

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1612 Session of 2007

INTRODUCED BY SOLOBAY, COHEN, CARROLL, GOODMAN, GRELL,
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MANDERINO, PALLONE, PAYNE, PETRONE, STABACK, YOUNGBLOOD,
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JUNE 21, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
OCTOBER 16, 2007

AN ACT

1 Providing for testing standards for cigarette fire safety, for
2 certification of compliance by manufacturers, for package
3 markings and for enforcement and penalties; establishing
4 special funds; and providing for sale of existing inventory,
5 for manufacturers' sale to other states or foreign countries
6 and for regulations and preemptions.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Cigarette
11 Fire Safety and Firefighter Protection Act.

12 Section 2. Legislative findings and intent.

13 (a) Findings.--The General Assembly finds that:

14 (1) Cigarettes are the leading cause of fire deaths in
15 this Commonwealth and in the nation. Each year 1,000 persons
16 are killed in the United States due to cigarette fires and
17 3,000 are injured in fires ignited by cigarettes. A high
18 proportion of the victims of cigarette fires are nonsmokers,
1 including senior citizens and young children. Cigarette-
2 caused fires result in billions of dollars of property losses
3 and damage in the United States and millions of dollars in
4 this Commonwealth. Cigarette fires unnecessarily jeopardize
5 firefighters and result in avoidable emergency response costs
6 for municipalities.

7 (2) The State of New York has enacted a cigarette fire
8 safety regulation effective June 28, 2004, that requires that
9 cigarettes sold in that state meet a fire safety performance
10 standard. California passed this bill into law on October 7,
11 2005. The General Assembly finds that New York State's
12 cigarette fire safety standard is based upon decades of
13 research by the National Institute of Standards and
14 Technology, Congressional research groups and private
15 industry.

16 (b) Intent.--It is the General Assembly's intent that the
17 Commonwealth adopt the cigarette fire safety standard that is in
18 effect in New York State to reduce the likelihood that
19 cigarettes will cause fires and result in deaths, injuries and
20 property damage. It is further the General Assembly's intent to
21 adopt a cigarette fire safety standard with a minimum of cost to
22 the Commonwealth and with minimal burden to cigarette
23 manufacturers, distributors and retail sellers as set forth
24 under this act.

25 Section 3. Definitions.

26 The following words and phrases when used in this act shall
27 have the meanings given to them in this section unless the
28 context clearly indicates otherwise:

29 "Agent." Any person authorized by the Commonwealth to

30 purchase and affix tax stamps on packages of cigarettes.

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1 "Cigarette." Any roll for smoking whether made wholly or in
2 part of tobacco or any other substance, irrespective of size or
3 shape and whether or not the tobacco or substance is flavored,
4 adulterated or mixed with any other ingredient, the wrapper or
5 cover of which is made of paper or any other substance or
6 material except tobacco.

7 "Commissioner." The State Fire Commissioner.

8 "Manufacturer."

9 (1) Any entity which manufactures or otherwise produces
10 cigarettes or causes cigarettes to be manufactured or
11 produced anywhere that such manufacturer intends to be sold
12 in this Commonwealth, including cigarettes intended to be
13 sold in the United States through an importer.

14 (2) The first purchaser anywhere that intends to resell
15 in the United States cigarettes manufactured anywhere that
16 the original manufacturer or maker does not intend to be sold
17 in the United States.

18 (3) Any entity that becomes a successor of any entity
19 described under paragraph (1) or (2).

20 "Quality control and quality assurance program." The
21 laboratory procedures implemented to ensure that operator bias,
22 systematic and nonsystematic methodological errors and
23 equipment-related problems do not affect the results of the
24 testing.

25 "Repeatability." The range of values within which the repeat
26 results of cigarette test trials from a single laboratory will
27 fall 95% of the time.

28 "Retail dealer." Any person other than a manufacturer or
29 wholesale dealer engaged in selling cigarettes or tobacco
30 products.

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1 "Sale." Any transfer of title or possession or both,
2 exchange or barter, conditional or otherwise, in any manner or
3 by any means whatever or any agreement therefore. In addition to
4 cash and credit sales, the giving of cigarettes as samples,
5 prizes or gifts and the exchanging of cigarettes for any
6 consideration other than money shall be considered sales.

