunity for the examinations authorized by this section.

SECTION 10.

There is hereby established in the state treasury a special fund to be known as the "Fire Prevention and Public Safety Fund." The fund shall consist of all monies recovered as penalties under Section 7. The monies shall be deposited to the credit of

the fund and shall, in addition to any other monies made available for such purpose, be made available to the state fire marshal to support fire safety and prevention programs.

SECTION 11.

Nothing in this part shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 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.

SECTION 12.

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

SECTION 13.

Notwithstanding any other provision of law, the local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision or with 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 14. For purposes of rulemaking, this act shall become effective July 1, 2007, the public welfare requiring it. For all other purposes, this act shall become effective August 1, 2008, the public welfare requiring it.