

Regular Session, 2007

ACT No. 409

HOUSE BILL NO. 579

BY REPRESENTATIVES ST. GERMAIN AND TOOMY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To enact R.S. 40:1601.1 through 1601.11, relative to fire prevention and safety; to provide
3 for definitions; to provide for test methods and performance standards for cigarette
4 products; to provide for certification and product change of cigarette products; to
5 provide for the marking of individual packages of cigarettes; to provide for
6 inspections relative to cigarettes; to provide for penalties; to provide for forfeiture
7 of cigarette products; to provide for the deposit of penalties into an existing fund; to
8 provide for out-of-state sales of cigarette products; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 40:1601.1 through 1601.11 are hereby enacted to read as follows:

11 §1601.1. Title

12 This Act shall be known and may be cited as the "Cigarette Fire Safety and
13 Firefighter Protection Act".

14 §1601.2. Definitions

15 As used in this Act, the following terms shall have the meaning indicated
16 unless the context clearly indicates otherwise:

17 (1) "Agent" means any person authorized by the Department of Revenue to
18 purchase and affix stamps on packages of cigarettes.

19 (2) "Cigarette" means any roll for smoking, whether made wholly or in part
20 of tobacco or any other substance, regardless of size or shape, and whether or not
21 such tobacco or substance is flavored, adulterated, or mixed with any other

1 ingredient, the wrapper or cover of which is made of paper or any other material
2 except where the wrapper is wholly or in greater part made of tobacco.

3 (3) "Manufacturer" means any of the following:

4 (a) Any entity which manufactures or otherwise produces cigarettes or
5 causes cigarettes to be manufactured or produced anywhere that such manufacturer
6 intends to be sold in this state, including cigarettes intended to be sold in the United
7 States through an importer.

8 (b) The first purchaser anywhere that intends to resell in the United States
9 cigarettes, manufactured anywhere, that the original manufacturer or maker does not
10 intend to be sold in the United States.

11 (c) Any entity that becomes a successor of an entity described in
12 Subparagraph (a) or (b) of this Paragraph.

13 (4) "Quality control and quality assurance program" means the laboratory
14 procedures implemented to ensure that operator bias, systematic and nonsystematic
15 methodological errors, and equipment-related problems do not affect the results of
16 the testing. Such a program ensures that the testing repeatability remains within the
17 required repeatability values pursuant to R.S. 40:1601.3(A) for all test trials used to
18 certify cigarettes in accordance with this Act.

19 (5) "Repeatability" means the range of values within which the repeat results
20 of cigarette test trials from a single laboratory will fall ninety-five percent of the
21 time.

22 (6) "Retail dealer" includes every dealer other than a wholesale dealer, or
23 manufacturer who sells or offers for sale cigars, cigarettes, or other tobacco products,
24 irrespective of quantity or the number of sales.

25 (7) "Sale" means any transfer of title or possession or both, exchange, or
26 barter, conditional or otherwise, in any manner or by any means whatever or any
27 agreement therefor. In addition to cash and credit sales, the giving of cigarettes as
28 samples, prizes, or gifts and the exchanging of cigarettes for any consideration other
29 than money are considered sales.

30 (8) "Sell" means an act of selling, or to offer or agree to sell.

1 (9) "Wholesale dealer" means a dealer whose principal business is that of a
2 wholesaler, who sells cigarettes, cigars, or other tobacco products to retail dealers for
3 purpose of resale, who is a bona fide wholesaler, and fifty percent of whose total
4 tobacco sales are to retail stores other than its own or its subsidiaries within
5 Louisiana. Wholesale dealer shall include any person in the state who acquires
6 cigarettes solely for the purpose of resale in vending machines, provided such person
7 services fifty or more cigarette vending machines in Louisiana other than his own,
8 and a Louisiana dealer who was affixing cigarette and tobacco stamps as of January
9 1, 1974. Wholesale dealer also shall include a bona fide tobacconist engaged in
10 receiving bulk smoking tobacco for the purpose of blending such tobacco for retail
11 sale at a particular retail outlet where fifty percent or more of the total purchases for
12 the preceding twelve months were purchases of tobacco products, excluding
13 cigarettes.