7 "Sell." To sell, to offer or to agree to do the same.

8 "Wholesale dealer." Any person, other than a manufacturer,
9 who sells cigarettes or tobacco products to retail dealers or
10 other persons for purposes of resale and any person who owns,
11 operates or maintains one or more cigarette or tobacco product
12 vending machines in, at or upon premises owned or occupied by
13 any other person.

14 Section 4. Standards for cigarette fire safety.

15 (a) Testing.--Except as provided under subsection (g), no
16 cigarettes may be sold or offered for sale in this Commonwealth
17 or offered for sale or sold to persons located in this
18 Commonwealth unless the cigarettes have been tested in
19 accordance with the test method and meet the performance
20 standard specified in this section, a written certification has
21 been filed by the manufacturer with the commissioner in
22 accordance with section 5 and the cigarettes have been marked in
23 accordance with section 6.

24 (b) Testing standards.--Testing of cigarettes shall be
25 conducted in accordance with the American Society of Testing and
26 Materials (ASTM) Standard E2187-04 "Standard Test Method for
27 Measuring the Ignition Strength of Cigarettes." Testing shall be
28 conducted on ten layers of filter paper. No more than 25% of the
29 cigarettes tested in a test trial in accordance with this
30 subsection shall exhibit full-length burns. Forty replicate

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1 tests shall comprise a complete test trial for each cigarette
2 tested. The performance standard required by this subsection
3 shall only be applied to a complete test trial. Laboratories
4 conducting testing in accordance with this subsection shall
5 implement a quality control and quality assurance program that
6 includes a procedure to determine the repeatability of the
7 testing results. The repeatability value shall be no greater
8 than 0.19. The program shall ensure that the testing
9 repeatability remains within the required repeatability values
10 for all test trials used to certify cigarettes in accordance
11 with this act. Written certifications shall be based upon
12 testing conducted by a laboratory that has been accredited under

13 standard ISO/IEC 17025 of the International Organization for
14 Standardization or has been accredited under another comparable
15 accreditation standard required by the commissioner. Additional
16 testing shall not be required under this subsection if
17 cigarettes are tested in a manner consistent with this act for
18 any other purposes. Testing performed or sponsored by the
19 commissioner to determine a cigarette's compliance with the
20 required performance standard shall be conducted in accordance
21 with this subsection.

22 (c) Use of bands.--Each cigarette listed in a certification
23 submitted under section 5 that uses lowered permeability bands
24 in the cigarette paper to achieve compliance with the
25 performance standard set forth in this section shall have at
26 least two nominally identical bands on the paper surrounding the
27 tobacco column. At least one complete band shall be located at
28 least 15 millimeters from the lighting end of the cigarette. For
29 cigarettes on which the bands are positioned by design, there
30 shall be at least two bands fully located at least 15

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1 millimeters from the lighting end and 10 millimeters from the
2 filter end of the tobacco column or 10 millimeters from the
3 labeled end of the tobacco column for a nonfiltered cigarette.

4 (d) Alternate testing.--The manufacturer or manufacturers of
5 a cigarette that the commissioner determines cannot be tested in
6 accordance with the test method prescribed under subsection (a)
7 shall propose a test method and performance standard for such
8 cigarette to the commissioner. Upon approval of the proposed
9 test method and a determination by the commissioner that the
10 performance standard proposed by the manufacturer or
11 manufacturers is equivalent to the performance standard
12 prescribed under subsection (a), the manufacturer or
13 manufacturers may employ such test method and performance
14 standard to certify the cigarette under section 5. If the
15 commissioner determines that another state has enacted reduced
16 cigarette ignition propensity standards that include a test
17 method and performance standard that are the same as those
18 contained in this act, and the commissioner finds that the
19 officials responsible for implementing those requirements have
20 approved the proposed alternative test method and performance
21 standard for a particular cigarette proposed by a manufacturer
22 as meeting the fire safety standards of that state's law or
23 regulation under a provision comparable to this section, then
24 the commissioner shall authorize that manufacturer to employ the
25 alternative test method and performance standard to certify that
26 cigarette for sale in this Commonwealth, unless the commissioner
27 demonstrates a reasonable basis why the alternative test should
28 not be accepted under this act. All other applicable
29 requirements of this section shall apply to the manufacturer or
30 manufacturers.

