

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1785
Committee Substitute Favorable 6/6/07
Committee Substitute #2 Favorable 7/3/07
Senate Finance Committee Substitute Adopted 8/1/07

Short Title: Fire-Safe Cigarette Act.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CIGARETTE FIRE SAFETY BY ADOPTING A
CIGARETTE FIRE-SAFETY STANDARD AND TO CLARIFY THE
STOCKHOLDER REQUIREMENTS FOR A BEHAVIORAL HEALTH
PROFESSIONAL CORPORATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a
new Article to read:

"Article 92.

"Fire-Safety Standard and Firefighter Protection Act.

"§ 58-92-1. Title.

This Article shall be known and may be cited as the "Fire-Safety Standard and
Firefighter Protection Act."

"§ 58-92-5. 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.

- 1 (6) In 2004, New York State implemented a cigarette fire-safety
2 regulation requiring cigarettes sold in that state to meet a fire-safety
3 performance standard; in 2005, Vermont and California enacted
4 cigarette fire-safety laws directly incorporating New York's regulation
5 into statute; and, in 2006, Illinois, New Hampshire, and Massachusetts
6 joined these states in enacting such laws.
- 7 (7) In 2005, Canada implemented the New York State fire-safety standard
8 contained in the other state laws, becoming the first nation to have a
9 cigarette fire-safety standard.
- 10 (8) New York State's cigarette fire-safety standard is based upon decades
11 of research by the National Institute of Standards and Technology,
12 congressional research groups, and private industry.
- 13 (9) This cigarette fire-safety standard minimizes costs to the State and
14 minimally burdens cigarette manufacturers, distributors, and retail
15 sellers, and, therefore, should become law in this State.
- 16 (10) It is therefore fitting and proper for this State to adopt the cigarette
17 fire-safety standard that is in effect in New York State to reduce the
18 likelihood that cigarettes will cause fires and result in deaths, injuries,
19 and property damages.

20 **"§ 58-92-10. Definitions.**

21 For the purposes of this Article:

- 22 (1) "Agent" means any person authorized by the Department of Revenue
23 to pay the excise tax on packages of cigarettes.
- 24 (2) "Cigarette" means any roll for smoking, whether made wholly or in
25 part of tobacco or any other substance, irrespective of size or shape,
26 and whether or not such tobacco or substance is flavored, adulterated,
27 or mixed with any other ingredient, the wrapper or cover of which is
28 made of paper or any other substance or material, other than leaf
29 tobacco.
- 30 (3) "Commissioner" means the Commissioner of Insurance.
- 31 (3a) "Consumer testing" means an assessment of cigarettes that is
32 conducted by a manufacturer (or under the control and direction of a
33 manufacturer), for the purpose of evaluating consumer acceptance of
34 such cigarettes.
- 35 (4) "Manufacturer" means:
- 36 a. Any entity which manufactures or otherwise produces cigarettes
37 or causes cigarettes to be manufactured or produced anywhere
38 that such manufacturer intends to be sold in this State, including
39 cigarettes intended to be sold in the United States through an
40 importer;
- 41 b. The first purchaser anywhere that intends to resell in the United
42 States cigarettes manufactured anywhere that the original
43 manufacturer or maker does not intend to be sold in the United
44 States; or

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

3 (5) "Quality control and quality assurance program" means the laboratory
4 procedures implemented to ensure that operator bias, systematic and
5 nonsystematic methodological errors, and equipment-related problems
6 do not affect the results of the testing. Such a program ensures that the
7 testing repeatability remains within the required repeatability values
8 stated in G.S. 58-92-15(a6) for all test trials used to certify cigarettes
9 in accordance with this Article.

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

13 (7) "Retail dealer" means any person, other than a manufacturer or
14 distributor, engaged in selling cigarettes or tobacco products.

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

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

22 (10) "Distributor" means any person other than a manufacturer who sells
23 cigarettes or tobacco products to retail dealers or other persons for
24 purposes of resale, any person who owns, operates, or maintains one or
25 more cigarette or tobacco product vending machines in, at, or upon
26 premises owned or occupied by any other person, or a distributor as
27 defined in G.S. 105-113.4(3)a.