14 §1601.3 Test method and performance standard

15 A. Except as provided in Subsection G of this Section, no cigarettes may be
16 sold or offered for sale in this state or offered for sale or sold to persons located in
17 this state unless the cigarettes have been tested in accordance with the test method
18 and meet the performance standards specified in this Section, a written certification
19 has been filed by the manufacturer with the state fire marshal in accordance with
20 R.S. 40:1601.4, and the cigarettes have been marked in accordance with R.S.
21 40:1601.5.

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

25 (2) Testing shall be conducted on ten layers of filter paper.

26 (3) No more than twenty-five percent of the cigarettes tested in a test trial in
27 accordance with this Section shall exhibit full-length burns. Forty replicate tests
28 shall comprise a complete test trial for each cigarette tested.

29 (4) The performance standard required by this Section shall only be applied
30 to a complete test trial.

1 (5) Written certifications shall be based upon testing conducted by a
2 laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the
3 International Organization for Standardization (ISO), or other comparable
4 accreditation standard required by the state fire marshal.

5 (6) Laboratories conducting testing in accordance with this Section shall
6 implement a quality control and quality assurance program that includes a procedure
7 that will determine the repeatability of the testing results. The repeatability value
8 shall be no greater than nineteen-hundredths.

9 (7) This Section does not require additional testing if cigarettes are tested
10 consistent with this Act for any other purpose.

11 (8) Testing performed or sponsored by the state fire marshal to determine a
12 cigarette's compliance with the performance standard required shall be conducted in
13 accordance with this Section.

14 B. Each cigarette listed in a certification submitted pursuant to R.S.
15 40:1601.4 that uses lowered permeability bands in the cigarette paper to achieve
16 compliance with the performance standards set forth in this Section shall have at
17 least two nominally identical bands on the paper surrounding the tobacco column.
18 At least one complete band shall be located at least fifteen millimeters from the
19 lighting end of the cigarette. For cigarettes on which the bands are positioned by
20 design, there shall be at least two bands fully located at least fifteen millimeters from
21 the lighting end and ten millimeters from the filter end of the tobacco column, or ten
22 millimeters from the labeled end of the tobacco column for non-filtered cigarettes.

23 C. A manufacturer of a cigarette that the state fire marshal determines cannot
24 be tested in accordance with the test method prescribed in this Section shall propose
25 a test method and performance standards for the cigarette to the state fire marshal.
26 Upon approval of the proposed test method and a determination by the state fire
27 marshal that the performance standard proposed by the manufacturer is equivalent
28 to the performance standard prescribed in this Section, the manufacturer may employ
29 such test method and performance standard to certify such cigarette pursuant to R.S.
30 40:1601.4. If the state fire marshal determines that another state has enacted reduced

1 cigarette ignition propensity standards that include a test method and performance
2 standards that are the same as those contained in this Act, and the state fire marshal
3 finds that the officials responsible for implementing those requirements have
4 approved the proposed alternative test method and performance standards for a
5 particular cigarette proposed by a manufacturer as meeting the fire safety standards
6 of that state's laws or regulations under a legal provision comparable to this Section,
7 then the state fire marshal shall authorize that manufacturer to employ the alternative
8 test method and performance standards to certify that cigarette for sale in this state,
9 unless the state fire marshal demonstrates a reasonable basis why the alternative test
10 should not be accepted under this Act. All other applicable requirements of this
11 Section shall apply to the manufacturer.

12 D.(1) Each manufacturer shall maintain copies of the reports of all tests
13 conducted on all cigarettes offered for sale for a period of three years and shall make
14 copies of these reports available to the state fire marshal or the attorney general upon
15 written request.

16 (2) Any manufacturer who fails to make copies of these reports available
17 within sixty days of receiving a written request shall be subject to a civil penalty not
18 to exceed five thousand dollars for each day after the sixtieth day that the
19 manufacturer does not make such copies available.

20 E. The state fire marshal may adopt a subsequent ASTM Standard Test
21 Method for Measuring the Ignition Strength of Cigarettes upon a finding that such
22 subsequent method does not result in a change in the percentage of full-length burns
23 exhibited by any tested cigarette when compared to the percentage of full-length
24 burns the same cigarette would exhibit when tested in accordance with ASTM
25 Standard E2187-04 and the performance standards in this Section.

26 F. The state fire marshal shall review the effectiveness of this Section and
27 report every three years to the legislature its findings and, if appropriate,
28 recommendations for legislation to improve the effectiveness of this Act. The report
29 and legislative recommendations shall be submitted no later than June thirtieth
30 following the conclusion of each three-year period.

