

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1785

Short Title: Fire-Safe Cigarette Act.

(Public)

Sponsors: Representatives Insko, Glazier, Cotham (Primary Sponsors); and Harrison.

Referred to: Judiciary I.

April 19, 2007

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE CIGARETTE FIRE-SAFETY BY ADOPTING A
2 CIGARETTE FIRE-SAFETY STANDARD.
3

4 The General Assembly of North Carolina enacts:

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

7 **SECTION 2.** Findings. The General Assembly finds:

- 8 (1) Cigarettes are the leading cause of fire deaths in this State and the
9 nation.
- 10 (2) Each year in the United States, 700-900 persons are killed due to
11 cigarette fires, and 3,000 are injured in fires ignited by cigarettes,
12 while in this State, there were 2,916 cigarette-related fires in North
13 Carilina during the period 2001-2006.
- 14 (3) A high proportion of the victims of cigarette fires are nonsmokers,
15 including senior citizens and young children.
- 16 (4) Cigarette-caused fires result in billions of dollars of property losses
17 and damages in the United States and millions of dollars in this State.
- 18 (5) Cigarette fires unnecessarily jeopardize firefighters and result in
19 avoidable emergency response costs for municipalities.
- 20 (6) In 2004, New York State implemented a cigarette fire safety regulation
21 requiring cigarettes sold in that state to meet a fire safety performance
22 standard; in 2005, Vermont and California enacted cigarette fire safety
23 laws directly incorporating New York's regulation into statute; and, in
24 2006, Illinois, New Hampshire, and Massachusetts joined these states
25 in enacting such laws.
- 26 (7) In 2005, Canada implemented the New York State fire safety standard
27 contained in the other state laws, becoming the first nation to have a
28 cigarette fire safety standard.

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

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

- 12 (1) "Agent" means any person authorized by the Department of Revenue
13 to pay the excise tax on packages of cigarettes.
14 (2) "Cigarette" means:
15 a. Any roll for smoking, whether made wholly or in part of
16 tobacco or any other substance, irrespective of size or shape,
17 and whether or not such tobacco or substance is flavored,
18 adulterated, or mixed with any other ingredient, the wrapper or
19 cover of which is made of paper or any other substance or
20 material, other than leaf tobacco; or
21 b. Any roll for smoking wrapped in any substance containing
22 tobacco which, because of its appearance, the type of tobacco
23 used in the filler, or its packaging and labeling, is likely to be
24 offered to, or purchased by, consumers as a cigarette as
25 described in sub-subdivision a. of this subdivision.
26 (3) "Commissioner" means the Commissioner of Agriculture.
27 (3a) "Consumer testing" means an assessment of cigarettes that is
28 conducted by a manufacturer (or under the control and direction of a
29 manufacturer), for the purpose of evaluating consumer acceptance of
30 such cigarettes, utilizing only the quantity of cigarettes that is
31 reasonably necessary for such assessment, and in a controlled setting
32 where the cigarettes are either consumed on-site or returned to the
33 testing administrators at the conclusion of the testing.
34 (4) "Manufacturer" means:
35 a. Any entity which manufactures or otherwise produces cigarettes
36 or causes cigarettes to be manufactured or produced anywhere
37 that such manufacturer intends to be sold in this State, including
38 cigarettes intended to be sold in the United States through an
39 importer;
40 b. The first purchaser anywhere that intends to resell in the United
41 States cigarettes manufactured anywhere that the original
42 manufacturer or maker does not intend to be sold in the United
43 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 Section 4(a6) of this act for all test trials used to certify
9 cigarettes in accordance with this act.

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

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

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

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

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

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

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

43 **SECTION 4.(a5)** Written certifications shall be based upon testing
44 conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025

1 of the International Organization for Standardization ("ISO"), or other comparable
2 accreditation standard required by the Commissioner.

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

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

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

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

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

40 **SECTION 4.(d)** Each manufacturer shall maintain copies of the reports of
41 all tests conducted on all cigarettes offered for sale for a period of three years, and shall
42 make copies of these reports available to the Commissioner and the Attorney General
43 upon written request. Any manufacturer who fails to make copies of these reports
44 available within 60 days of receiving a written request shall be subject to a civil penalty

1 not to exceed ten thousand dollars (\$10,000) for each day after the sixtieth day that the
2 manufacturer does not make such copies available.

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

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

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

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

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

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

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

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

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

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

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

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

37 (3) Length in millimeters.

38 (4) Circumference in millimeters.

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

40 (6) Filter or non-filter.

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

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

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

1 (10) The date that the testing occurred.

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

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

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

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

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

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

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

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

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

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

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

43 **SECTION 6.(d)** Prior to the certification of any cigarette, a manufacturer
44 shall present its proposed marking to the Commissioner for approval. Upon receipt of

1 the request, the Commissioner shall approve or disapprove the marking offered, except
2 that the Commissioner shall approve:

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

5 (2) The letters "FSC," which signifies Fire Standards Compliant appearing
6 in eight point type or larger and be permanently printed, stamped,
7 engraved, or embossed on the package at or near the UPC Code.

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

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

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

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

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

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

41 **SECTION 7.(d)** Any person violating any other provision in this act shall be
42 subject to a civil penalty for a first offense not to exceed one thousand dollars (\$1,000),
43 and for a subsequent offense subject to a civil penalty not to exceed five thousand
44 dollars (\$5,000) for each such violation.

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

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

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

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

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

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

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

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

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

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