

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH80319-LB-340 (04/10)

Short Title: Fire-Safe Cigarette Act.

(Public)

Sponsors: Representative Insko.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CIGARETTE FIRE-SAFETY BY ADOPTING A
CIGARETTE FIRE-SAFETY STANDARD.

The General Assembly of North Carolina enacts:

SECTION 1. Title. This act shall be known and may be cited as the
"Fire-Safety Standard and Firefighter Protection Act."

SECTION 2. Findings. The General Assembly finds:

- (1) Cigarettes are the leading cause of fire deaths in this State and the nation.
- (2) Each year in the United States, 700-900 persons are killed due to cigarette fires, and 3,000 are injured in fires ignited by cigarettes, while in this State, there were 2,916 cigarette-related fires in North Carolina during the period 2001-2006.
- (3) A high proportion of the victims of cigarette fires are nonsmokers, including senior citizens and young children.
- (4) Cigarette-caused fires result in billions of dollars of property losses and damages in the United States and millions of dollars in this State.
- (5) Cigarette fires unnecessarily jeopardize firefighters and result in avoidable emergency response costs for municipalities.
- (6) In 2004, New York State implemented a cigarette fire safety regulation requiring cigarettes sold in that state to meet a fire safety performance standard; in 2005, Vermont and California enacted cigarette fire safety laws directly incorporating New York's regulation into statute; and, in 2006, Illinois, New Hampshire, and Massachusetts joined these states in enacting such laws.

- 1 (7) In 2005, Canada implemented the New York State fire safety standard
2 contained in the other state laws, becoming the first nation to have a
3 cigarette fire safety standard.
- 4 (8) New York State's cigarette fire safety standard is based upon decades
5 of research by the National Institute of Standards and Technology,
6 Congressional research groups, and private industry.
- 7 (9) This cigarette fire safety standard minimizes costs to the State and
8 minimally burdens cigarette manufacturers, distributors, and retail
9 sellers, and, therefore, should become law in this State.
- 10 (10) It is therefore fitting and proper for this State to adopt the cigarette fire
11 safety standard that is in effect in New York State to reduce the
12 likelihood that cigarettes will cause fires and result in deaths, injuries,
13 and property damages.

14 **SECTION 3.** Definitions. For the purposes of this act:

- 15 (1) "Agent" means any person authorized by the Department of Revenue
16 to pay the excise tax on packages of cigarettes.
- 17 (2) "Cigarette" means:
18 a. Any roll for smoking, whether made wholly or in part of
19 tobacco or any other substance, irrespective of size or shape,
20 and whether or not such tobacco or substance is flavored,
21 adulterated, or mixed with any other ingredient, the wrapper or
22 cover of which is made of paper or any other substance or
23 material, other than leaf tobacco; or
24 b. Any roll for smoking wrapped in any substance containing
25 tobacco which, because of its appearance, the type of tobacco
26 used in the filler, or its packaging and labeling, is likely to be
27 offered to, or purchased by, consumers as a cigarette as
28 described in sub-subdivision a. of this subdivision.
- 29 (3) "Commissioner" means the Commissioner of Agriculture.
- 30 (3a) "Consumer testing" means an assessment of cigarettes that is
31 conducted by a manufacturer (or under the control and direction of a
32 manufacturer), for the purpose of evaluating consumer acceptance of
33 such cigarettes, utilizing only the quantity of cigarettes that is
34 reasonably necessary for such assessment, and in a controlled setting
35 where the cigarettes are either consumed on-site or returned to the
36 testing administrators at the conclusion of the testing.
- 37 (4) "Manufacturer" means:
38 a. Any entity which manufactures or otherwise produces cigarettes
39 or causes cigarettes to be manufactured or produced anywhere
40 that such manufacturer intends to be sold in this State, including
41 cigarettes intended to be sold in the United States through an
42 importer;
43 b. The first purchaser anywhere that intends to resell in the United
44 States cigarettes manufactured anywhere that the original

1 manufacturer or maker does not intend to be sold in the United
2 States; or

3 c. Any entity that becomes a successor of an entity described in
4 sub-subdivision a. or b. of this subdivision.