1 G. The requirements of this Section shall not prohibit:

2 (1) A wholesale dealer or retail dealer from selling its existing inventory of
3 cigarettes on or after the effective date of this Act if the wholesale dealer's inventory
4 was purchased prior to the effective date of this Act.

5 (2) The sale of cigarettes solely for the purpose of consumer testing. For
6 purposes of this Subsection, the term "consumer testing" means an assessment of
7 cigarettes that is conducted directly by, or under the direction and control of, a
8 manufacturer, for the purpose of evaluating consumer acceptance of such cigarettes,
9 utilizing only the quantity of cigarettes that is reasonably necessary for such
10 assessment.

11 H. This Section shall be implemented in accordance with the implementation
12 and substance of the New York Fire Safety Standards for Cigarettes.

13 §1601.4. Certification and product change

14 A. Each manufacturer shall submit to the state fire marshal a written
15 certification attesting that:

16 (1) Each cigarette listed in the certification has been tested in accordance
17 with R.S. 40:1601.3.

18 (2) Each cigarette listed in the certification meets the performance standards
19 set forth in R.S. 40:1601.3.

20 B. Each cigarette listed in the certification shall be described with the
21 following information:

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

23 (2) Style, such as light or ultra light.

24 (3) Length in millimeters.

25 (4) Circumference in millimeters.

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

27 (6) Filter or non-filter.

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

29 (8) Marking pursuant to R.S. 40:1601.5.

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

3 (10) The date that the testing occurred.

4 C. Copies of the certifications shall be made available to the attorney general
 5 for purposes consistent with this Act and the Department of Revenue for the
 6 purposes of ensuring compliance with this Section.

7 D. Each cigarette certified under this Section shall be recertified every three
 8 years.

9 E. For each certification, a manufacturer shall pay to the state fire marshal
 10 a maximum fee of two hundred fifty dollars.

11 F. If a manufacturer has certified a cigarette pursuant to this Section, and
 12 thereafter makes any change to such cigarette that is likely to alter its compliance
 13 with the reduced cigarette ignition propensity standards required by this Act, that
 14 cigarette shall not be sold or offered for sale in this state until the manufacturer
 15 retests the cigarette in accordance with the testing standards set forth in R.S.
 16 40:1601.3 and maintains records of that retesting as required by this Act. Any
 17 altered cigarette which does not meet the performance standards set forth in this Act
 18 may not be sold in this state.

19 §1601.5. Marking of cigarette packaging.

20 A. Cigarettes that are certified by a manufacturer in accordance with R.S.
 21 40:1601.4 shall be marked to indicate compliance with the requirements of R.S.
 22 40:1601.3. The marking shall be in eight-point type or larger and consist of one of
 23 the following:

24 (1) Modification of the UPC Code to include a visible mark printed at or
 25 around the area of the UPC Code. The mark may consist of alphanumeric or
 26 symbolic characters permanently stamped, engraved, embossed, or printed in
 27 conjunction with the UPC.

28 (2) Any visible combination of alphanumeric or symbolic characters
 29 permanently stamped, engraved, or embossed upon the cigarette package or
 30 cellophane wrap.

1 (3) Printed, stamped, engraved, or embossed text that indicates that the
2 cigarettes meet the standards set forth in this Act.

3 B. A manufacturer shall use only one marking and shall apply this marking
4 uniformly for all packages, including but not limited to packs, cartons, or cases, or
5 brands marketed by that manufacturer.

6 C. The state fire marshal shall be notified in writing as to the marking that
7 is selected.

8 D. Prior to the certification of any cigarette, a manufacturer shall present its
9 proposed marking to the state fire marshal for approval. Upon receipt of the request,
10 the state fire marshal shall approve or disapprove the marking offered, except the
11 state fire marshal shall approve the following:

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

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

17 E. Proposed markings shall be deemed approved if the state fire marshal fails
18 to act within ten business days of receiving a request for approval.

19 F. No manufacturer shall modify its approved marking unless the
20 modification has been approved by the state fire marshal in accordance with this
21 Section.

22 G. Manufacturers certifying cigarettes in accordance with this Section shall
23 provide a copy of the certifications to all wholesale dealers and agents to which they
24 sell cigarettes, and shall also provide sufficient copies of an illustration of the
25 package marking utilized by the manufacturer pursuant to this Section for each retail
26 dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers
27 and agents shall provide a copy of these package markings received from
28 manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers,
29 agents, and retail dealers shall permit the state fire marshal, the Department of

1 Revenue, the attorney general, and their employees to inspect markings of cigarette
2 packaging marked in accordance with this Section.

