
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1612 Session of
2007

INTRODUCED BY SOLOBAY, COHEN, CARROLL, GOODMAN, GRELL,
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JUNE 21, 2007

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 21, 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,
19 including senior citizens and young children. Cigarette-

1 caused fires result in billions of dollars of property losses
2 and damage in the United States and millions of dollars in
3 this Commonwealth. Cigarette fires unnecessarily jeopardize
4 firefighters and result in avoidable emergency response costs
5 for municipalities.

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

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

24 Section 3. Definitions.

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

28 "Agent." Any person authorized by the Commonwealth to
29 purchase and affix tax stamps on packages of cigarettes.

30 "Cigarette." Any roll for smoking whether made wholly or in

1 part of tobacco or any other substance, irrespective of size or
2 shape and whether or not the tobacco or substance is flavored,
3 adulterated or mixed with any other ingredient, the wrapper or
4 cover of which is made of paper or any other substance or
5 material except tobacco.

6 "Commissioner." The State Fire Commissioner.

7 "Manufacturer."

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

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

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

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

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

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

30 "Sale." Any transfer of title or possession or both,

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

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

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

12 Section 4. Standards for cigarette fire safety.

13 (a) Testing.--No cigarettes may be sold or offered for sale
14 in this Commonwealth or offered for sale or sold to persons
15 located in this Commonwealth unless the cigarettes have been
16 tested in accordance with the test method and meet the
17 performance standard specified in this section and a written
18 certification has been filed by the manufacturer with the
19 commissioner in accordance with section 5.

20 (b) Testing standards.--Testing of cigarettes shall be
21 conducted in accordance with the American Society of Testing and
22 Materials (ASTM) Standard E2187-04 "Standard Test Method for
23 Measuring the Ignition Strength of Cigarettes." Testing shall be
24 conducted on ten layers of filter paper. No more than 25% of the
25 cigarettes tested in a test trial in accordance with this
26 subsection shall exhibit full-length burns. Forty replicate
27 tests shall comprise a complete test trial for each cigarette
28 tested. The performance standard required by this subsection
29 shall only be applied to a complete test trial. Laboratories
30 conducting testing in accordance with this subsection shall

1 implement a quality control and quality assurance program that
2 includes a procedure to determine the repeatability of the
3 testing results. The repeatability value shall be no greater
4 than 0.19.

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

17 (d) Alternate testing.--The manufacturer or manufacturers of
18 a cigarette that the commissioner determines cannot be tested in
19 accordance with the test method prescribed under subsection (a)
20 shall propose a test method and performance standard for such
21 cigarette to the commissioner. Upon approval of the proposed
22 test method and a determination by the commissioner that the
23 performance standard proposed by the manufacturer or
24 manufacturers is equivalent to the performance standard
25 prescribed under subsection (a), the manufacturer or
26 manufacturers may employ such test method and performance
27 standard to certify the cigarette under section 5. If the
28 commissioner determines that another state has enacted reduced
29 cigarette ignition propensity standards that include a test
30 method and performance standard that is the same as those

1 contained in this act, and the commissioner finds that the
2 officials responsible for implementing those requirements have
3 approved the proposed alternative test method and performance
4 standard for a particular cigarette proposed by a manufacturer
5 as meeting the fire safety standards of that state's law or
6 regulation under a provision comparable to this section, then
7 the commissioner shall authorize that manufacturer to employ the
8 alternative test method and performance standard to certify that
9 cigarette for sale in this Commonwealth, unless the commissioner
10 demonstrates a reasonable basis why the alternative test should
11 not be accepted under this act. All other applicable
12 requirements of this section shall apply to the manufacturer or
13 manufacturers.

14 (e) Compliance.--In order to ensure compliance with the
15 performance standard specified in subsection (a), data from
16 testing conducted by manufacturers to comply with this
17 performance standard shall be kept on file by such manufacturers
18 for a period of three years and shall be sent to the
19 commissioner upon its request and to the Office of Attorney
20 General upon its request.

21 (f) Subsequent testing methods.--The commissioner may adopt
22 a subsequent ASTM Standard Test Method upon a finding that such
23 subsequent method does not result in a decrease in the
24 percentage of full-length burns exhibited by any tested
25 cigarette when compared to the percentage of full-length burns
26 the same cigarette would exhibit when tested in accordance with
27 ASTM Standard E2187-04.

28 (g) Review of standards.--Three years from the effective
29 date of this section, and at least every three years thereafter,
30 the commissioner shall undertake a review of the performance

1 standard set forth in this act based upon incidents of
2 cigarette-caused fires, advances in cigarette fire safety,
3 including improvements in cigarette technology and the data
4 submitted to demonstrate compliance with the performance
5 standard. Based upon the triennial review, the commissioner
6 shall report his findings to the General Assembly and, if
7 appropriate, submit recommendations to improve the effectiveness
8 of the performance standard.

9 Section 5. Certification of compliance by manufacturers.

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

12 (1) Each cigarette listed in the certification has been
13 tested in accordance with section 4.

14 (2) Each cigarette listed in the certification meets the
15 performance standard set forth under section 4.

