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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"N.J. mandates smokes that won't start fires," Asbury Park Press, 5-5-07, p.A3

"Fire-resistant cigarettes required under new law," The Press, 5-5-07.

RWH 4/29/08

§§1-13 -  
C.54:40A-54 to  
54:40A-66  
§14 - Note  
§§1-13 - Note to  
C.52:27D-25d

P.L. 2007, CHAPTER 86, *approved May 4, 2007*  
Assembly Committee Substitute (*First Reprint*) for  
Assembly, No. 2575

1 AN ACT concerning <sup>1</sup>**[fire-safe cigarettes]** reduced cigarette  
2 ignition propensity<sup>1</sup> and supplementing Title 54 of the Revised  
3 Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the “The  
9 <sup>1</sup>**[Cigarette Fire Safety]** Reduced Cigarette Ignition Propensity<sup>1</sup>  
10 and Firefighter Protection Act.”

11

12 2. The Legislature finds and declares that:

13 a. Cigarettes are the leading cause of fire deaths in this State and  
14 the nation;

15 b. Each year in the United States, 1,000 persons are killed due to  
16 cigarette fires and 3,000 are injured in fires ignited by cigarettes,  
17 while in this State 1,885 residential fires and 19 fatalities were  
18 attributable to cigarettes in 2004 and 2005;

19 c. A high proportion of the victims of cigarette fires are non-  
20 smokers, including senior citizens and young children;

21 d. Cigarette-caused fires result in billions of dollars of property  
22 losses and damage in the United States and millions of dollars in  
23 this State;

24 e. Cigarette fires unnecessarily jeopardize firefighters and result  
25 in avoidable emergency response costs for municipalities;

26 f. In 2004, New York State implemented a cigarette fire safety  
27 regulation requiring cigarettes sold in that state to meet a fire safety  
28 performance standard; in 2005, Vermont and California enacted  
29 cigarette fire safety laws directly incorporating New York’s  
30 regulation into statute; and, in 2006, Illinois <sup>1</sup>**[and]** <sup>1</sup> New  
31 Hampshire <sup>1</sup>, and Massachusetts<sup>1</sup> joined these states in enacting  
32 such laws.

33 g. In 2005, Canada implemented the New York State fire safety  
34 standard, becoming the first nation to have a cigarette fire safety  
35 standard;

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ALP committee amendments adopted December 4, 2006.

1 h. New York State’s cigarette fire safety standard is based upon  
2 decades of research by the National Institute of Standards and  
3 Technology, Congressional research groups and private industry;

4 i. This cigarette fire safety standard minimizes costs to the State  
5 and minimally burdens cigarette manufacturers, distributors and  
6 retail sellers, and, therefore, should become law in this State; and

7 j. It is therefore fitting and proper for this State to adopt the  
8 cigarette fire safety standard that is in effect in New York State to  
9 reduce the likelihood that cigarettes will cause fires and result in  
10 deaths, injuries and property damage.

11

12 3. For the purposes of this act:

13 “Agent” shall mean any person authorized by the State to  
14 purchase and affix tax stamps on packages of cigarettes.

15 “Cigarette” shall mean any roll for smoking whether made  
16 wholly or in part of tobacco or any other substance, irrespective of  
17 size or shape and whether 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 material  
20 except tobacco <sup>1</sup> [ , and that because of its size, appearance, the type  
21 of tobacco used in its filler, or its packaging or labeling, is likely to  
22 be offered to, or purchased by, consumers as a cigarette or cigarette  
23 equivalent ] <sup>1</sup> .

24 “Director” shall mean the Director of the Division of Fire Safety  
25 in the Department of Community Affairs.

26 “Manufacturer” shall mean:

27 a. any entity which manufactures or otherwise produces  
28 cigarettes or causes cigarettes to be manufactured or produced  
29 anywhere that such manufacturer intends to be sold in this State,  
30 including cigarettes intended to be sold in the United States through  
31 an importer; or

32 b. the first purchaser anywhere that intends to resell in the  
33 United States cigarettes manufactured anywhere that the original  
34 manufacturer or maker does not intend to be sold in the United  
35 States; or

36 c. any entity that becomes a successor of an entity described in  
37 subsections a. or b.

38 “Quality control and quality assurance program” shall mean the  
39 laboratory procedures implemented to ensure that operator bias,  
40 systematic and nonsystematic methodological errors, and  
41 equipment-related problems do not affect the results of the testing.  
42 Such a program ensures that the testing repeatability remains within  
43 the required repeatability values stated in paragraph <sup>1</sup> [(5)] (6) <sup>1</sup> of  
44 subsection a. of section 4 of this act for all test trials used to certify  
45 cigarettes in accordance with this act.

1       “Repeatability” shall mean the range of values within which the  
2 repeat results of cigarette test trials from a single laboratory will fall  
3 95 percent of the time.

4       “Retail dealer” shall mean any person other than a manufacturer  
5 or wholesale dealer engaged in selling cigarettes or tobacco  
6 products.

7       “Sale” shall mean any transfer of title or possession or both,  
8 exchange or barter, conditional or otherwise, in any manner or by  
9 any means whatever or any such agreement. In addition to cash and  
10 credit sales, the giving of cigarettes as samples, prizes or gifts, and  
11 the exchanging of cigarettes for any consideration other than money  
12 are considered sales.

13       “Sell” shall mean to sell, or to offer or agree to do the same.

14       “Wholesale dealer” shall mean any person who sells cigarettes or  
15 tobacco products to retail dealers or other persons for purposes of  
16 resale, and any person who owns, operates or maintains one or more  
17 cigarette or tobacco product vending machines in, at or upon  
18 premises owned or occupied by any other person.

19

20       4. a. Except as provided in subsection g. of this section, no  
21 cigarettes may be sold or offered for sale in this State or offered for  
22 sale or sold to persons located in this State unless the cigarettes  
23 have been tested in accordance with the test method and meet the  
24 performance standard specified in this section, <sup>1</sup>[and] a written  
25 certification has been filed by the manufacturer with the director in  
26 accordance with section 5 of this act <sup>1</sup>, and the cigarettes have been  
27 marked in accordance with section 6 of this act<sup>1</sup>.

28       (1) Testing of cigarettes shall be conducted in accordance with  
29 the American Society of Testing and Materials (“ASTM”) standard  
30 E2187-04 “Standard Test Method for Measuring the Ignition  
31 Strength of Cigarettes.”

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

33       (3) No more than 25 percent of the cigarettes tested in a test trial  
34 in accordance with this section shall exhibit full-length burns.  
35 Forty replicate tests shall comprise a complete test trial for each  
36 cigarette tested.

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

39       (5) Written certifications shall be based upon testing conducted  
40 by a laboratory that has been accredited pursuant to Standard  
41 ISO/IEC 17025 of the International Organization for  
42 Standardization, or other comparable accreditation standard  
43 required by the director.

44       (6)<sup>1</sup> Laboratories conducting testing in accordance with this  
45 section shall implement a quality control and quality assurance  
46 program that includes a procedure to determine the repeatability of

1 the testing results. The repeatability value shall be no greater than  
2 0.19.

3 <sup>1</sup>(7) This section does not require additional testing if cigarettes  
4 are tested consistent with this act for any other purpose.

5 (8) Testing performed or sponsored by the director to determine  
6 a cigarette's compliance with the performance standard required in  
7 this section shall be conducted in accordance with this section.<sup>1</sup>

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

20 c. A manufacturer of a cigarette that the director determines  
21 cannot be tested in accordance with the test method prescribed in  
22 subsection a. of this section shall propose a test method and  
23 performance standard for the cigarette to the director. Upon  
24 approval of the proposed test method and a determination by the  
25 director that the performance standard proposed by the  
26 manufacturer is equivalent to the performance standard prescribed  
27 in subsection a. of this section, the manufacturer may employ the  
28 test method and performance standard to certify the cigarette  
29 pursuant to section 5 of this act. <sup>1</sup>If the director determines that  
30 another state has enacted reduced cigarette ignition propensity  
31 standards that include a test method and performance standard that  
32 is the same as those contained in this act, and the director finds that  
33 the officials responsible for implementing those requirements have  
34 approved the proposed alternative test method and performance  
35 standard for a particular cigarette proposed by a manufacturer as  
36 meeting the fire safety standards of that state's law or regulation  
37 under a legal provision comparable to this section, then the director  
38 shall authorize that manufacturer to employ the alternative test  
39 method and performance standard to certify that cigarette for sale in  
40 this State, unless the director demonstrates a reasonable basis why  
41 the alternative test should not be accepted under this act.<sup>1</sup> All other  
42 applicable requirements of this section shall apply to the  
43 manufacturer.

44 d. <sup>1</sup>[To ensure compliance with the performance standard  
45 specified in subsections a. or c. of this section, data from testing  
46 conducted by manufacturers to comply with this performance  
47 standard shall be kept on file by the manufacturers for a period of

1 three years and shall be sent, upon request, to the director and the  
2 Attorney General] Each manufacturer shall maintain copies of the  
3 reports of all tests conducted on all cigarettes offered for sale for a  
4 period of three years, and shall make copies of these reports  
5 available to the director and the Attorney General upon written  
6 request. Any manufacturer who fails to make copies of these  
7 reports available within sixty days of receiving a written request  
8 shall be subject to a civil penalty not to exceed \$10,000 for each  
9 day after the sixtieth day that the manufacturer does not make such  
10 copies available<sup>1</sup> .

11 e. The director may adopt a subsequent ASTM Standard Test  
12 Method <sup>1</sup>for measuring the Ignition Strength of Cigarettes<sup>1</sup> upon a  
13 finding that such subsequent method does not result in a  
14 <sup>1</sup>[decrease] change<sup>1</sup> in the percentage of full-length burns  
15 exhibited by any tested cigarette when compared to the percentage  
16 of full-length burns the same cigarette would exhibit when tested in  
17 accordance with ASTM Standard E2187-04 <sup>1</sup>and the performance  
18 standard in subsection a. of this section<sup>1</sup> .

19 f. <sup>1</sup>[No later than January 1, 2010, and at least every three years  
20 thereafter, the director shall undertake a review of the performance  
21 standard set forth in this section based upon, but not limited to,  
22 incidents of cigarette-caused fires, advances in cigarette fire safety,  
23 including improvements in cigarette technology, and the data  
24 submitted to demonstrate compliance with the performance  
25 standard. Based upon the review the director may revise the  
26 performance standard so that it is more stringent than the  
27 performance standard set forth in this section to provide the public  
28 with a greater level of fire safety protection. Such revised  
29 performance standard shall be effective 180 days after the final  
30 standard is published in the New Jersey Register] The director shall  
31 review the effectiveness of this section and report, pursuant to  
32 section 2 of P.L.1991, c.164 (C.52:14-19.1), every three years to the  
33 Legislature his findings and, if appropriate, recommendations for  
34 legislation to improve the effectiveness of this section. The report  
35 and legislative recommendations shall be submitted no later than  
36 June 30th of each three-year period<sup>1</sup> .