28 **"§ 58-92-15. Test method and performance standard.**

29 (a) Except as provided in subsection (g) of this section, no cigarettes may be sold
30 or offered for sale in this State or offered for sale or sold to persons located in this State
31 unless the cigarettes have been tested in accordance with the test method and meet the
32 performance standard specified in this section, a written certification has been filed by
33 the manufacturer with the Commissioner in accordance with G.S. 58-92-20, and the
34 cigarettes have been marked in accordance with G.S. 58-92-25.

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

38 (a2) Testing shall be conducted on 10 layers of filter paper.

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

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

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

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

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

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

14 (b) Each cigarette listed in a certification submitted pursuant to G.S. 58-92-20
15 that uses lowered permeability bands in the cigarette paper to achieve compliance with
16 the performance standard set forth in this section shall have at least two nominally
17 identical bands on the paper surrounding the tobacco column. At least one complete
18 band shall be located at least 15 millimeters from the lighting end of the cigarette. For
19 cigarettes on which the bands are positioned by design, there shall be at least two bands
20 fully located at least 15 millimeters from the lighting end and 10 millimeters from the
21 filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco
22 column for nonfiltered cigarettes.

23 (c) A manufacturer of a cigarette that the Commissioner determines cannot be
24 tested in accordance with the test method prescribed in subsection (a1) of this section
25 shall propose a test method and performance standard for the cigarette to the
26 Commissioner. Upon approval of the proposed test method and a determination by the
27 Commissioner that the performance standard proposed by the manufacturer is
28 equivalent to the performance standard prescribed in subsection (a3) of this section, the
29 manufacturer may employ such test method and performance standard to certify such
30 cigarette pursuant to G.S. 58-92-20. If the Commissioner determines that another state
31 has enacted reduced cigarette ignition propensity standards that include a test method
32 and performance standard that are the same as those contained in this Article, and the
33 Commissioner finds that the officials responsible for implementing those requirements
34 have approved the proposed alternative test method and performance standard for a
35 particular cigarette proposed by a manufacturer as meeting the fire-safety standards of
36 that state's law or regulation under a legal provision comparable to this section, then the
37 Commissioner shall authorize that manufacturer to employ the alternative test method
38 and performance standard to certify that cigarette for sale in this State, unless the
39 Commissioner demonstrates a reasonable basis why the alternative test should not be
40 accepted under this Article. All other applicable requirements of this section shall apply
41 to the manufacturer.

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

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

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

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

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

18 (1) Distributors or retail dealers from selling their existing inventory of
19 cigarettes on or after the effective date of this Article if the distributor
20 or retail dealer can establish that all taxes owed on the cigarettes
21 pursuant to Article 2A of Chapter 105 of the General Statutes have
22 been paid prior to the effective date of this Article and the distributor
23 or retail dealer can establish that the inventory was purchased prior to
24 the effective date in comparable quantity to the inventory purchased
25 during the same period of the prior year.

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

27 (h) The Commissioner shall implement this Article in accordance with the
28 implementation and substance of the New York Fire Safety Standards for Cigarettes.

29 (i) No local government may pass any ordinance changing the performance
30 standard set forth in this section.

31 **"§ 58-92-20. Certification and product change.**

32 (a) Each manufacturer shall submit to the Commissioner a written certification
33 attesting both of the following:

34 (1) Each cigarette listed in the certification has been tested in accordance
35 with G.S. 58-92-15.

36 (2) Each cigarette listed in the certification meets the performance
37 standard set forth in G.S. 58-92-15.

38 (b) Each cigarette listed in the certification shall be described with the following
39 information:

40 (1) Brand or trade name on the package.

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

42 (3) Length in millimeters.

43 (4) Circumference in millimeters.

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

1 (6) Filter or nonfilter.

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

3 (8) Marking pursuant to G.S. 58-92-25.

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

6 (10) The date that the testing occurred.

7 (c) Certifications shall be made available to the Attorney General for purposes
8 consistent with this Article and the Commissioner for the purposes of ensuring
9 compliance with this section.

