

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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**HOUSE BILL 1785
Committee Substitute Favorable 6/6/07**

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. 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.
- (7) In 2005, Canada implemented the New York State fire-safety standard contained in the other state laws, becoming the first nation to have a 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
8 fire-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 Insurance.
- 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.
- 31 (4) "Manufacturer" means:
32 a. Any entity which manufactures or otherwise produces cigarettes
33 or causes cigarettes to be manufactured or produced anywhere
34 that such manufacturer intends to be sold in this State, including
35 cigarettes intended to be sold in the United States through an
36 importer;
37 b. The first purchaser anywhere that intends to resell in the United
38 States cigarettes manufactured anywhere that the original
39 manufacturer or maker does not intend to be sold in the United
40 States; or
41 c. Any entity that becomes a successor of an entity described in
42 sub-subdivision a. or b. of this subdivision.
- 43 (5) "Quality control and quality assurance program" means the laboratory
44 procedures implemented to ensure that operator bias, systematic and

1 nonsystematic methodological errors, and equipment-related problems
2 do not affect the results of the testing. Such a program ensures that the
3 testing repeatability remains within the required repeatability values
4 stated in Section 4(a6) of this act for all test trials used to certify
5 cigarettes in accordance with this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 **SECTION 4.(d)** Each manufacturer shall maintain copies of the reports of
39 all tests conducted on all cigarettes offered for sale for a period of three years and shall
40 make copies of these reports available to the Commissioner and the Attorney General
41 upon written request. Any manufacturer who fails to make copies of these reports
42 available within 60 days of receiving a written request shall be subject to a civil penalty
43 not to exceed ten thousand dollars (\$10,000) for each day after the sixtieth day that the
44 manufacturer does not make such copies available.

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

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

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

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

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

23 **SECTION 4.(h)** The Commissioner shall implement this act in accordance
24 with the implementation and substance of the New York Fire Safety Standards for
25 Cigarettes for guidance.

26 **SECTION 4.(i)** No local government may pass any ordinance changing the
27 performance standard set forth in this section.

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

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

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

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

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

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

38 (3) Length in millimeters.

39 (4) Circumference in millimeters.

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

41 (6) Filter or nonfilter.

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

43 (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 one of the following:

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,
42 and 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,
8 appearing in eight-point type or larger and permanently printed,
9 stamped, engraved, or embossed on the package at or near the UPC
10 Code.

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

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

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

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

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

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

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

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

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

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

28 **SECTION 7.(h)** A violation of this act constitutes a civil offense only and is
29 not a crime.

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

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

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

1 occupancy of any premises where cigarettes are placed, sold, or offered for sale, is
2 hereby directed and required to give the Attorney General, the Department of Revenue,
3 and the Commissioner, their duly authorized representatives, and other law enforcement
4 personnel the means, facilities, and opportunity for the examinations authorized by this
5 section.

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

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

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

19 **SECTION 13.** Effective Date. This act becomes effective on January 1,
20 2009.