

Article 92.

Fire-Safety Standard and Firefighter Protection Act.

(See note for effective date of this Article.)

§ 58-92-1. Title.

This Article shall be known and may be cited as the "Fire-Safety Standard and Firefighter Protection Act." (2007-451, s. 1.)

§ 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 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.
- (8) New York State's cigarette fire-safety standard is based upon decades of research by the National Institute of Standards and Technology, congressional research groups, and private industry.
- (9) This cigarette fire-safety standard minimizes costs to the State and minimally burdens cigarette manufacturers, distributors, and retail sellers, and, therefore, should become law in this State.
- (10) It is therefore fitting and proper for this State to adopt the cigarette fire-safety standard that is in effect in New York State to reduce the likelihood that cigarettes will cause fires and result in deaths, injuries, and property damages. (2007-451, s. 1.)

§ 58-92-10. Definitions.

For the purposes of this Article:

- (1) "Agent" means any person authorized by the Department of Revenue to pay the excise tax on packages of cigarettes.
- (1a) "Brand style" means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or packaging.
- (2) "Cigarette" means any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, other than leaf tobacco.
- (3) "Commissioner" means the Commissioner of Insurance.
- (4) "Consumer testing" means an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer), for the purpose of evaluating consumer acceptance of such cigarettes.
- (5) "Distributor" means any person other than a manufacturer who sells cigarettes or tobacco

products to retail dealers or other persons for purposes of resale, any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person, or a distributor as defined in G.S. 105-113.4(3)a.

- (6) "Manufacturer" means:
- a. Any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer;
 - b. The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or
 - c. Any entity that becomes a successor of an entity described in sub-subdivision a. or b. of this subdivision.
- (7) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in G.S. 58-92-15(g) for all test trials used to certify cigarettes in accordance with this Article.
- (8) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time.
- (9) "Retail dealer" means any person, other than a manufacturer or distributor, engaged in selling cigarettes or tobacco products.
- (10) "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money, are considered sales.
- (11) "Sell" means to sell, or to offer or agree to do the same. (2007-451, s. 1; 2010-101, s. 1.)

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

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

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

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

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

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

(f) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (IOS) or other comparable accreditation standard required by the Commissioner.

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

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

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

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

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

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

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

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

(o) The requirements of subsections (a) through (i) of this section shall not prohibit:

- (1) Distributors or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2010, if the distributor or retail dealer can establish that all taxes owed on the cigarettes pursuant to Article 2A of Chapter 105 of the General Statutes have been paid prior to January 1, 2010, and the distributor or retail dealer can establish that the inventory was purchased prior to January 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year.
- (2) The sale of cigarettes solely for the purpose of consumer testing.

(p) The Commissioner shall implement this Article in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes, as it read on August 24, 2007.

(q) No local government may pass any ordinance changing the performance standard set forth in this section. (2007-451, s. 1; 2009-490, s. 1.)

§ 58-92-20. Certification and product change.

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

- (1) Each cigarette listed in the certification has been tested in accordance with G.S. 58-92-15.
- (2) Each cigarette listed in the certification meets the performance standard set forth in G.S. 58-92-15.

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

- (1) Brand or trade name on the package.
- (2) Brand style, as defined in G.S. 58-92-10(1a).
- (3) Length in millimeters.
- (4) Circumference in millimeters.
- (5) Flavor, such as menthol or chocolate, if applicable.
- (6) Filter or nonfilter.
- (7) Package description, such as soft pack or box.
- (8) Marking pursuant to G.S. 58-92-25.
- (9) The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test.
- (10) The date that the testing occurred.

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

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

(e) For each brand style listed in a certification, a manufacturer shall pay to the Commissioner a fee of two hundred fifty dollars (\$250.00). The Commissioner may annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, fire safety, and oversight activities required by this Article.

(f) There is established in the State treasury a separate, nonreverting fund to be known as the "Fire Safety Standard and Firefighter Protection Act Enforcement Fund." The fund shall consist of all certification fees submitted by manufacturers and shall, in addition to any other monies made available for such purpose, be available to the Commissioner solely to support processing, testing, enforcement, and oversight activities under this Article. For the purposes of this Article, fire safety shall include community education and outreach and the provision and installation of fire safety devices in high-risk and high-need locations throughout the State.

(g) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this Article, that cigarette shall not be sold or offered for sale in this State until the manufacturer retests the cigarette in accordance with the testing standards set forth in G.S. 58-92-15 and maintains records of that retesting as required by G.S. 58-92-15. Any altered cigarette that does not meet the performance standard set forth in G.S. 58-92-15 shall not be sold in this State. (2007-451, s. 1; 2010-101, s. 2; 2016-78, s. 2.2.)

§ 58-92-25. Marking of cigarette packaging.

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

- (1) Modification of the product UPC Code to include a visible mark printed at or around the area of the UPC Code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the UPC.
- (2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap.
- (3) Printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this Article.

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

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

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

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

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

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

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

(g) Manufacturers certifying cigarettes in accordance with G.S. 58-92-20 shall provide a copy of the certifications to all distributors and agents to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this section for each retail dealer to which the distributors or agents sell cigarettes. Distributors and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Distributors, agents, and retail dealers shall permit the Commissioner, the Secretary of Revenue, the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this section. (2007-451, s. 1.)

§ 58-92-30. Penalties.

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

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

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

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

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

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

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

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

(i) A violation of this Article constitutes a civil offense only and is not a crime. (2007-451, s. 1; 2009-490, s. 2.)

§ 58-92-35. Implementation.

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

(b) The Department of Revenue in the regular course of conducting inspections of distributors, agents, and retail dealers, as authorized under the Tobacco Products Tax Act, Article 2A of Chapter 105 of the General Statutes, may inspect such cigarettes to determine if the cigarettes are marked as required by G.S. 58-92-25. If the cigarettes are not marked as required, the Department of Revenue shall notify the Commissioner. (2007-451, s. 1.)

§ 58-92-40. Inspection.

To enforce the provisions of this Article, the Attorney General, the Department of Revenue, and the Commissioner, their duly authorized representatives, and other law enforcement personnel may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale is hereby directed and required to give the Attorney General, the Department of Revenue, and the Commissioner, their duly authorized representatives, and other law enforcement personnel the means, facilities, and opportunity for the examinations authorized by this section. (2007-451, s. 1.)

§ 58-92-45. Disposition of penalties.

The clear proceeds of civil penalties and forfeitures provided for in this Article shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2007-451, s. 1.)

§ 58-92-50. Sale outside the State.

Nothing in this Article shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of G.S. 58-92-15 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this State. (2007-451, s. 1.)

§ 58-92-55. Preemption.

This Article does not apply if a federal reduced cigarette ignition propensity standard that preempts this Article is enacted and becomes effective, but such inapplicability does not affect any liability for forfeiture or penalties accrued prior to the effective date of the federal law. (2007-451, s. 1.)