5 (5) "Quality control and quality assurance program" means the laboratory
6 procedures implemented to ensure that operator bias, systematic and
7 nonsystematic methodological errors, and equipment-related problems
8 do not affect the results of the testing. Such a program ensures that the
9 testing repeatability remains within the required repeatability values
10 stated in Section 4(a6) of this act for all test trials used to certify
11 cigarettes in accordance with this act.

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

15 (7) "Retail dealer" means any person, other than a manufacturer or
16 wholesale dealer, engaged in selling cigarettes or tobacco products.

17 (8) "Sale" means any transfer of title or possession or both, exchange or
18 barter, conditional or otherwise, in any manner or by any means
19 whatever or any agreement therefor. In addition to cash and credit
20 sales, the giving of cigarettes as samples, prizes or gifts, and the
21 exchanging of cigarettes for any consideration other than money, are
22 considered sales.

23 (9) "Sell" means to sell, or to offer or agree to do the same.

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

29 **SECTION 4.** Test Method and Performance Standard. (a) Except as
30 provided in subsection (g) of this section, no cigarettes may be sold or offered for sale
31 in this State or offered for sale or sold to persons located in this State unless the
32 cigarettes have been tested in accordance with the test method and meet the
33 performance standard specified in this section, a written certification has been filed by
34 the manufacturer with the Commissioner in accordance with Section 5 of this act, and
35 the cigarettes have been marked in accordance with Section 6 of this act.

36 **SECTION 4.(a1)** Testing of cigarettes shall be conducted in accordance
37 with the American Society of Testing and Materials ("ASTM") standard E2187-04,
38 "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

39 **SECTION 4.(a2)** Testing shall be conducted on 10 layers of filter paper.

40 **SECTION 4.(a3)** No more than 25 percent of the cigarettes tested in a test
41 trial in accordance with this section shall exhibit full-length burns. Forty replicate tests
42 shall comprise a complete test trial for each cigarette tested.

43 **SECTION 4.(a4)** The performance standard required by this section shall
44 only be applied to a complete test trial.

1 **SECTION 4.(a5)** Written certifications shall be based upon testing
2 conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025
3 of the International Organization for Standardization ("ISO"), or other comparable
4 accreditation standard required by the Commissioner.

5 **SECTION 4.(a6)** Laboratories conducting testing in accordance with this
6 section shall implement a quality control and quality assurance program that includes a
7 procedure that will determine the repeatability of the testing results. The repeatability
8 value shall be no greater than 0.19.

9 **SECTION 4.(a7)** This section does not require additional testing if
10 cigarettes are tested consistent with this act for any other purpose.

11 **SECTION 4.(a8)** Testing performed or sponsored by the Commissioner to
12 determine a cigarette's compliance with the performance standard required shall be
13 conducted in accordance with this section.

14 **SECTION 4.(b)** Each cigarette listed in a certification submitted pursuant to
15 Section 5 of this act that uses lowered permeability bands in the cigarette paper to
16 achieve compliance with the performance standard set forth in this section shall have at
17 least two nominally identical bands on the paper surrounding the tobacco column. At
18 least one complete band shall be located at least 15 millimeters from the lighting end of
19 the cigarette. For cigarettes on which the bands are positioned by design, there shall be
20 at least two bands fully located at least 15 millimeters from the lighting end and 10
21 millimeters from the filter end of the tobacco column, or 10 millimeters from the
22 labeled end of the tobacco column for non-filtered cigarettes.

23 **SECTION 4.(c)** A manufacturer of a cigarette that the Commissioner
24 determines cannot be tested in accordance with the test method prescribed in subsection
25 (a1) of this section shall propose a test method and performance standard for the
26 cigarette to the Commissioner. Upon approval of the proposed test method and a
27 determination by the Commissioner that the performance standard proposed by the
28 manufacturer is equivalent to the performance standard prescribed in subsection (a3) of
29 this section, the manufacturer may employ such test method and performance standard
30 to certify such cigarette pursuant to Section 5 of this act. If the Commissioner
31 determines that another state has enacted reduced cigarette ignition propensity standards
32 that include a test method and performance standard that are the same as those
33 contained in this act, and the Commissioner finds that the officials responsible for
34 implementing those requirements have approved the proposed alternative test method
35 and performance standard for a particular cigarette proposed by a manufacturer as
36 meeting the fire safety standards of that state's law or regulation under a legal provision
37 comparable to this section, then the Commissioner shall authorize that manufacturer to
38 employ the alternative test method and performance standard to certify that cigarette for
39 sale in this State, unless the Commissioner demonstrates a reasonable basis why the
40 alternative test should not be accepted under this act. All other applicable requirements
41 of this section shall apply to the manufacturer.