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1 (e) Compliance.--In order to ensure compliance with the
2 performance standard specified in subsection (a), data from
3 testing conducted by manufacturers on all cigarettes offered for
4 sale to comply with this act shall be kept on file by the
5 manufacturers for a period of three years and copies shall be
6 sent to the commissioner upon the commissioner's written request
7 and to the Office of Attorney General upon the Attorney
8 General's written request. Any manufacturer that fails to make
9 copies of the reports available within 60 days of receipt of a
10 written request shall be subject to a civil penalty not to
11 exceed \$10,000 for each day after the 60th day that the
12 manufacturer does not make the copies available.

13 (f) Subsequent testing methods.--The commissioner may adopt
14 a subsequent ASTM Standard Test Method upon a finding that such
15 subsequent method does not result in a change in the percentage
16 of full-length burns exhibited by any tested cigarette when
17 compared to the percentage of full-length burns the same
18 cigarette would exhibit when tested in accordance with ASTM
19 Standard E2187-04 and the performance standard under subsection
20 (b).

21 (g) Consumer testing.--The requirements of subsection (a)
22 shall not prohibit the sale of cigarettes solely for the purpose
23 of consumer testing. For the purposes of this subsection,
24 "consumer testing" shall mean an assessment of cigarettes that
25 is conducted by a manufacturer or under the control or direction
26 of a manufacturer, for the purpose of evaluation of consumer

27 acceptance of cigarettes, utilizing only the quantity of
 28 cigarettes that is reasonably necessary for the assessment.
 29 (h) Review of standards.--Three years from the effective
 30 date of this section, and every three years thereafter, the
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1 commissioner shall undertake a review of the effectiveness of
 2 this section based upon incidents of cigarette-caused fires,
 3 advances in cigarette fire safety, including improvements in
 4 cigarette technology and the data submitted to demonstrate
 5 compliance with the performance standard. Based upon the
 6 triennial review, the commissioner shall report his findings to
 7 the General Assembly and, if appropriate, submit recommendations
 8 to improve the effectiveness of this section.

9 (I) IMPLEMENTATION.--THIS ACT SHALL BE IMPLEMENTED IN <--
 10 ACCORDANCE WITH THE IMPLEMENTATION AND SUBSTANCE OF THE NEW YORK
 11 FIRE SAFETY STANDARDS FOR CIGARETTES.

12 Section 5. Certification of compliance by manufacturers.

13 (a) Written certification.--Each manufacturer shall submit
 14 to the commissioner a written certification attesting that:

- 15 (1) Each cigarette listed in the certification has been
 16 tested in accordance with section 4.
- 17 (2) Each cigarette listed in the certification meets the
 18 performance standard set forth under section 4.
- 19 (3) Each cigarette listed in the certification shall be
 20 described with the following information:
 - 21 (i) Brand, such as the trade name on the package.
 - 22 (ii) Style, such as light, ultra light.
 - 23 (iii) Length in millimeters.
 - 24 (iv) Circumference in millimeters.
 - 25 (v) Flavor, such as menthol, chocolate, if
 26 applicable.
 - 27 (vi) Filter or nonfilter.
 - 28 (vii) Packaged description, such as soft pack, box.
 - 29 (viii) Marking approved in accordance with section
 30 6.

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

4 (x) The date that the testing occurred.

5 (b) Certifications.--The certifications shall be made
 6 available to the Attorney General and the Department of Revenue
 7 for the purposes of ensuring compliance with this section. Each
 8 cigarette certified under this section shall be recertified
 9 every three years.

10 (c) Certification fee.--For each certification form
 11 submitted to the commissioner, a manufacturer shall pay to the
 12 commissioner a fee of \$250.