10 (d) Each cigarette certified under this section shall be recertified every three
11 years.

12 (e) For each certification form, a manufacturer shall pay to the Commissioner a
13 fee of two hundred fifty dollars (\$250.00). The Commissioner may annually adjust this
14 fee to ensure it defrays the actual costs of the processing, testing, enforcement, and
15 oversight activities required by this Article.

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

22 (g) If a manufacturer has certified a cigarette pursuant to this section, and
23 thereafter makes any change to such cigarette that is likely to alter its compliance with
24 the reduced cigarette ignition propensity standards required by this Article, that cigarette
25 shall not be sold or offered for sale in this State until the manufacturer retests the
26 cigarette in accordance with the testing standards set forth in G.S. 58-92-15 and
27 maintains records of that retesting as required by G.S. 58-92-15. Any altered cigarette
28 which does not meet the performance standard set forth in G.S. 58-92-15 may not be
29 sold in this State.

30 **"§ 58-92-25. Marking of cigarette packaging.**

31 (a) Cigarettes that are certified by a manufacturer in accordance with
32 G.S. 58-92-20 shall be marked to indicate compliance with the requirements of
33 G.S. 58-92-15. The marking shall be in eight-point type or larger and consist of one of
34 the following:

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

39 (2) Any visible combination of alphanumeric or symbolic characters
40 permanently stamped, engraved, or embossed upon the cigarette
41 package or cellophane wrap.

42 (3) Printed, stamped, engraved, or embossed text that indicates that the
43 cigarettes meet the standards of this Article.

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

4 (c) The Commissioner shall be notified as to the marking that is selected.

5 (d) Prior to the certification of any cigarette, a manufacturer shall present its
6 proposed marking to the Commissioner for approval. Upon receipt of the request, the
7 Commissioner shall approve or disapprove the marking offered, except that the
8 Commissioner shall approve:

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

11 (2) The letters "FSC," which signifies Fire Standards Compliant,
12 appearing in eight-point type or larger and permanently printed,
13 stamped, engraved, or embossed on the package at or near the UPC
14 Code.

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

17 (e) No manufacturer shall modify its approved marking unless the modification
18 has been approved by the Commissioner in accordance with this section.

19 (f) Manufacturers certifying cigarettes in accordance with G.S. 58-92-20 shall
20 provide a copy of the certifications to all distributors and agents to which they sell
21 cigarettes and shall also provide sufficient copies of an illustration of the package
22 marking utilized by the manufacturer pursuant to this section for each retail dealer to
23 which the distributors or agents sell cigarettes. Distributors and agents shall provide a
24 copy of these package markings received from manufacturers to all retail dealers to
25 which they sell cigarettes. Distributors, agents, and retail dealers shall permit the
26 Commissioner, the Secretary of Revenue, the Attorney General, and their employees to
27 inspect markings of cigarette packaging marked in accordance with this section.

28 **"§ 58-92-30. Penalties.**

29 (a) A manufacturer, distributor, agent, or any other person or entity who
30 knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of
31 G.S. 58-92-15, shall be subject to a civil penalty not to exceed one hundred dollars
32 (\$100.00) for each pack of such cigarettes sold or offered for sale provided that in no
33 case shall the penalty against any such person or entity exceed one hundred thousand
34 dollars (\$100,000) during any 30-day period.

35 (b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of
36 G.S. 58-92-15 shall be subject to a civil penalty not to exceed one hundred dollars
37 (\$100.00) for each pack of such cigarettes sold or offered for sale, provided that in no
38 case shall the penalty against any retail dealer exceed twenty-five thousand dollars
39 (\$25,000) for sales or offers to sell during any 30-day period.

40 (c) In addition to any penalty prescribed by law, any corporation, partnership,
41 sole proprietor, limited partnership, or association engaged in the manufacture of
42 cigarettes that knowingly makes a false certification pursuant to G.S. 58-92-20 shall be
43 subject to a civil penalty of at least seventy-five thousand dollars (\$75,000) but not to
44 exceed two hundred fifty thousand dollars (\$250,000) for each such false certification.