37 g. The requirements of subsection a. of this section shall not  
38 prohibit wholesale or retail dealers from selling their existing  
39 inventory of <sup>1</sup>[noncompliant]<sup>1</sup> cigarettes on or after the effective  
40 date of this act if the wholesale or retailer dealer can establish that  
41 State tax stamps were affixed to the cigarettes prior to the effective  
42 date, and if the wholesale or retailer dealer can establish that the  
43 inventory was purchased prior to the effective date in comparable  
44 quantity to the inventory purchased during the same period of the  
45 prior year.

- 1       <sup>1</sup>h. This act shall be implemented in accordance with the  
2 implementation and substance of the New York Fire Safety  
3 Standards for Cigarettes.<sup>1</sup>  
4
- 5       5. a. Each manufacturer shall submit to the director a written  
6 certification attesting that:
- 7       (1) Each cigarette listed in the certification has been tested in  
8 accordance with section 4 of this act; and
- 9       (2) Each cigarette listed in the certification meets the  
10 performance standard set forth under section 4 of this act.
- 11       b. Each cigarette listed in the certification shall be described  
12 with the following information:
- 13       (1) brand, or trade name on the package;
- 14       (2) style, such as light or ultra light;
- 15       (3) length in millimeters;
- 16       (4) circumference in millimeters;
- 17       (5) flavor, such as menthol or chocolate, if applicable;
- 18       (6) filter or non-filter;
- 19       (7) package description, such as soft pack or box; <sup>1</sup>**["and"]**<sup>1</sup>
- 20       (8) marking approved in accordance with section 6 of this act<sup>1</sup>;
- 21       (9) the name, address, and telephone number of the laboratory, if  
22 different than the manufacturer, that conducted the test; and
- 23       (10) the date that the testing occurred<sup>1</sup>.
- 24       c. The certifications shall be made available to the Attorney  
25 General for purposes consistent with this act and the Division of  
26 Taxation in the Department of the Treasury for the purposes of  
27 ensuring compliance with this section.
- 28       d. Each cigarette certified under this section shall be re-certified  
29 every three years.
- 30       e. For each cigarette listed in a certification, a manufacturer  
31 shall pay to the director a <sup>1</sup>**["\$1,000"]** \$250<sup>1</sup> fee. The director is  
32 authorized to annually adjust this fee to ensure it defrays the actual  
33 costs of the processing, testing, enforcement and oversight activities  
34 required by this act.
- 35       f. There is established in the State Treasury a separate,  
36 nonlapsing fund to be known as the <sup>1</sup>**["Cigarette Fire Safety]**  
37 "Reduced Cigarette Ignition Propensity"<sup>1</sup> and Firefighter Protection  
38 Act Enforcement Fund." The fund shall consist of all certification  
39 fees submitted by manufacturers, and shall, in addition to any other  
40 monies made available for such purpose, be available to the  
41 Division of Fire Safety for use solely to support processing, testing,  
42 enforcement and oversight activities under the act.
- 43       <sup>1</sup>g. If a manufacturer has certified a cigarette pursuant to this  
44 section, and thereafter makes any change to the cigarette that is  
45 likely to alter its compliance with the reduced cigarette ignition  
46 propensity standards required by this act, that cigarette shall not be  
47 sold or offered for sale in this State until the manufacturer retests



1 the cigarette in accordance with the testing standards set forth in  
2 section 4 of this act and maintain records of that retesting as  
3 required by section 4 of this act. An altered cigarette which does  
4 not meet the performance standard set forth in section 4 of this act  
5 shall not be sold in this State.<sup>1</sup>  
6

7 6. a. Cigarettes that are certified by a manufacturer in  
8 accordance with section 5 of this act shall be marked to indicate  
9 compliance with the requirements of section 4 of this act. The  
10 marking shall be in eight point font type or larger and consist of:

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

16 (2) any visible combination of alphanumeric or symbolic  
17 characters permanently stamped, engraved, or embossed upon the  
18 cigarette package or cellophane wrap; or

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

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

25 c. The director shall be notified as to the marking that is  
26 selected.

27 d. Prior to the certification of any cigarette, a manufacturer shall  
28 present its proposed marking to the director for approval. Upon  
29 receipt of the request, the director shall approve or disapprove the  
30 marking offered, except that the director shall approve any marking  
31 in use and approved for sale in New York State pursuant to <sup>1</sup>[its  
32 fire safety regulations, unless the director determines that cigarettes  
33 approved for sale in New York State do not meet the requirements  
34 for certification pursuant to section 5 of this act] the New York Fire  
35 Safety Standards for Cigarettes<sup>1</sup> . Proposed markings shall be  
36 deemed approved if the director fails to act within 10 business days  
37 of receiving a request for approval.

38 e. No manufacturer shall modify its approved marking unless  
39 the modification has been approved by the director in accordance  
40 with <sup>1</sup>this<sup>1</sup> section <sup>1</sup>[6 of this act]<sup>1</sup> .

41 f. Manufacturers certifying cigarettes in accordance with section  
42 5 of this act shall provide a copy of the certifications to all  
43 wholesale dealers and agents to which they sell cigarettes, and shall  
44 also provide sufficient copies of an illustration of the package  
45 marking utilized by the manufacturer pursuant to this section for  
46 each <sup>1</sup>[retailer] retail dealer<sup>1</sup> to which the wholesale dealers or  
47 agents sell cigarettes. Wholesale dealers and agents shall provide a

1 copy of these package markings received from manufacturers to all  
2 retail dealers to which they sell cigarettes. Wholesale dealers,  
3 agents, and retail dealers shall permit the director, the Director of  
4 the Division of Taxation, the Attorney General, '[or]' their  
5 employees, 'or other law enforcement personnel' to inspect  
6 markings of cigarette packaging marked in accordance with this  
7 section.

8  
9 7. a. A manufacturer, wholesale dealer, agent or any other  
10 person or entity who knowingly sells 'or offers to sell' cigarettes,  
11 other than through retail sale, in violation of section 4 of this act,  
12 for a first offense shall be liable to a civil penalty not to exceed  
13 \$10,000 per each sale of such cigarettes, and for a subsequent  
14 offense shall be liable to a civil penalty not to exceed \$25,000 per  
15 each such sale of cigarettes'provided that in no case shall the  
16 penalty against any such person or entity exceed \$100,000 during a  
17 thirty-day period' .

18 b. A retail dealer who knowingly sells cigarettes in violation of  
19 section 4 of this act shall:

20 (1) for a first offense be liable to a civil penalty not to exceed  
21 \$500, and for a subsequent offense be liable to a civil penalty not to  
22 exceed \$2,000, per each such sale or offer for sale of cigarettes, if  
23 the total number of cigarettes sold or offered for sale in such sale  
24 does not exceed 1,000 cigarettes; or

25 (2) for a first offense be liable to a civil penalty not to exceed  
26 \$1,000, and for a subsequent offense be liable to a civil penalty not  
27 to exceed \$5,000 per each such sale or offer for sale of such  
28 cigarettes, if the total number of cigarettes sold or offered for sale  
29 in such sale exceeds 1,000 cigarettes 'provided that this penalty  
30 against any retail dealer shall not exceed \$25,000 during a thirty-  
31 day period' .

32 c. In addition to any penalty prescribed by law, any corporation,  
33 partnership, sole proprietor, limited partnership or association  
34 engaged in the manufacture of cigarettes that knowingly makes a  
35 false certification pursuant to section 5 of this act shall, for a first  
36 offense, be liable to a civil penalty '~~not to exceed \$10,000~~' of at  
37 least \$75,000' , and for a subsequent offense a civil penalty not to  
38 exceed '~~[\$25,000]~~ \$250,000' for each such false certification.

39 d. Any person violating any other provision in this section shall  
40 be liable to a civil penalty for a first offense not to exceed \$1,000,  
41 and for a subsequent offense liable to a civil penalty not to exceed  
42 \$5,000 for each such violation.

43 e. Any cigarettes that have been sold or offered for sale that do  
44 not comply with the safety standard required by section 4 of this act  
45 shall be subject to forfeiture under the provisions of N.J.S.2C:64-1  
46 et seq. 'provided, however, that prior to the destruction of any  
47 cigarette seized pursuant to these provisions, the true holder of the

1 trademark rights in the cigarette brand shall be permitted to inspect  
2 the cigarette.<sup>1</sup>

3 f. In addition to any other remedy provided by law, the director  
4 'or Attorney General'<sup>1</sup> may file an action in Superior Court for a  
5 violation of this act, including petitioning for injunctive relief or to  
6 recover any costs or damages suffered by the State because of a  
7 violation of this section, including enforcement costs relating to the  
8 specific violation and attorney's fees. Each violation of this section  
9 or of rules or regulations adopted under this section constitutes a  
10 separate civil violation for which the director may obtain relief.

11

12 8. a. The director may promulgate rules and regulations,  
13 pursuant to the "Administrative Procedures Act," P.L.1968, c.410  
14 (C.52:14B-1 et seq.), necessary to effectuate the purposes of this  
15 act.

16 b. <sup>1</sup>['The director may, in consultation with the Director of the  
17 Division of Taxation and the Attorney General, promulgate rules  
18 and regulations to conduct random inspections of wholesale dealers,  
19 agents, and retail dealers to ensure that only cigarettes complying  
20 with this act are sold in this State] The Director of the Division of  
21 Taxation in the Department of the Treasury, in the regular course of  
22 conducting inspections of wholesale dealers, agents, and retail  
23 dealers as authorized under the "Cigarette Tax Act," P.L.1948, c.65  
24 (C.54:40A-1 et seq.), may inspect such cigarettes to determine if the  
25 cigarettes are marked as required by section 6 of this act. If the  
26 cigarettes are not marked as required, the Director of Taxation shall  
27 notify the director, notwithstanding the provisions of R.S.54:50-8<sup>1</sup> .

