

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

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.

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.
- (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

1 cigarette fire-safety laws directly incorporating New York's regulation  
2 into statute; and, in 2006, Illinois, New Hampshire, and Massachusetts  
3 joined these states in enacting such laws.

4 (7) In 2005, Canada implemented the New York State fire-safety standard  
5 contained in the other state laws, becoming the first nation to have a  
6 cigarette fire-safety standard.

7 (8) New York State's cigarette fire-safety standard is based upon decades  
8 of research by the National Institute of Standards and Technology,  
9 congressional research groups, and private industry.

10 (9) This cigarette fire-safety standard minimizes costs to the State and  
11 minimally burdens cigarette manufacturers, distributors, and retail  
12 sellers, and, therefore, should become law in this State.

13 (10) It is therefore fitting and proper for this State to adopt the cigarette  
14 fire-safety standard that is in effect in New York State to reduce the  
15 likelihood that cigarettes will cause fires and result in deaths, injuries,  
16 and property damages.

17 **"§ 58-92-10. Definitions.**

18 For the purposes of this Article:

19 (1) "Agent" means any person authorized by the Department of Revenue  
20 to pay the excise tax on packages of cigarettes.

21 (2) "Cigarette" means any roll for smoking, whether made wholly or in  
22 part of tobacco or any other substance, irrespective of size or shape,  
23 and whether or not such tobacco or substance is flavored, adulterated,  
24 or mixed with any other ingredient, the wrapper or cover of which is  
25 made of paper or any other substance or material, other than leaf  
26 tobacco.

27 (3) "Commissioner" means the Commissioner of Insurance.

28 (3a) "Consumer testing" means an assessment of cigarettes that is  
29 conducted by a manufacturer (or under the control and direction of a  
30 manufacturer), for the purpose of evaluating consumer acceptance of  
31 such cigarettes.

32 (4) "Manufacturer" means:

33 a. Any entity which manufactures or otherwise produces cigarettes  
34 or causes cigarettes to be manufactured or produced anywhere  
35 that such manufacturer intends to be sold in this State, including  
36 cigarettes intended to be sold in the United States through an  
37 importer;

38 b. The first purchaser anywhere that intends to resell in the United  
39 States cigarettes manufactured anywhere that the original  
40 manufacturer or maker does not intend to be sold in the United  
41 States; or

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

- 1           (5) "Quality control and quality assurance program" means the laboratory  
2 procedures implemented to ensure that operator bias, systematic and  
3 nonsystematic methodological errors, and equipment-related problems  
4 do not affect the results of the testing. Such a program ensures that the  
5 testing repeatability remains within the required repeatability values  
6 stated in G.S. 58-92-15(a6) for all test trials used to certify cigarettes  
7 in accordance with this Article.
- 8           (6) "Repeatability" means the range of values within which the repeat  
9 results of cigarette test trials from a single laboratory will fall  
10 ninety-five percent (95%) of the time.
- 11           (7) "Retail dealer" means any person, other than a manufacturer or  
12 distributor, engaged in selling cigarettes or tobacco products.
- 13           (8) "Sale" means any transfer of title or possession or both, exchange or  
14 barter, conditional or otherwise, in any manner or by any means  
15 whatever or any agreement therefor. In addition to cash and credit  
16 sales, the giving of cigarettes as samples, prizes, or gifts, and the  
17 exchanging of cigarettes for any consideration other than money, are  
18 considered sales.
- 19           (9) "Sell" means to sell, or to offer or agree to do the same.
- 20           (10) "Distributor" means any person other than a manufacturer who sells  
21 cigarettes or tobacco products to retail dealers or other persons for  
22 purposes of resale, any person who owns, operates, or maintains one or  
23 more cigarette or tobacco product vending machines in, at, or upon  
24 premises owned or occupied by any other person, or a distributor as  
25 defined in G.S. 105-113.4(3)a.

26 **§ 58-92-15. Test method and performance standard.**

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

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

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

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

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

42           (a5) Written certifications shall be based upon testing conducted by a laboratory  
43 that has been accredited pursuant to standard ISO/IEC 17025 of the International

1 Organization for Standardization (IOS) or other comparable accreditation standard  
2 required by the Commissioner.

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

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

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

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

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

40 (d) Each manufacturer shall maintain copies of the reports of all tests conducted  
41 on all cigarettes offered for sale for a period of three years and shall make copies of  
42 these reports available to the Commissioner and the Attorney General upon written  
43 request. Any manufacturer who fails to make copies of these reports available within 60  
44 days of receiving a written request shall be subject to a civil penalty not to exceed ten

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

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

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

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

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

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

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

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

29 **"§ 58-92-20. Certification and product change.**

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

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

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

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

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

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

40 (3) Length in millimeters.

41 (4) Circumference in millimeters.

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

43 (6) Filter or nonfilter.

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

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

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

4           (10) The date that the testing occurred.

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

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

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

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

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

28          **"§ 58-92-25. Marking of cigarette packaging.**

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

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

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

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

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

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

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

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

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

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

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

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

25 **"§ 58-92-30. Penalties.**

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

32       (b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of  
33 G.S. 58-92-15 shall be subject to a civil penalty not to exceed one hundred dollars  
34 (\$100.00) for each pack of such cigarettes sold or offered for sale, provided that in no  
35 case shall the penalty against any retail dealer exceed twenty-five thousand dollars  
36 (\$25,000) for sales or offers to sell during any 30-day period.

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

42       (d) Any person violating any other provision in this Article shall be subject to a  
43 civil penalty for a first offense not to exceed one thousand dollars (\$1,000), and for a

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

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

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

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

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

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

27 **§ 58-92-35. Implementation.**

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

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

35 **§ 58-92-40. Inspection.**

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



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

3 **"§ 58-92-45. Disposition of penalties.**

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

7 **"§ 58-92-50. Sale outside the State.**

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

13 **"§ 58-92-55. Preemption.**

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

18 **SECTION 2.** This act becomes effective on January 1, 2009.