42 **SECTION 4.(d)** Each manufacturer shall maintain copies of the reports of
43 all tests conducted on all cigarettes offered for sale for a period of three years, and shall
44 make copies of these reports available to the Commissioner and the Attorney General

1 upon written request. Any manufacturer who fails to make copies of these reports
2 available within 60 days of receiving a written request shall be subject to a civil penalty
3 not to exceed ten thousand dollars (\$10,000) for each day after the sixtieth day that the
4 manufacturer does not make such copies available.

5 **SECTION 4.(e)** The Commissioner may adopt a subsequent ASTM
6 Standard Test Method for measuring the Ignition Strength of Cigarettes upon a finding
7 that such subsequent method does not result in a change in the percentage of full-length
8 burns exhibited by any tested cigarette when compared to the percentage of full-length
9 burns the same cigarette would exhibit when tested in accordance with ASTM Standard
10 E2187-04 and the performance standard in subsection (a3) of this section.

11 **SECTION 4.(f)** The Commissioner shall review the effectiveness of this
12 section and report every three years to the General Assembly the Commissioner's
13 findings and, if appropriate, recommendations for legislation to improve the
14 effectiveness of this act. The report and legislative recommendations shall be submitted
15 no later than June 30 following the conclusion of each three-year period.

16 **SECTION 4.(g)** The requirements of subsections (a) through (a8) of this
17 section shall not prohibit:

18 (1) Wholesale or retail dealers from selling their existing inventory of
19 cigarettes on or after the effective date of this act if the wholesale or
20 retailer dealer can establish that state tax stamps were affixed to the
21 cigarettes prior to the effective date and the wholesale or retailer dealer
22 can establish that the inventory was purchased prior to the effective
23 date in comparable quantity to the inventory purchased during the
24 same period of the prior year.

25 (2) The sale of cigarettes solely for the purpose of consumer testing.

26 **SECTION 4.(h)** In implanting this act, the Commissioner may look to the
27 implementation and substance of the New York Fire Safety Standards for Cigarettes for
28 guidance.

29 **SECTION 5.** Certification and Product Change. (a) Each manufacturer shall
30 submit to the Commissioner a written certification attesting that:

31 (1) Each cigarette listed in the certification has been tested in accordance
32 with Section 4 of this act.

33 (2) Each cigarette listed in the certification meets the performance
34 standard set forth in Section 4 of this act.

35 **SECTION 5.(b)** Each cigarette listed in the certification shall be described
36 with the following information:

37 (1) Brand, or trade name on the package.

38 (2) Style, such as light or ultralight.

39 (3) Length in millimeters.

40 (4) Circumference in millimeters.

41 (5) Flavor, such as menthol or chocolate, if applicable.

42 (6) Filter or non-filter.

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

44 (8) Marking pursuant to Section 6 of this act.

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

3 (10) The date that the testing occurred.

4 **SECTION 5.(c)** Certifications shall be made available to the Attorney
5 General for purposes consistent with this act and the Commissioner for the purposes of
6 ensuring compliance with this section.

7 **SECTION 5.(d)** Each cigarette certified under this section shall be
8 recertified every three years.

9 **SECTION 5.(e)** For each cigarette listed in a certification, a manufacturer
10 shall pay to the Commissioner a fee of two hundred fifty dollars (\$250.00). The
11 Commissioner may annually adjust this fee to ensure it defrays the actual costs of the
12 processing, testing, enforcement, and oversight activities required by this act.

13 **SECTION 5.(f)** There is established in the State treasury a separate,
14 nonreverting fund to be known as the "Fire Safety Standard and Firefighter Protection
15 Act Enforcement Fund." The fund shall consist of all certification fees submitted by
16 manufacturers, and shall, in addition to any other monies made available for such
17 purpose, be available to the Commissioner solely to support processing, testing,
18 enforcement, and oversight activities under this act.

