

Amendment No. 960

Senate Amendment to Assembly Bill No. 229 First Reprint (BDR 42-568)

Proposed by: Senate Committee on Commerce and Labor**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 229 (§§ 11, 13).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	☐	Lost	☐ _____	Adopted	☐	Lost	☐ _____
Concurred In	☐	Not	☐ _____	Concurred In	☐	Not	☐ _____
Receded	☐	Not	☐ _____	Receded	☐	Not	☐ _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

DP/WLK



Date: 5/28/2009

A.B. No. 229—Enacts provisions governing fire-safe cigarettes. (BDR 42-568)



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:

This bill, which is modeled on requirements first adopted in New York in 2004, sets forth the testing requirements and performance standard for fire safety for cigarettes sold or offered for sale in Nevada. **Section 10** of this bill prohibits the sale of any cigarettes in Nevada which do not meet the testing requirements or performance standard for cigarettes set forth in that section and which have not been certified in accordance with **section 11** of this bill or properly marked in accordance with **section 12** of this bill. **Section 10** also sets forth the testing requirements for cigarettes and the performance standard they must meet, using the ASTM International Standard ASTM E2187-04, while allowing for alternate testing methods and performance standards approved by the State Fire Marshal, and sets forth other requirements manufacturers must meet, such as keeping reports of testing.

Section 11 of this bill requires a manufacturer of cigarettes to submit to the State Fire Marshal a written certification concerning each cigarette the manufacturer intends to sell in Nevada, certifying that the cigarette meets the testing requirements and performance standard set forth in **section 10** of this bill, and to pay a fee of \$250 to the State Fire Marshal for each

cigarette listed in a certification. **Section 11.5** of this bill requires the Executive Director of the Department of Taxation to establish a procedure to ensure that agents, wholesale dealers and retail dealers receive notice of the cigarettes that have been certified by manufacturers. **Section 12** of this bill requires that cigarettes which have been certified be marked with the letters "FSC," signifying "Fire Standard Compliant."

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

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

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

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

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

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

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

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

Sec. 5. *"Manufacturer" means:*

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

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

Sec. 6. *"Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or other tobacco products.*

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

Sec. 8. *"Sell" means to make a sale or to offer or agree to make a sale.*

Sec. 9. *"Wholesale dealer" means:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Any cigarette listed in a certification submitted to the State Fire Marshal pursuant to section 11 of this act which uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard required by this section must have not less than two nominally identical bands on the paper surrounding the tobacco column, at least one of which must be located not less than 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands, one of which is located not less than ~~12.5~~ 15 millimeters from the lighting end of the cigarette and one of which is located not less than 10 millimeters from:

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

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

6. If the State Fire Marshal:

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

paragraph (e) of subsection 2, the alternative method of testing and performance standard may be used to certify the cigarette pursuant to section 11 of this act; or

(b) Determines that:

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

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

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

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

8. The State Fire Marshal may, by regulation, adopt by reference a subsequent ASTM International Standard Test Method for Measuring the Ignition Strength of Cigarettes if he determines that the subsequent method of testing 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 the ASTM International Standard ASTM E2187-04 and the performance standard set forth in paragraph (e) of subsection 2. If the State Fire Marshal adopts the subsequent method of testing, it may be used as an alternative method for the certification of cigarettes.

9. This section does not prohibit:

(a) A wholesale dealer or retail dealer from selling his existing inventory of cigarettes on or after the effective date of this section if the wholesale dealer or retail dealer can establish that Nevada cigarette revenue stamps were affixed to the packages of cigarettes before the effective date of this section and the cigarettes were purchased by the wholesale dealer or retail dealer before the effective date of this section in a quantity comparable to the inventory purchased by the wholesale dealer or retail dealer during the same period of the immediately preceding year.

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

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

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

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

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

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

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

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

- (a) The brand or trade name on the package;
- (b) The style, such as light or ultra light;
- (c) The length in millimeters;
- (d) The circumference in millimeters;
- (e) The flavor, such as menthol or chocolate, if applicable;
- (f) Whether the cigarette is filtered or nonfiltered;
- (g) The package description, such as soft pack or box;
- (h) The marking pursuant to section 12 of this act;
- (i) The name, address and telephone number of the laboratory that conducted the testing of the cigarette; and
- (j) The date that the testing occurred.

3. The State Fire Marshal shall make the certifications that are submitted to him pursuant to this section available to the Attorney General for purposes consistent with sections 2 to 19, inclusive, of this act and to the Executive Director of the Department of Taxation for the purpose of ensuring compliance with this section and section 11.5 of this act.