28

29 <sup>1</sup>9. To enforce the provisions of this act, the Attorney General  
30 and the director are hereby authorized to examine the books, papers,  
31 invoices and other records of any person in possession, control or  
32 occupancy of any premises where cigarettes are placed, stored, sold  
33 or offered for sale, as well as the stock of cigarettes on the  
34 premises. Every person in the possession, control or occupancy of  
35 any premises where cigarettes are placed, sold or offered for sale, is  
36 hereby directed and required to give the Attorney General and the  
37 director the means, facilities and opportunity for the examinations  
38 authorized by this section.<sup>1</sup>

39

40 <sup>1</sup>[9.] 10.<sup>1</sup> There is hereby established in the State Treasury a  
41 special fund to be known as the "Fire Prevention and Public Safety  
42 Fund." The fund shall consist of all monies recovered as penalties  
43 under section 7 of this act. The monies shall be deposited to the  
44 credit of the fund and shall, in addition to any other monies made  
45 available for such purpose, be made available to the director to  
46 support fire safety and prevention programs.

1       ~~‘[10.] 11.’~~ Nothing in this act shall be construed to prohibit any  
2 person or entity from manufacturing or selling cigarettes that do not  
3 meet the requirements of section 4 of this act if the cigarettes are or  
4 will be stamped for sale in another state or are packaged for sale  
5 outside the United States and that person or entity has taken  
6 reasonable steps to ensure that such cigarettes will not be sold or  
7 offered for sale to persons located in this State.

8  
9       ~~‘[11] 12’~~ . This act shall be ~~‘[preempted] inoperative’~~ if a  
10 federal ~~‘reduced’~~ cigarette ~~‘[fire safety performance] ignition~~  
11 ~~propensity’~~ standard ~~‘that preempts this act is adopted and’~~  
12 becomes effective ~~‘[~~, and the director determines that the standard  
13 provides equal or stronger protections against cigarette-started fires  
14 than this act. Portions of this act shall only be preempted to the  
15 extent expressly preempted by federal law~~’~~ .

16  
17       ~~‘13. Notwithstanding any other provision of law, local~~  
18 ~~governmental units of this State shall not enact or enforce any~~  
19 ~~ordinance or other local law or regulation conflicting with, or~~  
20 ~~preempted by, any provision of this act or with any policy of this~~  
21 ~~State expressed by this act, whether that policy be expressed by~~  
22 ~~inclusion of a provision in the act or by exclusion of that subject~~  
23 ~~from the act.’~~

24  
25       ~~‘[12.] 14.’~~ This act shall take effect on the first day of the  
26 thirteenth month after enactment.

27  
28  
29  
30  
31       \_\_\_\_\_

32       “The Reduced Cigarette Ignition Propensity and Firefighter  
Protection Act.”

# ASSEMBLY, No. 2575

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED FEBRUARY 23, 2006

**Sponsored by:**

**Assemblyman JACK CONNERS**

**District 7 (Burlington and Camden)**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**Assemblyman FREDERICK SCALERA**

**District 36 (Bergen, Essex and Passaic)**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington and Camden)**

**Co-Sponsored by:**

**Assemblymen Sires, Giblin, Assemblywoman Vainieri Huttle,**

**Assemblymen Prieto, Diegnan, Schaer, Assemblywoman Quigley,**

**Assemblymen Manzo and Van Drew**

**SYNOPSIS**

"Cigarette Fire Safety Act."

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 6/13/2006)

1 AN ACT concerning fire-safe cigarettes and supplementing Title 54  
2 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Cigarette  
8 Fire Safety Act."

9

10 2. The Legislature hereby finds and declares that:

11 a. Cigarettes are the most common ignition source for fatal  
12 house fires, which cause approximately 29 percent of the fire deaths  
13 in the United States; cigarette fires cause close to 1,000 deaths and  
14 3,000 injuries each year in the United States; and

15 b. Common scenario is the delayed ignition of a sofa, chair or  
16 mattress by a lit cigarette that is forgotten or dropped by a smoker  
17 whose alertness is impaired by alcohol or medication; and

18 c. Cigarettes are designed to continue burning when left  
19 unattended. If dropped on mattresses, upholstered furniture or other  
20 combustible material while still burning, their propensity to start  
21 fires varies depending on the cigarette design and content; and

22 d. Studies showing the technical and economic feasibility of  
23 commercial production of fire-safe cigarettes, a result of relatively  
24 minor design changes which could reduce the propensity for  
25 igniting mattresses and upholstered furniture, were completed in the  
26 1980's and safer cigarette technology has existed since that time;  
27 and

28 e. Mass production of fire-safe smoking materials has not been  
29 undertaken due to a lack of consensus on a uniform test method on  
30 which to base a standard for fire-safe cigarettes; and

31 f. Mass production of cigarettes incorporating the new  
32 technology, a potentially important burn prevention tool, will not  
33 occur until standards against which fire-starting performance can be  
34 measured, have been mandated by law at the state or federal level.

35

36 3. a. Within two years after the effective date of this act, the  
37 Division of Fire Safety in the Department of Community Affairs,  
38 after consultation with the National Institute of Standards and  
39 Technology, shall promulgate fire safety standards for cigarettes  
40 sold or offered for sale in this State, pursuant to the "Administrative  
41 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be  
42 necessary to effectuate the purpose of this act.

43 b. The standards shall insure either:

44 (1) That such cigarettes, if ignited, will stop burning within a  
45 time period specified by the standards if the cigarettes are not  
46 smoked during that period; or

47 (2) That such cigarettes meet performance standards prescribed  
48 by the division to limit the risk that such cigarettes will ignite

1 upholstered furniture, mattresses or other household furnishings.

2 c. In promulgating fire safety standards for cigarettes pursuant  
3 to this section, the Division of Fire Safety, in consultation with the  
4 Department of Health and Senior Services, shall consider whether  
5 cigarettes manufactured in accordance with such standards may  
6 reasonably result in increased health risks to consumers.

7 d. The Division of Fire Safety shall be responsible for  
8 administering the provisions of this section. The division shall  
9 report to the Governor and the Legislature no later than 18 months  
10 after this section takes effect on the status of its work in  
11 promulgating the fire safety standards required by this act.

12

13 4. On and after the date the fire safety standards take effect in  
14 accordance with this act, no cigarettes shall be sold or offered for  
15 sale in this state unless the manufacturer thereof has certified in  
16 writing to the Division of Fire Safety and the Attorney General that  
17 such cigarettes meet the performance standards prescribed by the  
18 division pursuant to paragraph (2) of subsection b. of section 3 of  
19 this act. Copies of such written certifications shall be provided by  
20 the certifying manufacturer to all licensed wholesale dealers, as  
21 defined in section 102 of P.L.1948, c.65 (C.54:40A-2). The  
22 division shall prescribe procedures by which licensed retail dealers  
23 are notified of which cigarettes have been certified by  
24 manufacturers as meeting the performance standards prescribed by  
25 the division.

26

27 5. The fire safety standards required under this act shall take  
28 effect on such date as the Division of Fire Safety shall specify in  
29 promulgating such standards and this date shall be the earliest  
30 practicable date by which manufacturers of cigarettes can comply  
31 with the standards; except that this date shall not be later than 180  
32 days after the standards are promulgated. On and after that date, no  
33 person shall sell cigarettes that have not been certified by the  
34 manufacturer in accordance with this act; except, that nothing in  
35 this act shall be construed to prohibit any licensed wholesale dealer  
36 from selling cigarettes that have not been certified by the  
37 manufacturer in accordance with this act if such cigarettes are or  
38 will be stamped for sale by licensed dealers in another state or are  
39 packaged for sale outside the United States.

40

41 6. a. Any licensed wholesale dealer or any other person who  
42 knowingly sells cigarettes wholesale in violation of this act shall be  
43 subject to a civil penalty of no more than \$10,000 for each such sale  
44 of such cigarettes. Any licensed retail dealer, as defined in section  
45 102 of P.L.1948, c.65 (C.54:40A-2) who knowingly sells cigarettes  
46 in violation of this section shall be subject to the following: (1) a  
47 civil penalty of not more than \$500 for each such sale or offer for  
48 sale of such cigarettes, when the total number of cigarettes sold or

1 offered for sale in such sale does not exceed 1,000 cigarettes; (2) a  
2 civil penalty of not more than \$1,000 for each such sale or offer for  
3 sale of such cigarettes, when the total number of cigarettes sold or  
4 offered for sale in such sale exceeds 1,000.

5 b. In addition to any penalty prescribed by law, any person  
6 engaged in the manufacture of cigarettes that knowingly makes a  
7 false certification pursuant to this act shall be subject to a civil  
8 penalty if not more than \$10,000 for each such false certification.  
9

10 7. In any civil action for damages, compliance with the fire  
11 safety standard promulgated under this act may not be admitted as a  
12 defense.  
13

14 8. The Cigarette Fire Safety Act Fund is established as a  
15 nonlapsing, revolving fund into which shall be deposited all  
16 revenues from the fines imposed under P.L. , c. (C. )  
17 (pending before the Legislature as this bill). Interest received on  
18 moneys in the fund shall be credited to the fund. The fund shall be  
19 administered by the Division of Fire Safety in the Department of  
20 Community Affairs. Moneys in the fund shall, in addition to any  
21 other moneys made available for such purpose, be allocated for the  
22 administrative expenses of the fund and enforcement of the  
23 Cigarette Fire Safety Act by the division.  
24

25 9. If the Commissioner of Community Affairs has reason to  
26 believe that any person or licensee has engaged in or is engaging in  
27 any practice or transaction prohibited by P.L. , c. (C. )  
28 (pending before the Legislature as this bill), the commissioner may,  
29 in addition to any remedies available, bring a summary action in the  
30 name of and on behalf of the State against the person or licensee  
31 and any other person concerned or in any way participating in or  
32 about to participate in those practices or transactions, to enjoin the  
33 person or licensee from continuing those practices or engaging in or  
34 doing an act in furtherance of those practices or in violation of this  
35 act.  
36

37 10. This act shall take effect on the first day of the second year  
38 after enactment. This act shall not take effect if federal fire safety  
39 standards for cigarettes that preempt this act are enacted before the  
40 effective date. This act shall be deemed repealed if federal fire  
41 safety standards for cigarettes that preempt this act are enacted  
42 subsequent to the effective date of this act.  
43  
44

45 STATEMENT

46  
47 Cigarettes are the leading cause of fire-deaths in the United  
48 States. It is not uncommon in any year for more than 1,000 people



1 to be killed in fires caused by cigarettes. In a recent year, there  
2 were 169,000 cigarette-related fires that killed 1,083 people, injured  
3 2,809, and caused \$420,000,000 in property damage.

4 This bill, the "Cigarette Fire Safety Act," calls for the creation of  
5 fire safety standards for cigarettes that would make them less likely  
6 to ignite upholstered furniture and mattresses and therefore reduce  
7 the number of fires caused by careless smokers. It follows the lead  
8 of New York State, where similar legislation was enacted in  
9 August, 2000.