3 §1601.6. Implementation

4 The state fire marshal may promulgate rules and regulations, pursuant to the
5 Administrative Procedure Act, necessary to effectuate the purposes of this Act.

6 §1601.7. Inspection; seizure

7 A. To enforce the provisions of this Act, the attorney general, the
8 Department of Revenue, the office of alcohol and tobacco control, and the state fire
9 marshal, their duly authorized representatives, and other law enforcement personnel
10 are hereby authorized to examine the books, papers, invoices, and other records of
11 any person in possession, control, or occupancy of any premises where cigarettes are
12 placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the
13 premises. Every person in the possession, control, or occupancy of any premises
14 where cigarettes are placed, sold, or offered for sale is hereby directed and required
15 to give the attorney general, the Department of Revenue, the office of alcohol and
16 tobacco control, and the state fire marshal, their duly authorized representatives, and
17 other law enforcement personnel the means, facilities, and opportunity for the
18 examinations authorized by this Section.

19 B. The Department of Revenue, the office of alcohol and tobacco control,
20 the attorney general, and the state fire marshal, or their duly authorized
21 representatives, and other law enforcement personnel in the regular course of
22 conducting inspections of wholesale dealers, agents, and retail dealers, may inspect
23 cigarettes to determine if the cigarettes are marked as required by R.S. 40:1601.5.

24 §1601.8. Penalties; forfeiture

25 A. A manufacturer, who knowingly sells or offers to sell cigarettes, in
26 violation of this Act, shall be subject to a civil penalty not to exceed one hundred
27 dollars for each pack of such cigarettes sold or offered for sale, provided that in no
28 case shall the penalty against any such person or entity exceed fifty thousand dollars
29 during any thirty-day period.

1 B. In addition to any penalty prescribed by law, any corporation, partnership,
2 sole proprietor, limited partnership, or association engaged in the manufacture of
3 cigarettes that knowingly makes a false certification pursuant to R.S. 40:1601.4 shall
4 be subject to a civil penalty not less than twenty-five thousand dollars and not to
5 exceed one hundred thousand dollars for each such false certification.

6 C. Any person violating any other provision of this Act shall be subject to
7 a civil penalty for a first offense not to exceed one thousand dollars. The penalty for
8 any subsequent violation shall not exceed five thousand dollars.

9 §1601.9. Remedy

10 A. It shall be a rebuttable presumption that the retailer or wholesaler receives
11 cigarettes from the manufacturer in good faith.

12 B. In addition to any other remedy provided by law, the state fire marshal,
13 the Department of Revenue, the office of alcohol and tobacco control, or attorney
14 general may file an action in a court of competent jurisdiction for a violation of this
15 Act, including petitioning for injunctive relief, for recovery of any costs or damages
16 suffered by the state because of a violation of this Act, for enforcement costs relating
17 to the specific violation, and for court costs and attorney fees. Each violation of this
18 Act or of rules or regulations adopted under this Act constitutes a separate civil
19 violation for which the state fire marshal, the Department of Revenue, the office of
20 alcohol and tobacco control, or attorney general may obtain relief.

21 §1601.10. Deposit of penalties; existing fund

22 The penalties collected as provided for in R.S. 40:1601.8 shall be deposited
23 into the Louisiana Life Safety and Property Protection Trust Fund within the state
24 treasury as provided for in R.S. 40:1664.9. The monies shall be deposited to the
25 credit of the fund and shall, in addition to any other monies available for such
26 purpose, be available to the state fire marshal to support fire safety and prevention
27 programs.

28 §1601.11. Out-of-state sales

29 Nothing in this Act shall be construed to prohibit any person or entity from
30 manufacturing or selling cigarettes that do not meet the requirements set forth in this

1 Act if the cigarettes are or will be stamped for sale in another state or are packaged
 2 for sale outside the United States and that person or entity has taken reasonable steps
 3 to ensure that such cigarettes will not be sold or offered for sale to persons located
 4 in this state.

5 Section 2. This Act shall be repealed if a federal reduced cigarette ignition
 6 propensity standard that preempts this Act is adopted and becomes effective.

7 Section 3. This Act shall become effective on August 31, 2009.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____