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

5. A manufacturer shall pay to the State Fire Marshal a fee of \$1,000 for each brand family of cigarettes listed in the certification. The fee paid applies to all cigarettes within the brand family certified and must include any new cigarettes certified within the brand family during the 3-year certification period. All fees collected pursuant to this section must be deposited in the Cigarette Fire Safety Standard and Firefighter Protection Fund created by section 17 of this act. As used in this subsection, "brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, without limitation, "menthol," "lights," "kings" and "100s," and includes any brand name, whether or not occurring alone or in conjunction with any other word, any trademark, logo, symbol, motto, selling message or recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

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

1 **Sec. 11.5.** *The Executive Director of the Department of Taxation shall*
2 *establish a procedure to ensure that agents, wholesale dealers and retail dealers*
3 *receive notice of the cigarettes that have been certified by manufacturers*
4 *pursuant to section 11 of this act. The procedure may include, without limitation,*
5 *listing the brands and styles of cigarettes which have been certified on an*
6 *Internet website maintained by the Department.*

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

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

16 *3. A manufacturer that certifies a cigarette in accordance with section 11 of*
17 *this act shall provide a copy of the certification to each wholesale dealer and*
18 *agent to whom the manufacturer sells cigarettes. A wholesale dealer, retail dealer*
19 *or agent shall allow the State Fire Marshal, the Executive Director of the*
20 *Department of Taxation and the Attorney General, and their respective*
21 *employees, to inspect the markings of cigarette packaging marked in accordance*
22 *with this section.*

23 **Sec. 13.** *1. Any manufacturer, wholesale dealer, agent or other person*
24 *that knowingly sells cigarettes in this State, other than through retail sale, in*
25 *violation of section 10 of this act is subject to a civil penalty not to exceed \$100*
26 *for each pack of such cigarettes sold, except that the penalty against the person*
27 *must not exceed \$100,000 during any 30-day period.*

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

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

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

39 *5. A law enforcement officer, authorized representative of the Department*
40 *of Taxation or authorized representative of the State Fire Marshal who discovers*
41 *any cigarettes for sale in this State for which no certification has been submitted*
42 *pursuant to section 11 of this act or which are not marked pursuant to section 12*
43 *of this act may seize the cigarettes. Cigarettes seized pursuant to this section must*
44 *be destroyed after the true holder of the trademark rights in the cigarette brand is*
45 *allowed to inspect the cigarettes.*

46 *6. Each violation of any provision of sections 2 to 19, inclusive, of this act*
47 *or any regulation adopted pursuant thereto constitutes a separate civil violation*
48 *for which the State Fire Marshal or the Attorney General may obtain relief. In*
49 *addition to any other remedy provided by law, the Attorney General may file an*
50 *action in a court of competent jurisdiction concerning a violation of any*
51 *provision of sections 2 to 19, inclusive, of this act or any regulation adopted*
52 *pursuant thereto, including, without limitation, petitioning for:*

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

8 (b) The recovery of any civil penalty authorized by the provisions of sections
9 2 to 19, inclusive, of this act.

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

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

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

19 Sec. 15. The Department of Taxation, in the regular course of conducting
20 inspections of wholesale dealers, retail dealers and agents pursuant to NRS
21 370.001 to 370.530, inclusive, may inspect any packages of cigarettes to
22 determine if they have been marked in accordance with section 12 of this act. If
23 the packages of cigarettes are not marked as required, the Executive Director of
24 the Department of Taxation shall notify the State Fire Marshal and may seize the
25 packages of cigarettes pursuant to subsection 5 of section 13 of this act.

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

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

39 2. The interest and income earned on the money in the Fund, after
40 deducting any applicable charges, must be credited to the Fund. All claims
41 against the Fund must be paid as other claims against the State are paid.

42 3. The State Fire Marshal shall administer the Fund and may expend any
43 money in the Fund to support fire safety and fire prevention programs.

44 Sec. 18. On or before January 30 of each odd-numbered year, the State
45 Fire Marshal shall submit to the Director of the Legislative Counsel Bureau for
46 transmittal to the next regular session of the Legislature a written report
47 concerning the effectiveness of the provisions of sections 2 to 19, inclusive, of this
48 act and any recommendations for legislation to improve the effectiveness of
49 sections 2 to 19, inclusive, of this act.

50 Sec. 19. 1. The provisions of sections 2 to 19, inclusive, of this act must,
51 to the extent practicable, be interpreted and construed to effectuate the general
52 purpose of those provisions to make uniform the laws of those states that have
53 enacted similar legislation.

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

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

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

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

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

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

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