10 It would become effective on the first day of the second year  
11 after enactment unless preempted by federal fire safety standards.  
12 Within two years of that date, standards must be promulgated by the  
13 Division of Fire Safety for the use of manufacturers and licensed  
14 wholesalers and retailers for cigarettes sold or offered for sale in  
15 New Jersey. The effective date of the new standard would be the  
16 earliest practicable date that manufacturers could comply, as  
17 determined by the division, but not more than 180 days after the  
18 standards are promulgated. The safety standard would require that  
19 a cigarette snuff out automatically rather than continue to burn  
20 when not puffed for a specified extended period. Manufacturers  
21 must certify that their cigarettes meet the State's performance  
22 standards. The division also must consult with the Department of  
23 Health and Senior Services to ascertain if such cigarettes may result  
24 in increased health risks to consumers. Passage of such standards  
25 by this State and others may be expected to ultimately induce  
26 interest by the tobacco industry in a nationwide fire-safe cigarette  
27 law.

28 Unlawful production or sales by wholesale dealers would result  
29 in fines of up to \$10,000 for each sale. Unlawful sales by retail  
30 dealers would result in fines of up to \$500 for each sale when up to  
31 1,000 cigarettes are sold and up to \$1,000 when more than 1,000  
32 cigarettes are sold. Fines would be deposited in a new Cigarette  
33 Fire Safety Act Fund administered by the Division of Fire Safety.  
34 Monies, including interest generated, would be allocated for  
35 administrative expenses of the fund and enforcement of the act by  
36 the Division of Fire Safety.

37 Many scientists and fire officials say a great number of these  
38 deaths could often be avoided because small design changes in  
39 cigarettes would make them less prone to start fires: a filter tip, less  
40 porous paper, more expandable tobacco, a smaller diameter, and no  
41 citrate added to the paper. The federal Fire Safe Cigarette Act of  
42 1990 led to the creation of a scientific test method to measure a  
43 cigarette's propensity to cause fires. More recently, Philip Morris  
44 has announced in January, 2000, that it has the technology to make  
45 a safer paper for cigarettes and has already met with Consumer  
46 Product Safety Commission officials to discuss the technology.

47 In July, 2000, Philip Morris began marketing custom-  
48 manufactured Merit cigarettes which use a special paper with rings

1 of extra paper at regular intervals. The rings act like speed bumps  
2 by reducing the amount of oxygen entering the cigarette, slowing  
3 down the rate at which it burns and thus lowering the heat it  
4 generates. Tests have shown that these cigarettes cause 90 per cent  
5 fewer fires than do traditional cigarettes. Reportedly, there is no  
6 difference in the taste or effort required to inhale. Some observers  
7 have suggested that in addition to cutting down on fires, the  
8 mandate will cut down on cigarette use because smokers who walk  
9 away from a lighted cigarette for five or ten minutes will come back  
10 to a stub than can be relit rather than a pile of ashes.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2575

# STATE OF NEW JERSEY

DATED: JUNE 12, 2006

The Assembly Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2575.

This Assembly Committee Substitute for Assembly Bill No. 2575, the "Cigarette Fire Safety and Firefighter Protection Act," prohibits the sale of cigarettes in this State unless the cigarettes meet the fire safety performance standard set forth in the substitute. The substitute is modeled on New York State's 2004 fire safety performance standard, which has since been enacted in Vermont, California, Illinois and New Hampshire.

Specifically, cigarettes must be tested in accordance with a standard developed by the American Society of Testing and Materials. The test must be conducted on 10 layers of filter paper and no more than 25 percent may exhibit full-length burns. The performance standard must be applied to a complete test trial and laboratories conducting such testing must implement a quality control and assurance program, a component of which must address repeatability of the test results. If this testing method cannot be applied to a certain cigarette, the substitute authorizes the Director of the Division of Fire Safety to approve an equivalent testing method. Manufacturers must keep testing data on file for three years. The director is required to review the performance standard every three years to determine whether the standard should be made more stringent to improve the level of fire safety protection provided to the public.

The substitute requires cigarette manufacturers to file a written certification every three years with the Division of Fire Safety that the cigarette meets the performance standard. The certification is to include certain descriptive information concerning the cigarette, such as brand; style; length; circumference; flavor; filter or non-filter; and soft pack or box. The certifications are to be made available to the Attorney General and the Division of Taxation. The fee to be paid to the director for a certification is \$1,000, but can be annually adjusted by the director to defray increasing administrative costs. The fees are to be deposited in the "Cigarette Fire Safety and Firefighter Protection Act Enforcement Fund" to be used by the division for processing,

testing, enforcement and oversight activities associated with the substitute.

Additionally, the substitute requires manufacturers to “mark” cigarettes to indicate they are in compliance with its provisions. The mark, and any subsequent modifications, must be approved by the director.

Manufacturers and wholesale dealers who violate the substitutes provisions are liable to a civil penalty for a first offense of up to \$10,000 for each cigarette sale and for a subsequent offense up to \$25,000 for each cigarette sale. A retail dealer who sells 1,000 cigarettes or less in violation of the substitutes provisions is liable to a civil penalty of up to \$500 for a first offense and up to \$2,000 for a subsequent offense. If the illegal retail sale is for more than 1,000 cigarettes, the dealer is liable to a civil penalty of up to \$1,000 for a first offense and up to \$5,000 for a subsequent offense. Any other person violating any other provision of the substitute is liable to a civil penalty of up to \$1,000 for a first offense and up to \$5,000 for a subsequent offense. These penalty moneys are to be deposited in the “Fire Prevention and Public Safety Fund” to be used by the director for fire safety and prevention programs.

The director also is authorized to file an action in Superior Court for a violation of the substitute’s provisions for injunctive relief or to recover damages. Cigarettes sold in violation of the substitute also are subject to forfeiture.

The substitute would be effective on the first day of the thirteenth month after enactment, but wholesale or retail dealers would not be prohibited from selling their existing inventory of noncompliant cigarettes on or after the effective date if they can establish that State tax stamps were affixed to the cigarettes prior to the effective date and that the inventory was purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year.

Cigarettes are the leading cause of fire deaths in this State and the nation. Requiring cigarette manufacturers to create fire safety standards will make cigarettes less likely to ignite upholstered furniture and mattresses and, therefore, reduce the number of fires caused by careless smokers.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2575**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 4, 2006

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2575 (ACS).

As amended and reported by the committee, the Assembly Committee Substitute for Assembly Bill No. 2575 is entitled the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act." The act prohibits the sale of cigarettes in this State unless the cigarettes meet the fire safety performance standard set forth in the substitute. The amended substitute is modeled on New York State's 2004 fire safety performance standard, which has since been enacted in Vermont, California, Illinois, New Hampshire, and Massachusetts.

Specifically, cigarettes must be tested in accordance with a standard developed by the American Society of Testing and Materials. The test must be conducted on 10 layers of filter paper and no more than 25 percent may exhibit full-length burns. The performance standard must be applied to a complete test trial and laboratories conducting such testing must implement a quality control and assurance program, a component of which must address repeatability of the test results. If this testing method cannot be applied to a certain cigarette, the substitute authorizes the Director of the Division of Fire Safety to approve an equivalent testing method. Manufacturers must keep testing data on file for three years. The director is required to review the effectiveness of the performance standard and report to the Legislature every three years his findings, as well as recommendations for legislation, to improve the effectiveness of the standard.

The amended substitute requires cigarette manufacturers to file a written certification every three years with the Division of Fire Safety that the cigarette meets the performance standard. The certification is to include certain descriptive information concerning the cigarette, such as brand; style; length; circumference; flavor; filter or non-filter; soft pack or box; markings indicating the cigarette has been tested; name and address of the laboratory if it is different than the manufacturer who conducted the test; and date of testing. The certifications are to be made available to the Attorney General and the

Division of Taxation. The fee to be paid to the director for a certification is \$1,000, but can be annually adjusted by the director to defray increasing administrative costs. The fees are to be deposited in the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund” to be used by the division for processing, testing, enforcement and oversight activities associated with the amended substitute.

Additionally, the amended substitute requires manufacturers to “mark” cigarettes to indicate they are in compliance with its provisions. The mark, and any subsequent modifications, must be approved by the director.

Manufacturers and wholesale dealers who knowingly sell or offer to sell cigarettes that do not meet the performance standard required by the bill are liable to a civil penalty for a first offense of up to \$10,000 for each cigarette sale and for a subsequent offense up to \$25,000 for each cigarette sale, but the penalty is not to exceed \$100,000 in a thirty-day period. A retail dealer who sells 1,000 cigarettes or less in violation of the amended substitute’s provisions is to be fined a civil penalty of up to \$500 for a first offense and up to \$2,000 for a subsequent offense. If the illegal retail sale is for more than 1,000 cigarettes, the dealer is liable to a civil penalty of up to \$1,000 for a first offense and up to \$5,000 for a subsequent offense, but this penalty is not to exceed \$25,000 during a thirty-day period. The penalty for a false certification under the amended substitute is at least \$75,000 for a first offense and up to \$250,000 for a subsequent offense. Any other person violating any other provision of the substitute is liable to a civil penalty of up to \$1,000 for a first offense and up to \$5,000 for a subsequent offense. These penalty moneys are to be deposited in the “Fire Prevention and Public Safety Fund” to be used by the director for fire safety and prevention programs.

The director and the Attorney General are authorized to file an action in Superior Court for a violation of the substitute’s provisions for injunctive relief or to recover damages. Cigarettes sold in violation of the substitute also are subject to forfeiture, but prior to any destruction of forfeited cigarettes, the true holder of the trademark rights must be permitted to inspect the cigarettes. The amended substitute empowers the Attorney General and the director to examine the books, papers, invoices and other records of persons who possess, control or occupy any premises where cigarettes are stored or sold.

The amended substitute would be effective on the first day of the thirteenth month after enactment, but wholesale or retail dealers would not be prohibited from selling their existing inventory of cigarettes on or after the effective date if they can establish that State tax stamps were affixed to the cigarettes prior to the effective date and that the inventory was purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year.