19 **SECTION 5.(g)** If a manufacturer has certified a cigarette pursuant to this
20 section, and thereafter makes any change to such cigarette that is likely to alter its
21 compliance with the reduced cigarette ignition propensity standards required by this act,
22 that cigarette shall not be sold or offered for sale in this State until the manufacturer
23 retests the cigarette in accordance with the testing standards set forth in Section 4 of this
24 act and maintains records of that retesting as required by Section 4 of this act. Any
25 altered cigarette which does not meet the performance standard set forth in Section 4 of
26 this act may not be sold in this State.

27 **SECTION 6. Marking of Cigarette Packaging.** (a) Cigarettes that are
28 certified by a manufacturer in accordance with Section 5 of this act shall be marked to
29 indicate compliance with the requirements of Section 4 of this act. The marking shall be
30 in eight point type or larger and consist of:

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

35 (2) Any visible combination of alphanumeric or symbolic characters
36 permanently stamped, engraved, or embossed upon the cigarette
37 package or cellophane wrap.

38 (3) Printed, stamped, engraved, or embossed text that indicates that the
39 cigarettes meet the standards of this act.

40 **SECTION 6.(b)** A manufacturer shall use only one marking, and shall apply
41 this marking uniformly for all packages, including but not limited to packs, cartons, and
42 cases, and brands marketed by that manufacturer.

43 **SECTION 6.(c)** The Commissioner shall be notified as to the marking that is
44 selected.

1 **SECTION 6.(d)** Prior to the certification of any cigarette, a manufacturer
2 shall present its proposed marking to the Commissioner for approval. Upon receipt of
3 the request, the Commissioner shall approve or disapprove the marking offered, except
4 that the Commissioner shall approve:

- 5 (1) Any marking in use and approved for sale in New York pursuant to the
6 New York Fire Safety Standards for Cigarettes, or
- 7 (2) The letters "FSC," which signifies Fire Standards Compliant appearing
8 in eight point type or larger and be permanently printed, stamped,
9 engraved, or embossed on the package at or near the UPC Code.

10 **SECTION 6.(d1)** Proposed markings shall be deemed approved if the
11 Commissioner fails to act within 10 business days of receiving a request for approval.

12 **SECTION 6.(e)** No manufacturer shall modify its approved marking unless
13 the modification has been approved by the Commissioner in accordance with this
14 section.

15 **SECTION 6.(f)** Manufacturers certifying cigarettes in accordance with
16 Section 5 of this act shall provide a copy of the certifications to all wholesale dealers
17 and agents to which they sell cigarettes, and shall also provide sufficient copies of an
18 illustration of the package marking utilized by the manufacturer pursuant to this section
19 for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale
20 dealers, and agents shall provide a copy of these package markings received from
21 manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers,
22 agents and retail dealers shall permit the Commissioner, the Secretary of Revenue, the
23 Attorney General, and their employees to inspect markings of cigarette packaging
24 marked in accordance with this section.

25 **SECTION 7.** Penalties. (a) A manufacturer, wholesale dealer, agent, or any
26 other person or entity who knowingly sells or offers to sell cigarettes, other than through
27 retail sale, in violation of Section 4 of this act, shall be subject to a civil penalty not to
28 exceed one hundred dollars (\$100.00) for each pack of such cigarettes sold or offered
29 for sale provided that in no case shall the penalty against any such person or entity
30 exceed one hundred thousand dollars (\$100,000) during any 30-day period.

31 **SECTION 7.(b)** A retail dealer who knowingly sells or offers to sell
32 cigarettes in violation of Section 4 of this act shall be subject to a civil penalty not to
33 exceed one hundred dollars (\$100.00) for each pack of such cigarettes sold or offered
34 for sale, provided that in no case shall the penalty against any retail dealer exceed
35 twenty-five thousand dollars (\$25,000) for sales or offers to sell during any 30-day
36 period.

37 **SECTION 7.(c)** In addition to any penalty prescribed by law, any
38 corporation, partnership, sole proprietor, limited partnership, or association engaged in
39 the manufacture of cigarettes that knowingly makes a false certification pursuant to
40 Section 5 of this act shall be subject to a civil penalty of at least seventy-five thousand
41 dollars (\$75,000) but not to exceed two hundred fifty thousand dollars (\$250,000) for
42 each such false certification.