13 (d) Modification of certain products.--If a manufacturer has
 14 certified a cigarette under this section and later makes a
 15 change to the cigarette that is likely to alter its compliance
 16 with the reduced cigarette ignition propensity standards
 17 required under this act, the cigarette shall not be sold or
 18 offered for sale in this Commonwealth until the manufacturer
 19 retests the cigarette in accordance with the testing standards
 20 under section 4 and maintains records of that retesting as
 21 required under section 4. Any altered cigarette which does not
 22 meet the performance standards under section 4 may not be sold
 23 in this Commonwealth.

24 Section 6. Package markings.

25 (a) Markings.--Cigarettes that are certified by a
 26 manufacturer in accordance with section 5 shall be marked to
 27 indicate compliance with the requirement of section 4. The
 28 marking shall be in eight-point font type or larger and shall
 29 consist of any one of the following:

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

5 (2) Any visible combination of alphanumeric or symbolic
 6 characters permanently stamped, engraved or embossed upon the
 7 cigarette package or cellophane wrap.

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

10 (b) Uniform markings.--A manufacturer must use only one
 11 marking and must apply this marking uniformly for all packages,
 12 including packs, cartons, cases and brands marketed by that
 13 manufacturer.

14 (c) Notification.--The commissioner must be notified as to
 15 the marking that is selected.

16 (d) Approval of markings.--Prior to the certification of any
 17 cigarette, a manufacturer shall present its proposed marking to
 18 the commissioner for approval. Upon receipt of the request, the
 19 commissioner shall approve or disapprove the marking offered.
 20 THE COMMISSIONER SHALL APPROVE THE USE OF LETTERS "FSC," WHICH <--
 21 SIGNIFIES FIRE STANDARDS COMPLIANT APPEARING IN EIGHT-POINT TYPE
 22 OR LARGER AND PERMANENTLY PRINTED, STAMPED, ENGRAVED OR EMBOSSED
 23 ON THE PACKAGE AT OR NEAR THE UPC CODE. Proposed markings shall
 24 be deemed approved if the commissioner fails to act within ten
 25 business days of receiving a request for approval.

26 (e) Modification of marking.--No manufacturer shall modify
 27 its approved marking unless the modification has been approved
 28 by the commissioner in accordance with this section.

29 (f) Copy of certifications.--Manufacturers certifying
 30 cigarettes in accordance with section 5 shall provide a copy of
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1 such certifications to all wholesale dealers and agents to which
 2 they sell cigarettes and shall also provide sufficient copies of
 3 an illustration of the package marking utilized by the
 4 manufacturer pursuant to this section for each retail dealer to
 5 which the wholesale dealers or agents sell cigarettes. Wholesale
 6 dealers and agents shall provide a copy of these package
 7 markings received from manufacturers to all retail dealers to
 8 which they sell cigarettes. Wholesale dealers, agents and retail
 9 dealers shall permit the commissioner, the Secretary of Revenue,
 10 the Office of Attorney General or employees thereof to inspect
 11 markings of cigarette packaging marked in accordance with this
 12 section.

13 Section 7. Enforcement and penalties.

14 (a) Penalties.--

15 (1) Any manufacturer, wholesale dealer, agent or any
 16 other person or entity who knowingly sells or offers to sell
 17 cigarettes, other than through retail sale, in violation of
 18 section 4 shall for a first offense be subject to a civil
 19 penalty not to exceed \$10,000 per each sale of cigarettes,
 20 and for a subsequent offense be subject to a civil penalty
 21 not to exceed \$25,000 per each sale of cigarettes. A penalty
 22 against a person or entity under this section may not exceed
 23 \$100,000 during any 30-day period.

24 (2) Any retail dealer who knowingly sells or offers to
 25 sell cigarettes in violation of section 4 shall for a first
 26 offense be subject to a civil penalty not to exceed \$500, and
 27 for a subsequent offense be subject to a civil penalty not to
 28 exceed \$5,000 for each violation. In no case shall the
 29 penalty against any retail dealer exceed \$25,000 for sales or
 30 offers to sell during any 30-day period.

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1 (3) In addition to any penalty provided by statute, an
 2 entity engaged in the manufacture of cigarettes that
 3 knowingly makes a false certification under section 5 shall
 4 be subject to a civil penalty of not less than \$75,000 and
 5 not more than \$250,000 for each false certification.