Cigarettes are the leading cause of fire deaths in this State and the nation. Requiring cigarette manufacturers to create fire safety standards will make cigarettes less likely to ignite upholstered furniture and mattresses and, therefore, reduce the number of fires caused by careless smokers.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) change the title of the act to “The Reduced Cigarette Ignition Propensity and Firefighter Protection Act;”

(2) add Massachusetts to the list of states that have enacted such laws;

(3) remove certain language from the definition of a cigarette;

(4) require written certifications to be based on testing by a laboratory accredited pursuant to Standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standard required by the director;

(5) clarify that no additional testing is needed if cigarettes are tested consistent with the act for another purpose;

(6) clarify that testing done by the director must be in accordance with the act;

(7) require that reports of testing be maintained and made available to the Attorney General and the director upon written request and impose a \$10,000 civil penalty on manufacturers who don’t comply with a request in 60 days;

(8) require the director to review the effectiveness of the testing and report those findings and legislative recommendations to the Legislature every three years (under the substitute, the director was required to evaluate the standard every three years and make it more stringent, if necessary);

(9) clarify that the act is to be implemented in accordance with the New York safety standard;

(10) in addition to the current information describing the cigarette, require the name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test and the date that the testing occurred;

(11) decrease the fee paid to the director for each cigarette in a certification from \$1,000 to \$250;

(12) clarify that an altered cigarette cannot be sold in the State until it is retested and meets the act’s standard;

(13) authorize other law enforcement personnel, in addition to the director and the Attorney General, to inspect the cigarette markings required under the act;

(14) cap the penalty against a retail dealer selling more than 1,000 noncompliant cigarettes at \$25,000 in a thirty day period;

(15) increase the penalties for making a false certification from up to \$10,000 to up to \$75,000 for a first offense and from up to \$25,000 to up to \$250,000 for a subsequent offense;

(16) allow the true holder of the trademark rights in a cigarette seized by the Attorney General to inspect the cigarette before it is destroyed;

(17) replace a provision authorizing random inspections of cigarette wholesale dealers, agents and retail dealers with a provision authorizing the Director of Taxation, when conducting inspections of these dealers and agents as authorized under the "Cigarette Tax Act," to inspect the cigarettes to determine if they are marked as required by the act, and if not, notify the Director of Fire Safety;

(18) authorize the Attorney General and director to examine the books, other records and cigarettes of a person who possesses or controls the premises where cigarettes are stored or sold and require these persons to allow this examination;

(19) allow the Attorney General, in addition to the director, to file an action in Superior Court to enforce the provisions of the act;

(20) prohibit local governmental units in this State from enacting or enforce an ordinance or regulation that conflicts with or preempts a provision of the act; and

(21) clarify certain provisions and make technical corrections.



SENATE LAW AND PUBLIC SAFETY AND VETERANS'  
AFFAIRS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 2575

**STATE OF NEW JERSEY**

DATED: FEBRUARY 26, 2007

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably the Assembly Committee Substitute (1R) for Assembly Bill No. 2575.

This substitute is entitled the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act." The act prohibits the sale of cigarettes in this State unless the cigarettes meet the fire safety performance standard set forth in the substitute. The substitute is modeled on New York State's 2004 fire safety performance standard, which has since been enacted in Vermont, California, Illinois, New Hampshire, and Massachusetts.

Specifically, cigarettes must be tested in accordance with a standard developed by the American Society of Testing and Materials. The test must be conducted on 10 layers of filter paper and no more than 25 percent may exhibit full-length burns. The performance standard must be applied to a complete test trial and laboratories conducting such testing must implement a quality control and assurance program, a component of which must address repeatability of the test results. If this testing method cannot be applied to a certain cigarette, the substitute authorizes the Director of the Division of Fire Safety to approve an equivalent testing method. Manufacturers must keep testing data on file for three years. The director is required to review the effectiveness of the performance standard and report to the Legislature every three years his findings, as well as recommendations for legislation, to improve the effectiveness of the standard.

The substitute requires cigarette manufacturers to file a written certification every three years with the Division of Fire Safety that the cigarette meets the performance standard. The certification is to include certain descriptive information concerning the cigarette, such as brand; style; length; circumference; flavor; filter or non-filter; soft pack or box; markings indicating the cigarette has been tested; name and address of the laboratory if it is different than the manufacturer who conducted the test; and date of testing. The certifications are to be made available to the Attorney General and the Division of

Taxation. The fee to be paid to the director for a certification is \$250, but can be annually adjusted by the director to defray increasing administrative costs. It is the committee's understanding that this fee is to be paid per certification. The fees are to be deposited in the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund" to be used by the division for processing, testing, enforcement and oversight activities associated with the amended substitute.

Additionally, the substitute requires manufacturers to "mark" cigarettes to indicate they are in compliance with its provisions. The mark, and any subsequent modifications, must be approved by the director.

Manufacturers and wholesale dealers who knowingly sell or offer to sell cigarettes that do not meet the performance standard required by the bill are liable to a civil penalty for a first offense of up to \$10,000 for each cigarette sale and for a subsequent offense up to \$25,000 for each cigarette sale, but the penalty is not to exceed \$100,000 in a thirty-day period. A retail dealer who sells 1,000 cigarettes or less in violation of the amended substitute's provisions is to be fined a civil penalty of up to \$500 for a first offense and up to \$2,000 for a subsequent offense. If the illegal retail sale is for more than 1,000 cigarettes, the dealer is liable to a civil penalty of up to \$1,000 for a first offense and up to \$5,000 for a subsequent offense, but this penalty is not to exceed \$25,000 during a thirty-day period. The penalty for a false certification under the amended substitute is at least \$75,000 for a first offense and up to \$250,000 for a subsequent offense. Any other person violating any other provision of the substitute is liable to a civil penalty of up to \$1,000 for a first offense and up to \$5,000 for a subsequent offense. These penalty moneys are to be deposited in the "Fire Prevention and Public Safety Fund" to be used by the director for fire safety and prevention programs.

The director and the Attorney General are authorized to file an action in Superior Court for a violation of the substitute's provisions for injunctive relief or to recover damages. Cigarettes sold in violation of the substitute also are subject to forfeiture, but prior to any destruction of forfeited cigarettes, the true holder of the trademark rights must be permitted to inspect the cigarettes. The substitute empowers the Attorney General and the director to examine the books, papers, invoices and other records of persons who possess, control or occupy any premises where cigarettes are stored or sold.

The substitute would be effective on the first day of the thirteenth month after enactment, but wholesale or retail dealers would not be prohibited from selling their existing inventory of cigarettes on or after the effective date if they can establish that State tax stamps were affixed to the cigarettes prior to the effective date and that the inventory was purchased prior to the effective date in comparable

quantity to the inventory purchased during the same period of the prior year.

Cigarettes are the leading cause of fire deaths in this State and the nation. Requiring cigarette manufacturers to create fire safety standards will make cigarettes less likely to ignite upholstered furniture and mattresses and, therefore, reduce the number of fires caused by careless smokers.

As reported by the committee, this bill is identical to Senate Bill No. 2043, which was amended and reported by the committee on this same date.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2575

# STATE OF NEW JERSEY

DATED: MARCH 5, 2007

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2575 (ACS/1R).

The bill establishes the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act.” This act prohibits the sale of cigarettes in this State unless the cigarettes meet the fire safety performance standard set forth in the bill.

Specifically, cigarettes must be tested in accordance with a standard developed by the American Society of Testing and Materials, or if this testing method cannot be applied to a certain cigarette, by an equivalent testing method approved by the Director of the Division of Fire Safety. The director is required to review the effectiveness of the performance standard and report findings and recommendations to the Legislature every three years.

The bill requires cigarette manufacturers to file a written certification regarding cigarette performance standards with the Division of Fire Safety every three years and establishes a per certification fee of \$250, which may be annually adjusted by the director. The fees are to be deposited in the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund” to be used by the division for processing, testing, enforcement and oversight activities associated with the bill.

The bill also establishes penalties and fees on manufacturers and wholesale and retail dealers for violations of the provisions of the bill. These revenues are to be deposited in the “Fire Prevention and Public Safety Fund” to be used by the director for fire safety and prevention programs.

The bill further requires manufacturers to “mark” cigarettes to indicate compliance with the performance standards established by the bill.

The director and the Attorney General are authorized to file an action in Superior Court for a violation of the bill’s provisions for injunctive relief or to recover damages. Cigarettes sold in violation of

the bill also are subject to forfeiture, but prior to any destruction of forfeited cigarettes, the true holder of the trademark rights must be permitted to inspect the cigarettes.

This bill is modeled on New York State's 2004 fire safety performance standard, which has since been enacted in Vermont, California, Illinois, New Hampshire, and Massachusetts.

This bill is identical to the Senate Bill No. 2043 (1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that expenditures associated with implementation of this bill will be offset by the fees set by the Director of the Division of Fire Safety, and that additional temporary personnel may be needed by the division to process the initial cigarette certificate applications and fees.

The OLS also determines that the bill authorizes the Division of Fire Safety and the Attorney General to examine any premises where cigarettes are stored or sold to ensure compliance, however, the bill does not require enforcement. The Division of Taxation already conducts inspections and is required to notify the Director of the Division of Fire Safety if the requirements of the bill are not met.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, No. 2575**  
**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

DATED: DECEMBER 18, 2006

**SUMMARY**

**Synopsis:** “The Reduced Cigarette Ignition Propensity and Firefighter Protection Act.”

**Type of Impact:** Indeterminate Impact. Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund

**Agencies Affected:** Department of Community Affairs, Division of Fire Safety, Department of Law and Public Safety, Division of Taxation

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Cost</b>	Indeterminate - See Comments Below		
<b>State Revenue</b>	Indeterminate - See Comments Below		

- The Office of Legislative Services (OLS) estimates that expenditures associated with implementing this bill would be offset by fees set by the Director of the Division of Fire Safety.
- Establishes “The Reduced Cigarette Ignition Propensity and Firefighter Protection Act,” which prohibits the sale of cigarettes in this State which do not meet the fire safety performance standard set forth in the act.
- Requires the Director of the Division of Fire Safety to review the effectiveness of the performance standard and report to the Legislature every three years.
- Establishes the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund” to be used by the Division of Fire Safety for the processing, testing, enforcement and oversight activities required under the bill.
- Provides that manufacturers pay \$250 per cigarette certification, which is to be deposited in the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund.”

- Authorizes the Attorney General and the Director of the Division of Fire Safety to examine any premises where cigarettes are stored or sold to enforce provisions of the bill.

## **BILL DESCRIPTION**

Assembly Committee Substitute (1R) for Assembly Bill No. 2575 of 2006 establishes “The Reduced Cigarette Ignition Propensity and Firefighter Protection Act.” This act prohibits the sale of cigarettes in this State which do not meet fire safety performance standards.

This act is modeled on New York State’s 2004 fire safety performance standard law. Vermont, California, Illinois, New Hampshire, and Massachusetts have since adopted this standard. Specifically, cigarettes must be tested in accordance with a fire safety performance standard developed by the American Society of Testing and Materials.