1 (d) Any person violating any other provision in this Article shall be subject to a
2 civil penalty for a first offense not to exceed one thousand dollars (\$1,000), and for a
3 subsequent offense subject to a civil penalty not to exceed five thousand dollars
4 (\$5,000) for each such violation.

5 (e) Any cigarettes that have been sold or offered for sale that do not comply with
6 the performance standard required by G.S. 58-92-15 shall be subject to forfeiture as
7 contraband under the same procedures as G.S. 75D-5 or G.S. 113-412. Cigarettes
8 forfeited pursuant to this section shall be destroyed; provided, however, that prior to the
9 destruction of any cigarette forfeited pursuant to these provisions, the true holder of the
10 trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

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

18 (g) Whenever any law enforcement personnel or duly authorized representative
19 of the Commissioner shall discover any cigarettes that have not been marked in the
20 manner required by G.S. 58-92-25, such personnel is hereby authorized and empowered
21 to seize and take possession of such cigarettes. Such cigarettes shall be turned over to
22 the Department of Revenue and shall be forfeited to the State. Cigarettes seized
23 pursuant to this section shall be destroyed; provided, however, that prior to the
24 destruction of any cigarette seized pursuant to these provisions, the true holder of the
25 trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

26 (h) Any penalty imposed under this Article shall be payable to the
27 Commissioner.

28 (i) A violation of this Article constitutes a civil offense only and is not a crime.

29 **"§ 58-92-35. Implementation.**

30 (a) The Commissioner may adopt rules, pursuant to Chapter 150B of the General
31 Statutes, necessary to effectuate the purposes of this Article.

32 (b) The Department of Revenue in the regular course of conducting inspections
33 of distributors, agents, and retail dealers, as authorized under the Tobacco Products Tax
34 Act, Article 2A of Chapter 105 of the General Statutes, may inspect such cigarettes to
35 determine if the cigarettes are marked as required by G.S. 58-92-25. If the cigarettes are
36 not marked as required, the Department of Revenue shall notify the Commissioner.

37 **"§ 58-92-40. Inspection.**

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

1 Attorney General, the Department of Revenue, and the Commissioner, their duly
2 authorized representatives, and other law enforcement personnel the means, facilities,
3 and opportunity for the examinations authorized by this section.

4 **"§ 58-92-45. Disposition of penalties.**

5 The clear proceeds of civil penalties and forfeitures provided for in this Article shall
6 be remitted to the Civil Penalty and Forfeiture Fund in accordance with
7 G.S. 115C-457.2.

8 **"§ 58-92-50. Sale outside the State.**

9 Nothing in this Article shall be construed to prohibit any person or entity from
10 manufacturing or selling cigarettes that do not meet the requirements of G.S. 58-92-15
11 if the cigarettes are or will be stamped for sale in another state or are packaged for sale
12 outside the United States and that person or entity has taken reasonable steps to ensure
13 that such cigarettes will not be sold or offered for sale to persons located in this State.

14 **"§ 58-92-55. Preemption.**

15 This Article does not apply if a federal reduced cigarette ignition propensity standard
16 that preempts this Article is enacted and becomes effective, but such inapplicability
17 does not affect any liability for forfeiture or penalties accrued prior to the effective date
18 of the federal law."

19 **SECTION 2.(a)** G.S. 55B-14(c)(4) reads as rewritten:

20 "(c) A professional corporation may also be formed by and between or among:

21 ...

22 (4) A physician, ~~or~~ a licensed psychologist, a licensed clinical social
23 worker, or each of them~~both,~~ and a certified clinical specialist in
24 psychiatric and mental health nursing, a licensed clinical social
25 worker, a licensed marriage and family therapist, a licensed
26 professional counselor, or each of them, to render psychotherapeutic
27 and related services that the respective stockholders are licensed,
28 certified, or otherwise approved to provide.

29 ..."

30 **SECTION 2.(b)** The formation of any professional corporation prior to the
31 effective date of this section is hereby validated.

32 **SECTION 3** Section 1 of this act becomes effective January 1, 2010. The
33 remainder of the act is effective when it becomes law.