43 **SECTION 7.(d)** Any person violating any other provision in this act shall be
44 subject to a civil penalty for a first offense not to exceed one thousand dollars (\$1,000),

1 and for a subsequent offense subject to a civil penalty not to exceed five thousand
2 dollars (\$5,000) for each such violation.

3 **SECTION 7.(e)** Any cigarettes that have been sold or offered for sale that
4 do not comply with the performance standard required by Section 4 of this act shall be
5 subject to forfeiture as contraband under the same procedures as G.S. 75D-15 or
6 G.S. 113-412. Cigarettes forfeited pursuant to this section shall be destroyed; provided,
7 however, that prior to the destruction of any cigarette forfeited pursuant to these
8 provisions, the true holder of the trademark rights in the cigarette brand shall be
9 permitted to inspect the cigarette.

10 **SECTION 7.(f)** In addition to any other remedy provided by law, the
11 Commissioner or Attorney General may file an action in the superior court for a
12 violation of this act, including petitioning for injunctive relief or to recover any costs or
13 damages suffered by the State because of a violation of this act, including enforcement
14 costs relating to the specific violation and attorneys' fees. Each violation of this act or of
15 rules or regulations adopted under this act constitutes a separate civil violation for
16 which the Commissioner or Attorney General may obtain relief.

17 **SECTION 7.(g)** Whenever any law enforcement personnel or duly
18 authorized representative of the Commissioner shall discover any cigarettes that have
19 not been marked in the manner required by Section 6 of this act, such personnel is
20 hereby authorized and empowered to seize and take possession of such cigarettes. Such
21 cigarettes shall be turned over to the Department of Revenue and shall be forfeited to
22 the State. Cigarettes seized pursuant to this section shall be destroyed; provided,
23 however, that prior to the destruction of any cigarette seized pursuant to these
24 provisions, the true holder of the trademark rights in the cigarette brand shall be
25 permitted to inspect the cigarette.

26 **SECTION 8.** Implementation. (a) The Commissioner may adopt rules,
27 pursuant to Chapter 150B of the General Statutes, necessary to effectuate the purposes
28 of this act.

29 **SECTION 8.(b)** The Department of Revenue in the regular course of
30 conducting inspections of wholesale dealers, agents, and retail dealers, as authorized
31 under the Tobacco Products Tax Act, Article 2A of Chapter 105 of the General Statutes,
32 may inspect such cigarettes to determine if the cigarettes are marked as required by
33 Section 6 of this act. If the cigarettes are not marked as required, the Department of
34 Revenue shall notify the Commissioner.

35 **SECTION 9.** Inspection. To enforce the provisions of this act, the Attorney
36 General, the Department of Revenue, and the Commissioner, their duly authorized
37 representatives, and other law enforcement personnel may examine the books, papers,
38 invoices, and other records of any person in possession, control, or occupancy of any
39 premises where cigarettes are placed, stored, sold, or offered for sale, as well as the
40 stock of cigarettes on the premises. Every person in the possession, control, or
41 occupancy of any premises where cigarettes are placed, sold, or offered for sale, is
42 hereby directed and required to give the Attorney General, the Department of Revenue,
43 and the Commissioner, their duly authorized representatives, and other law enforcement

1 personnel the means, facilities, and opportunity for the examinations authorized by this
2 section.

3 **SECTION 10.** Disposition of Penalties. The clear proceeds of civil penalties
4 and forfeitures provided for in this act shall be remitted to the Civil Penalty and
5 Forfeiture Fund in accordance with G.S. 115C-457.2.

6 **SECTION 11.** Sale Outside the State. Nothing in this act shall be construed
7 to prohibit any person or entity from manufacturing or selling cigarettes that do not
8 meet the requirements of Section 4 of this act if the cigarettes are or will be stamped for
9 sale in another state or are packaged for sale outside the United States, and that person
10 or entity has taken reasonable steps to ensure that such cigarettes will not be sold or
11 offered for sale to persons located in this State.

12 **SECTION 12.** Preemption. This act does not apply if a federal reduced
13 cigarette ignition propensity standard that preempts this act is enacted and becomes
14 effective, but such inapplicability does not affect any liability for forfeiture or penalties
15 accrued prior to the effective date of the federal law.

16 **SECTION 13.** Effective Date. This act becomes effective on the first day of
17 the thirteenth calendar month after enactment.