The Director of the Division of Fire Safety is required to review the effectiveness of that performance standard and report to the Legislature every three years his findings, along with any recommendations for additional legislation.

Cigarette certifications are to be made available to the Attorney General and the Division of Taxation. The bill establishes a fee of \$250 per cigarette certification to be paid to the Director of the Division of Fire Safety. This fee can be annually adjusted by the director to defray any expenses related to the provisions of this bill. The fees are to be deposited in the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund” and used by the division for its processing, testing, enforcement and oversight activities associated implementing the bill.

Penalties and fees are established for manufacturers and wholesale dealers who knowingly sell or offer to sell cigarettes that do not meet the performance standard as well as a retail dealer who is violation of the bill. These fees will be placed into the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund.”

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS estimates that expenditures associated with implementing this bill would be offset by the fees set by the Director of the Division of Fire Safety.

The OLS estimates that additional temporary personnel may be needed by the Division of Fire Safety to process the initial cigarette certificate applications and fees.

The OLS also determines that the bill authorizes the Division of Fire Safety and the Attorney General to examine any premises where cigarettes are stored or sold to ensure compliance, however, the bill does not require enforcement. The Division of Taxation already conducts inspections and is required to notify the Director of the Division of Fire Safety if the requirements of the bill are not met.

Based on a 2005 Division of Taxation Annual Report, in 2003 there were roughly 309,042,364 packs of cigarettes sold in New Jersey. There are more than 50 varieties of cigarettes available to consumers in this State.

*Section: Law and Public Safety*

*Analyst: Kristin A. Brunner  
Associate Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.



# SENATE, No. 2043

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JUNE 15, 2006

**Sponsored by:**

**Senator PAUL A. SARLO**

**District 36 (Bergen, Essex and Passaic)**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Co-Sponsored by:**

**Senators Karcher, Girgenti, Inverso, Madden, Coniglio and Sacco**

**SYNOPSIS**

“The Cigarette Fire Safety and Firefighter Protection Act.”

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/27/2007)**

1 AN ACT concerning fire-safe cigarettes and supplementing Title 54  
2 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “The  
8 Cigarette Fire Safety and Firefighter Protection Act.”

9

10 2. The Legislature finds and declares that:

11 a. Cigarettes are the leading cause of fire deaths in this State and  
12 the nation;

13 b. Each year in the United States, 1,000 persons are killed due to  
14 cigarette fires and 3,000 are injured in fires ignited by cigarettes,  
15 while in this State 1,885 residential fires and 19 fatalities were  
16 attributable to cigarettes in 2004 and 2005;

17 c. A high proportion of the victims of cigarette fires are non-  
18 smokers, including senior citizens and young children;

19 d. Cigarette-caused fires result in billions of dollars of property  
20 losses and damage in the United States and millions of dollars in  
21 this State;

22 e. Cigarette fires unnecessarily jeopardize firefighters and result  
23 in avoidable emergency response costs for municipalities;

24 f. In 2004, New York State implemented a cigarette fire safety  
25 regulation requiring cigarettes sold in that state to meet a fire safety  
26 performance standard; in 2005, Vermont and California enacted  
27 cigarette fire safety laws directly incorporating New York’s  
28 regulation into statute; and, in 2006, Illinois and New Hampshire  
29 joined these states in enacting such laws.

30 g. In 2005, Canada implemented the New York State fire safety  
31 standard, becoming the first nation to have a cigarette fire safety  
32 standard;

33 h. New York State’s cigarette fire safety standard is based upon  
34 decades of research by the National Institute of Standards and  
35 Technology, Congressional research groups and private industry;

36 i. This cigarette fire safety standard minimizes costs to the State  
37 and minimally burdens cigarette manufacturers, distributors and  
38 retail sellers, and, therefore, should become law in this State; and

39 j. It is therefore fitting and proper for this State to adopt the  
40 cigarette fire safety standard that is in effect in New York State to  
41 reduce the likelihood that cigarettes will cause fires and result in  
42 deaths, injuries and property damage.

43

44 3. For the purposes of this act:

45 “Agent” shall mean any person authorized by the State to  
46 purchase and affix tax stamps on packages of cigarettes.

47 “Cigarette” shall mean any roll for smoking whether made  
48 wholly or in part of tobacco or any other substance, irrespective of

1 size or shape and whether tobacco or substance is flavored,  
2 adulterated or mixed with any other ingredient, the wrapper or  
3 cover of which is made of paper or any other substance or material  
4 except tobacco, and that because of its size, appearance, the type of  
5 tobacco used in its filler, or its packaging or labeling, is likely to be  
6 offered to, or purchased by, consumers as a cigarette or cigarette  
7 equivalent.

8 “Director” shall mean the Director of the Division of Fire Safety  
9 in the Department of Community Affairs.

10 “Manufacturer” shall mean:

11 a. any entity which manufactures or otherwise produces  
12 cigarettes or causes cigarettes to be manufactured or produced  
13 anywhere that such manufacturer intends to be sold in this State,  
14 including cigarettes intended to be sold in the United States through  
15 an importer; or

16 b. the first purchaser anywhere that intends to resell in the  
17 United States cigarettes manufactured anywhere that the original  
18 manufacturer or maker does not intend to be sold in the United  
19 States; or

20 c. any entity that becomes a successor of an entity described in  
21 subsections a. or b.

22 “Quality control and quality assurance program” shall mean the  
23 laboratory procedures implemented to ensure that operator bias,  
24 systematic and nonsystematic methodological errors, and  
25 equipment-related problems do not affect the results of the testing.  
26 Such a program ensures that the testing repeatability remains within  
27 the required repeatability values stated in paragraph (5) of  
28 subsection a. of section 4 of this act for all test trials used to certify  
29 cigarettes in accordance with this act.

30 “Repeatability” shall mean the range of values within which the  
31 repeat results of cigarette test trials from a single laboratory will fall  
32 95 percent of the time.

33 “Retail dealer” shall mean any person other than a manufacturer  
34 or wholesale dealer engaged in selling cigarettes or tobacco  
35 products.

36 “Sale” shall mean any transfer of title or possession or both,  
37 exchange or barter, conditional or otherwise, in any manner or by  
38 any means whatever or any such agreement. In addition to cash and  
39 credit sales, the giving of cigarettes as samples, prizes or gifts, and  
40 the exchanging of cigarettes for any consideration other than money  
41 are considered sales.

42 “Sell” shall mean to sell, or to offer or agree to do the same.

43 “Wholesale dealer” shall mean any person who sells cigarettes or  
44 tobacco products to retail dealers or other persons for purposes of  
45 resale, and any person who owns, operates or maintains one or more  
46 cigarette or tobacco product vending machines in, at or upon  
47 premises owned or occupied by any other person.

1       4. a. Except as provided in subsection g. of this section, no  
2 cigarettes may be sold or offered for sale in this State or offered for  
3 sale or sold to persons located in this State unless the cigarettes  
4 have been tested in accordance with the test method and meet the  
5 performance standard specified in this section, and a written  
6 certification has been filed by the manufacturer with the director in  
7 accordance with section 5 of this act.

8       (1) Testing of cigarettes shall be conducted in accordance with  
9 the American Society of Testing and Materials (“ASTM”) standard  
10 E2187-04 “Standard Test Method for Measuring the Ignition  
11 Strength of Cigarettes.”

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

13       (3) No more than 25 percent of the cigarettes tested in a test trial  
14 in accordance with this section shall exhibit full-length burns.  
15 Forty replicate tests shall comprise a complete test trial for each  
16 cigarette tested.

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

19       (5) Laboratories conducting testing in accordance with this  
20 section shall implement a quality control and quality assurance  
21 program that includes a procedure to determine the repeatability of  
22 the testing results. The repeatability value shall be no greater than  
23 0.19.

24       b. Each cigarette listed in a certification submitted pursuant to  
25 section 5 of this act that uses lowered permeability bands in the  
26 cigarette paper to achieve compliance with the performance  
27 standard set forth in this section shall have at least two nominally  
28 identical bands on the paper surrounding the tobacco column. At  
29 least one complete band shall be located at least 15 millimeters  
30 from the lighting end of the cigarette. For cigarettes on which the  
31 bands are positioned by design, there shall be at least two bands  
32 fully located at least 15 millimeters from the lighting end and 10  
33 millimeters from the filter end of the tobacco column, or 10  
34 millimeters from the labeled end of the tobacco column for a non-  
35 filtered cigarette.

36       c. A manufacturer of a cigarette that the director determines  
37 cannot be tested in accordance with the test method prescribed in  
38 subsection a. of this section shall propose a test method and  
39 performance standard for the cigarette to the director. Upon  
40 approval of the proposed test method and a determination by the  
41 director that the performance standard proposed by the  
42 manufacturer is equivalent to the performance standard prescribed  
43 in subsection a. of this section, the manufacturer may employ the  
44 test method and performance standard to certify the cigarette  
45 pursuant to section 5 of this act. All other applicable requirements  
46 of this section shall apply to the manufacturer.

47       d. To ensure compliance with the performance standard  
48 specified in subsections a. or c. of this section, data from testing

1 conducted by manufacturers to comply with this performance  
2 standard shall be kept on file by the manufacturers for a period of  
3 three years and shall be sent, upon request, to the director and the  
4 Attorney General.

5 e. The director may adopt a subsequent ASTM Standard Test  
6 Method upon a finding that such subsequent method does not result  
7 in a decrease in the percentage of full-length burns exhibited by any  
8 tested cigarette when compared to the percentage of full-length  
9 burns the same cigarette would exhibit when tested in accordance  
10 with ASTM Standard E2187-04.

11 f. No later than January 1, 2010, and at least every three years  
12 thereafter, the director shall undertake a review of the performance  
13 standard set forth in this section based upon, but not limited to,  
14 incidents of cigarette-caused fires, advances in cigarette fire safety,  
15 including improvements in cigarette technology, and the data  
16 submitted to demonstrate compliance with the performance  
17 standard. Based upon the review the director may revise the  
18 performance standard so that it is more stringent than the  
19 performance standard set forth in this section to provide the public  
20 with a greater level of fire safety protection. Such revised  
21 performance standard shall be effective 180 days after the final  
22 standard is published in the New Jersey Register.

23 g. The requirements of subsection a. of this section shall not  
24 prohibit wholesale or retail dealers from selling their existing  
25 inventory of noncompliant cigarettes on or after the effective date  
26 of this act if the wholesale or retailer dealer can establish that State  
27 tax stamps were affixed to the cigarettes prior to the effective date,  
28 and if the wholesale or retailer dealer can establish that the  
29 inventory was purchased prior to the effective date in comparable  
30 quantity to the inventory purchased during the same period of the  
31 prior year.