16 (3) Each cigarette listed in the certification shall be
17 described with the following information:

18 (i) Brand, such as the trade name on the package.

19 (ii) Style, such as light, ultra light.

20 (iii) Length in millimeters.

21 (iv) Circumference in millimeters.

22 (v) Flavor, such as menthol, chocolate, if
23 applicable.

24 (vi) Filter or nonfilter.

25 (vii) Packaged description, such as soft pack, box.

26 (viii) Marking approved in accordance with section
27 6.

28 (b) Certifications.--The certifications shall be made
29 available to the Attorney General and the Department of Revenue
30 for the purposes of ensuring compliance with this section. Each

1 cigarette certified under this section shall be recertified
2 every three years.

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

6 Section 6. Package markings.

7 (a) Markings.--Cigarettes that are certified by a
8 manufacturer in accordance with section 5 shall be marked to
9 indicate compliance with the requirement of section 4. The
10 marking shall be in eight-point font type or larger and shall
11 consist of:

12 (1) Modification of the product UPC Code to indicate a
13 visible mark printed at or around the area of the UPC Code.
14 The mark may consist of alphanumeric or symbolic characters
15 permanently stamped, engraved, embossed or printed in
16 conjunction with the UPC Code.

17 (2) Any visible combination of alphanumeric or symbolic
18 characters permanently stamped, engraved or embossed upon the
19 cigarette package or cellophane wrap.

20 (3) Printed, stamped, engraved or embossed text that
21 indicates that the cigarettes meet the standards of this
22 section.

23 (b) Uniform markings.--A manufacturer must use only one
24 marking and must apply this marking uniformly for all packages,
25 including packs, cartons, cases and brands marketed by that
26 manufacturer.

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

29 (d) Approval of markings.--Prior to the certification of any
30 cigarette, a manufacturer shall present its proposed marking to

1 the commissioner for approval. Upon receipt of the request, the
2 commissioner shall approve or disapprove the marking offered,
3 except that the commissioner shall approve any marking in use
4 and approved for sale in the State of New York pursuant to its
5 fire safety regulations unless the commissioner determines that
6 cigarettes approved for sale in this Commonwealth do not meet
7 the requirements for certification under section 5. Proposed
8 markings shall be deemed approved if the commissioner fails to
9 act within ten business days of receiving a request for
10 approval.

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

14 (f) Copy of certifications.--Manufacturers certifying
15 cigarettes in accordance with section 5 shall provide a copy of
16 such certifications to all wholesale dealers and agents to which
17 they sell cigarettes and shall also provide sufficient copies of
18 an illustration of the package marking utilized by the
19 manufacturer pursuant to this section for each retailer to which
20 the wholesale dealers or agents sell cigarettes. Wholesale
21 dealers and agents shall provide a copy of these package
22 markings received from manufacturers to all retail dealers to
23 which they sell cigarettes. Wholesale dealers, agents and retail
24 dealers shall permit the commissioner, the Secretary of Revenue,
25 the Office of Attorney General or employees thereof to inspect
26 markings of cigarette packaging marked in accordance with this
27 section.

28 Section 7. Enforcement and penalties.

29 (a) Penalties.--

30 (1) Any manufacturer, wholesale dealer, agent or any

1 other person or entity who knowingly sells cigarettes, other
2 than through retail sale, in violation of section 4 shall for
3 a first offense be subject to a civil penalty not to exceed
4 \$10,000 per each sale of cigarettes, and for a subsequent
5 offense be subject to a civil penalty not to exceed \$25,000
6 per each sale of cigarettes.

7 (2) Any retail dealer who knowingly sells cigarettes in
8 violation of section 4 shall for a first offense be subject
9 to a civil penalty not to exceed \$500, and for a subsequent
10 offense be subject to a civil penalty not to exceed \$5,000
11 for each violation.

12 (3) Any cigarettes that have been sold or offered for
13 sale that do not comply with the safety standard required
14 under section 4 shall be deemed contraband and subject to
15 seizure and disposal by the Commonwealth.

16 (b) Enforcement.--The commissioner is authorized to enforce
17 this act and to promulgate regulations as necessary to implement
18 and administer this act.

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

24 (d) Injunctive relief.--In addition to any other remedy
25 provided by law, the Attorney General may file an action in
26 State court for a violation of this act, including petitioning
27 for injunctive relief or to recover any costs or damages
28 suffered by the Commonwealth because of a violation of this act,
29 including enforcement costs relating to the specific violation
30 and attorney fees. In any such action, the Attorney General

1 shall have the same authority to investigate and to obtain
2 remedies. Each violation of this section or of rules adopted
3 under this section constitutes a separate civil violation for
4 which the Attorney General may obtain relief.

5 Section 8. Establishment of special funds.

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

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

29 Section 9. Sale of existing inventory.

30 The requirement that only cigarettes certified as compliant

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

11 Section 10. Manufacturer sale to other states or foreign
12 countries.

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

20 Section 11. Effect of Federal regulations.

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

23 Section 20. Effective date.

24 This act shall take effect January 1, 2009.