6 (4) Any cigarettes that have been sold or offered for
 7 sale and that do not comply with the package marking or
 8 performance standards required under this act shall be
 9 subject to forfeiture and disposal by the Commonwealth. Prior
 10 to the destruction of any cigarette forfeited under this
 11 paragraph, the true holder of trademark rights in the
 12 cigarette brand shall be permitted to inspect the cigarette.

13 (b) Enforcement.--The commissioner is authorized to enforce
 14 this act and to promulgate regulations as necessary to implement
 15 and administer this act.

16 (c) Regulations.--The commissioner may, in consultation with
 17 the Secretary of Revenue and the Attorney General, promulgate
 18 regulations to conduct random inspections of wholesale dealers,
 19 agents and retail dealers to ensure that only cigarettes
 20 complying with this act are sold in this Commonwealth.

21 (d) Injunctive relief.--In addition to any other remedy
 22 provided by law, the Attorney General may file an action in
 23 State court for a violation of this act, including petitioning

24 for injunctive relief or to recover any costs or damages
25 suffered by the Commonwealth because of a violation of this act,
26 including enforcement costs relating to the specific violation
27 and attorney fees. In any such action, the Attorney General
28 shall have the same authority to investigate and to obtain
29 remedies. Each violation of this section or of rules adopted
30 under this section constitutes a separate civil violation for
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1 which the Attorney General may obtain relief.

2 Section 8. Establishment of special funds.

3 (a) Cigarette Fire Safety and Firefighter Protection Act
4 Enforcement Fund.--There is established in the custody of the
5 State Treasurer a special fund to be known as the Cigarette Fire
6 Safety and Firefighter Protection Act Enforcement Fund. The fund
7 shall consist of all certification fees submitted by
8 manufacturers and shall, in addition to any other moneys made
9 available for that purpose, be available to the Treasury
10 Department and shall be used solely to support State processing,
11 testing, enforcement and oversight activities related to this
12 act. All payments from the Cigarette Fire Safety and Firefighter
13 Protection Act Enforcement Fund shall be made on the audit and
14 warrant of the State Treasurer on vouchers certified and
15 submitted by the commissioner.

16 (b) Fire Prevention and Public Safety Fund.--There is
17 established in the custody of the State Treasurer a special fund
18 to be known as the Fire Prevention and Public Safety Fund. The
19 fund shall consist of all moneys recovered as penalties under
20 this act. The money shall be deposited to the credit of the fund
21 and shall, in addition to any other money made available for
22 that purpose, be available to the commissioner to support fire
23 safety and prevention programs. All payments from the fund shall
24 be made on the audit and warrant of the State Treasurer on
25 vouchers certified and submitted by the commissioner.

26 Section 9. Sale of existing inventory.

27 The requirement that only cigarettes certified as compliant
28 with the performance standard in this act may be sold shall not
29 prohibit wholesale dealers or retail dealers from selling their
30 existing inventory of cigarettes on or after the effective date
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1 of this section, if the wholesale dealer or retail dealer can
2 establish that State tax stamps were affixed to the cigarettes
3 prior to the effective date of this section, and if the
4 wholesale dealer or retail dealer can establish that the
5 inventory was purchased prior to the effective date of this
6 section, in comparable quantity to the inventory purchased
7 during the same period of the prior year.

8 Section 10. Manufacturer sale to other states or foreign
9 countries.

10 Nothing in this act shall be construed to prohibit any person
11 or entity from manufacturing or selling cigarettes that do not
12 meet the requirements of section 4(a)(1) if the cigarettes are
13 or will be stamped for sale in another state or are packaged for
14 sale outside the United States and has taken reasonable steps to
15 ensure that such cigarettes will not be sold or offered for sale
16 to persons located in this Commonwealth.

17 Section 11. Effect of Federal regulations.

18 This act shall be preempted if a Federal reduced cigarette
19 ignition propensity standard is adopted and becomes effective.

20 Section 20. Effective date.

21 This act shall take effect January 1, 2009.