32

33 5. a. Each manufacturer shall submit to the director a written  
34 certification attesting that:

35 (1) Each cigarette listed in the certification has been tested in  
36 accordance with section 4 of this act; and

37 (2) Each cigarette listed in the certification meets the  
38 performance standard set forth under section 4 of this act.

39 b. Each cigarette listed in the certification shall be described  
40 with the following information:

41 (1) brand, or trade name on the package;

42 (2) style, such as light or ultra light;

43 (3) length in millimeters;

44 (4) circumference in millimeters;

45 (5) flavor, such as menthol or chocolate, if applicable;

46 (6) filter or non-filter;

47 (7) package description, such as soft pack or box; and

48 (8) marking approved in accordance with section 6 of this act.

1 c. The certifications shall be made available to the Attorney  
2 General for purposes consistent with this act and the Division of  
3 Taxation in the Department of the Treasury for the purposes of  
4 ensuring compliance with this section.

5 d. Each cigarette certified under this section shall be re-certified  
6 every three years.

7 e. For each cigarette listed in a certification, a manufacturer  
8 shall pay to the director a \$1,000 fee. The director is authorized to  
9 annually adjust this fee to ensure it defrays the actual costs of the  
10 processing, testing, enforcement and oversight activities required by  
11 this act.

12 f. There is established in the State Treasury a separate,  
13 nonlapsing fund to be known as the "Cigarette Fire Safety and  
14 Firefighter Protection Act Enforcement Fund." The fund shall  
15 consist of all certification fees submitted by manufacturers, and  
16 shall, in addition to any other monies made available for such  
17 purpose, be available to the Division of Fire Safety for use solely to  
18 support processing, testing, enforcement and oversight activities  
19 under the act.

20

21 6. a. Cigarettes that are certified by a manufacturer in  
22 accordance with section 5 of this act shall be marked to indicate  
23 compliance with the requirements of section 4 of this act. The  
24 marking shall be in eight point font type or larger and consist of:

25 (1) modification of the product UPC Code to indicate a visible  
26 mark printed at or around the area of the UPC Code. The mark may  
27 consist of alphanumeric or symbolic characters permanently  
28 stamped, engraved, embossed or printed in conjunction with the  
29 UPC; or

30 (2) any visible combination of alphanumeric or symbolic  
31 characters permanently stamped, engraved, or embossed upon the  
32 cigarette package or cellophane wrap; or

33 (3) printed, stamped, engraved or embossed text that indicates  
34 that the cigarettes meet the standards of this section.

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

39 c. The director shall be notified as to the marking that is  
40 selected.

41 d. Prior to the certification of any cigarette, a manufacturer shall  
42 present its proposed marking to the director for approval. Upon  
43 receipt of the request, the director shall approve or disapprove the  
44 marking offered, except that the director shall approve any marking  
45 in use and approved for sale in New York State pursuant to its fire  
46 safety regulations, unless the director determines that cigarettes  
47 approved for sale in New York State do not meet the requirements  
48 for certification pursuant to section 5 of this act. Proposed

1 markings shall be deemed approved if the director fails to act within  
2 10 business days of receiving a request for approval.

3 e. No manufacturer shall modify its approved marking unless  
4 the modification has been approved by the director in accordance  
5 with section 6 of this act.

6 f. Manufacturers certifying cigarettes in accordance with section  
7 5 of this act shall provide a copy of the certifications to all  
8 wholesale dealers and agents to which they sell cigarettes, and shall  
9 also provide sufficient copies of an illustration of the package  
10 marking utilized by the manufacturer pursuant to this section for  
11 each retailer to which the wholesale dealers or agents sell cigarettes.  
12 Wholesale dealers and agents shall provide a copy of these package  
13 markings received from manufacturers to all retail dealers to which  
14 they sell cigarettes. Wholesale dealers, agents, and retail dealers  
15 shall permit the director, the Director of the Division of Taxation,  
16 the Attorney General, or their employees, to inspect markings of  
17 cigarette packaging marked in accordance with this section.

18

19 7. a. A manufacturer, wholesale dealer, agent or any other  
20 person or entity who knowingly sells cigarettes, other than through  
21 retail sale, in violation of section 4 of this act, for a first offense  
22 shall be liable to a civil penalty not to exceed \$10,000 per each sale  
23 of such cigarettes, and for a subsequent offense shall be liable to a  
24 civil penalty not to exceed \$25,000 per each such sale of cigarettes.

25 b. A retail dealer who knowingly sells cigarettes in violation of  
26 section 4 of this act shall:

27 (1) for a first offense be liable to a civil penalty not to exceed  
28 \$500, and for a subsequent offense be liable to a civil penalty not to  
29 exceed \$2,000, per each such sale or offer for sale of cigarettes, if  
30 the total number of cigarettes sold or offered for sale in such sale  
31 does not exceed 1,000 cigarettes; or

32 (2) for a first offense be liable to a civil penalty not to exceed  
33 \$1,000, and for a subsequent offense be liable to a civil penalty not  
34 to exceed \$5,000 per each such sale or offer for sale of such  
35 cigarettes, if the total number of cigarettes sold or offered for sale  
36 in such sale exceeds 1,000 cigarettes.

37 c. In addition to any penalty prescribed by law, any corporation,  
38 partnership, sole proprietor, limited partnership or association  
39 engaged in the manufacture of cigarettes that knowingly makes a  
40 false certification pursuant to section 5 of this act shall, for a first  
41 offense, be liable to a civil penalty not to exceed \$10,000, and for a  
42 subsequent offense a civil penalty not to exceed \$25,000 for each  
43 such false certification.

44 d. Any person violating any other provision in this section shall  
45 be liable to a civil penalty for a first offense not to exceed \$1,000,  
46 and for a subsequent offense liable to a civil penalty not to exceed  
47 \$5,000 for each such violation.

1 e. Any cigarettes that have been sold or offered for sale that do  
2 not comply with the safety standard required by section 4 of this act  
3 shall be subject to forfeiture under the provisions of N.J.S.2C:64-1  
4 et seq.

5 f. In addition to any other remedy provided by law, the director  
6 may file an action in Superior Court for a violation of this act,  
7 including petitioning for injunctive relief or to recover any costs or  
8 damages suffered by the State because of a violation of this section,  
9 including enforcement costs relating to the specific violation and  
10 attorney's fees. Each violation of this section or of rules or  
11 regulations adopted under this section constitutes a separate civil  
12 violation for which the director may obtain relief.

13  
14 8. a. The director may promulgate rules and regulations,  
15 pursuant to the "Administrative Procedures Act," P.L.1968, c.410  
16 (C.52:14B-1 et seq.), necessary to effectuate the purposes of this  
17 act.

18 b. The director may, in consultation with the Director of the  
19 Division of Taxation and the Attorney General, promulgate rules  
20 and regulations to conduct random inspections of wholesale dealers,  
21 agents, and retail dealers to ensure that only cigarettes complying  
22 with this act are sold in this State.

23  
24 9. There is hereby established in the State Treasury a special  
25 fund to be known as the "Fire Prevention and Public Safety Fund."  
26 The fund shall consist of all monies recovered as penalties under  
27 section 7 of this act. The monies shall be deposited to the credit of  
28 the fund and shall, in addition to any other monies made available  
29 for such purpose, be made available to the director to support fire  
30 safety and prevention programs.

31  
32 10. Nothing in this act shall be construed to prohibit any person  
33 or entity from manufacturing or selling cigarettes that do not meet  
34 the requirements of section 4 of this act if the cigarettes are or will  
35 be stamped for sale in another state or are packaged for sale outside  
36 the United States and that person or entity has taken reasonable  
37 steps to ensure that such cigarettes will not be sold or offered for  
38 sale to persons located in this State.

39  
40 11. This act shall be preempted if a federal cigarette fire safety  
41 performance standard becomes effective, and the director  
42 determines that the standard provides equal or stronger protections  
43 against cigarette-started fires than this act. Portions of this act shall  
44 only be preempted to the extent expressly preempted by federal law.

45  
46 12. This act shall take effect on the first day of the thirteenth  
47 month after enactment.



STATEMENT

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This bill, the “Cigarette Fire Safety and Firefighter Protection Act,” prohibits the sale of cigarettes in this State unless the cigarettes meet the fire safety performance standard set forth in the bill. This bill is modeled on New York State’s 2004 fire safety performance standard, which has since been enacted in Vermont, California, Illinois and New Hampshire.

Specifically, cigarettes must be tested in accordance with a standard developed by the American Society of Testing and Materials. The test must be conducted on 10 layers of filter paper and no more than 25 percent may exhibit full-length burns. The performance standard must be applied to a complete test trial and laboratories conducting such testing must implement a quality control and assurance program, a component of which must address repeatability of the test results. If this testing method cannot be applied to a certain cigarette, the bill authorizes the Director of the Division of Fire Safety to approve an equivalent testing method. Manufacturers must keep testing data on file for three years. The director is required to review the performance standard every three years to determine whether the standard should be made more stringent to improve the level of fire safety protection provided to the public.

The bill requires cigarette manufacturers to file a written certification every three years with the Division of Fire Safety that the cigarette meets the performance standard. The certification is to include certain descriptive information concerning the cigarette, such as brand; style; length; circumference; flavor; filter or non-filter; and soft pack or box. The certifications are to be made available to the Attorney General and the Division of Taxation. The fee to be paid to the director for a certification is \$1,000, but can be annually adjusted by the director to defray increasing administrative costs. The fees are to be deposited in the “Cigarette Fire Safety and Firefighter Protection Act Enforcement Fund” to be used by the division for processing, testing, enforcement and oversight activities associated with the act.

Additionally, the bill requires manufacturers to “mark” cigarettes to indicate they are in compliance with the provisions of the bill. The mark, and any subsequent modifications, must be approved by the director.

Manufacturers and wholesale dealers who violate the bill’s provisions are liable to a civil penalty for a first offense of up to \$10,000 for each cigarette sale and for a subsequent offense up to \$25,000 for each cigarette sale. A retail dealer who sells 1,000 cigarettes or less in violation of the bill is liable to a civil penalty of up to \$500 for a first offense and up to \$2,000 for a subsequent offense. If the illegal retail sale is for more than 1,000 cigarettes, the dealer is liable to a civil penalty of up to \$1,000 for a first

1 offense and up to \$5,000 for a subsequent offense. Any other  
2 person violating any other provision of the bill is liable to a civil  
3 penalty of up to \$1,000 for a first offense and up to \$5,000 for a  
4 subsequent offense. These penalty moneys are to be deposited in  
5 the "Fire Prevention and Public Safety Fund" to be used by the  
6 director for fire safety and prevention programs.

7 The director also is authorized to file an action in Superior Court  
8 for a violation of the bill's provisions for injunctive relief or to  
9 recover damages. Cigarettes sold in violation of the bill also are  
10 subject to forfeiture.

11 This bill will be effective on the first day of the thirteenth month  
12 after enactment, but wholesale or retail dealers would not be  
13 prohibited from selling their existing inventory of noncompliant  
14 cigarettes on or after the effective date if they can establish that  
15 State tax stamps were affixed to the cigarettes prior to the effective  
16 date and that the inventory was purchased prior to the effective date  
17 in comparable quantity to the inventory purchased during the same  
18 period of the prior year.

19 Cigarettes are the leading cause of fire deaths in this State and  
20 the nation. Requiring cigarette manufacturers to create fire safety  
21 standards will make cigarettes less likely to ignite upholstered  
22 furniture and mattresses and, therefore, reduce the number of fires  
23 caused by careless smokers.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'  
AFFAIRS COMMITTEE

STATEMENT TO

**SENATE, No. 2043**

with committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 26, 2007

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably and with committee amendments Senate Bill No. 2043.

This bill is entitled the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act." The act prohibits the sale of cigarettes in this State unless the cigarettes meet the fire safety performance standard set forth in the bill. The amended bill is modeled on New York State's 2004 fire safety performance standard, which has since been enacted in Vermont, California, Illinois, New Hampshire, and Massachusetts.

Specifically, cigarettes must be tested in accordance with a standard developed by the American Society of Testing and Materials. The test must be conducted on 10 layers of filter paper and no more than 25 percent may exhibit full-length burns. The performance standard must be applied to a complete test trial and laboratories conducting such testing must implement a quality control and assurance program, a component of which must address repeatability of the test results. If this testing method cannot be applied to a certain cigarette, the bill authorizes the Director of the Division of Fire Safety to approve an equivalent testing method. Manufacturers must keep testing data on file for three years. The director is required to review the effectiveness of the performance standard and report to the Legislature every three years his findings, as well as recommendations for legislation, to improve the effectiveness of the standard.

The amended bill requires cigarette manufacturers to file a written certification every three years with the Division of Fire Safety that the cigarette meets the performance standard. The certification is to include certain descriptive information concerning the cigarette, such as brand; style; length; circumference; flavor; filter or non-filter; soft pack or box; markings indicating the cigarette has been tested; name and address of the laboratory if it is different than the manufacturer who conducted the test; and date of testing. The certifications are to be made available to the Attorney General and the Division of Taxation. The fee to be paid to the director for a certification is \$250,

but can be annually adjusted by the director to defray increasing administrative costs. It is the committee's understanding that this fee is to be paid per certification. The fees are to be deposited in the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund" to be used by the division for processing, testing, enforcement and oversight activities associated with the amended bill.

Additionally, the amended bill requires manufacturers to "mark" cigarettes to indicate they are in compliance with its provisions. The mark, and any subsequent modifications, must be approved by the director.

Manufacturers and wholesale dealers who knowingly sell or offer to sell cigarettes that do not meet the performance standard required by the bill are liable to a civil penalty for a first offense of up to \$10,000 for each cigarette sale and for a subsequent offense up to \$25,000 for each cigarette sale, but the penalty is not to exceed \$100,000 in a thirty-day period. A retail dealer who sells 1,000 cigarettes or less in violation of the amended bill's provisions is to be fined a civil penalty of up to \$500 for a first offense and up to \$2,000 for a subsequent offense. If the illegal retail sale is for more than 1,000 cigarettes, the dealer is liable to a civil penalty of up to \$1,000 for a first offense and up to \$5,000 for a subsequent offense, but this penalty is not to exceed \$25,000 during a thirty-day period. The penalty for a false certification under the amended bill is at least \$75,000 for a first offense and up to \$250,000 for a subsequent offense. Any other person violating any other provision of the bill is liable to a civil penalty of up to \$1,000 for a first offense and up to \$5,000 for a subsequent offense. These penalty moneys are to be deposited in the "Fire Prevention and Public Safety Fund" to be used by the director for fire safety and prevention programs.

The director and the Attorney General are authorized to file an action in Superior Court for a violation of the bill's provisions for injunctive relief or to recover damages. Cigarettes sold in violation of the bill also are subject to forfeiture, but prior to any destruction of forfeited cigarettes, the true holder of the trademark rights must be permitted to inspect the cigarettes. The amended bill empowers the Attorney General and the director to examine the books, papers, invoices and other records of persons who possess, control or occupy any premises where cigarettes are stored or sold.

The amended bill would be effective on the first day of the thirteenth month after enactment, but wholesale or retail dealers would not be prohibited from selling their existing inventory of cigarettes on or after the effective date if they can establish that State tax stamps were affixed to the cigarettes prior to the effective date and that the inventory was purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year.

Cigarettes are the leading cause of fire deaths in this State and the nation. Requiring cigarette manufacturers to create fire safety standards will make cigarettes less likely to ignite upholstered furniture and mattresses and, therefore, reduce the number of fires caused by careless smokers.

The committee amended the bill to:

(1) change the title of the act to “The Reduced Cigarette Ignition Propensity and Firefighter Protection Act;”

(2) add Massachusetts to the list of states that have enacted such laws;

(3) remove certain language from the definition of a cigarette;

(4) require written certifications to be based on testing by a laboratory accredited pursuant to Standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standard required by the director;

(5) clarify that no additional testing is needed if cigarettes are tested consistent with the act for another purpose;

(6) clarify that testing done by the director must be in accordance with the act;

(7) require that reports of testing be maintained and made available to the Attorney General and the director upon written request and impose a \$10,000 civil penalty on manufacturers who don’t comply with a request in 60 days;

(8) require the director to review the effectiveness of the testing and report those findings and legislative recommendations to the Legislature every three years (under the bill, the director was required to evaluate the standard every three years and make it more stringent, if necessary);

(9) clarify that the act is to be implemented in accordance with the New York safety standard;

(10) in addition to the current information describing the cigarette, require the name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test and the date that the testing occurred;

(11) decrease the fee paid to the director for each cigarette in a certification from \$1,000 to \$250;

(12) clarify that an altered cigarette cannot be sold in the State until it is retested and meets the act’s standard;

(13) authorize other law enforcement personnel, in addition to the director and the Attorney General, to inspect the cigarette markings required under the act;

(14) cap the penalty against a retail dealer selling more than 1,000 noncompliant cigarettes at \$25,000 in a thirty day period;

(15) increase the penalties for making a false certification from up to \$10,000 to up to \$75,000 for a first offense and from up to \$25,000 to up to \$250,000 for a subsequent offense;

(16) allow the true holder of the trademark rights in a cigarette seized by the Attorney General to inspect the cigarette before it is destroyed;

(17) replace a provision authorizing random inspections of cigarette wholesale dealers, agents and retail dealers with a provision authorizing the Director of Taxation, when conducting inspections of these dealers and agents as authorized under the "Cigarette Tax Act," to inspect the cigarettes to determine if they are marked as required by the act, and if not, notify the Director of Fire Safety;

(18) authorize the Attorney General and director to examine the books, other records and cigarettes of a person who possesses or controls the premises where cigarettes are stored or sold and require these persons to allow this examination;

(19) allow the Attorney General, in addition to the director, to file an action in Superior Court to enforce the provisions of the act;

(20) prohibit local governmental units in this State from enacting or enforce an ordinance or regulation that conflicts with or preempts a provision of the act; and

(21) clarify certain provisions and make technical corrections.

As amended and reported by the committee, this bill is identical to the Assembly Committee Substitute (1R) for Assembly Bill No. 2575, which also was reported by the committee on this same date.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 2043**

# **STATE OF NEW JERSEY**

DATED: MARCH 5, 2007

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2043 (1R).

The bill establishes the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act.” This act prohibits the sale of cigarettes in this State unless the cigarettes meet the fire safety performance standard set forth in the bill.

Specifically, cigarettes must be tested in accordance with a standard developed by the American Society of Testing and Materials, or if this testing method cannot be applied to a certain cigarette, by an equivalent testing method approved by the Director of the Division of Fire Safety. The director is required to review the effectiveness of the performance standard and report findings and recommendations to the Legislature every three years.

The bill requires cigarette manufacturers to file a written certification regarding cigarette performance standards with the Division of Fire Safety every three years and establishes a per certification fee of \$250, which may be annually adjusted by the director. The fees are to be deposited in the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund” to be used by the division for processing, testing, enforcement and oversight activities associated with the bill.

The bill also establishes penalties and fees on manufacturers and wholesale and retail dealers for violations of the provisions of the bill. These revenues are to be deposited in the “Fire Prevention and Public Safety Fund” to be used by the director for fire safety and prevention programs.

The bill further requires manufacturers to “mark” cigarettes to indicate compliance with the performance standards established by the bill.

The director and the Attorney General are authorized to file an action in Superior Court for a violation of the bill’s provisions for injunctive relief or to recover damages. Cigarettes sold in violation of the bill also are subject to forfeiture, but prior to any destruction of forfeited cigarettes, the true holder of the trademark rights must be permitted to inspect the cigarettes.

This bill is modeled on New York State's 2004 fire safety performance standard, which has since been enacted in Vermont, California, Illinois, New Hampshire, and Massachusetts.

This bill is identical to Assembly Bill No. 2575 (ACS/1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that expenditures associated with implementation of this bill will be offset by the fees set by the Director of the Division of Fire Safety, and that additional temporary personnel may be needed by the division to process the initial cigarette certificate applications and fees.

The OLS also determines that the bill authorizes the Division of Fire Safety and the Attorney General to examine any premises where cigarettes are stored or sold to ensure compliance, however, the bill does not require enforcement. The Division of Taxation already conducts inspections and is required to notify the Director of the Division of Fire Safety if the requirements of the bill are not met.



# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

**SENATE, No. 2043**

## **STATE OF NEW JERSEY 212th LEGISLATURE**

DATED: APRIL 25, 2007

### SUMMARY

**Synopsis:** "The Cigarette Fire Safety and Firefighter Protection Act."

**Type of Impact:** Indeterminate Impact. Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund.

**Agencies Affected:** Department of Community Affairs, Division of Fire Safety, Department of Law and Public Safety, Division of Taxation

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate - See Comments Below		
<b>State Revenue</b>	Indeterminate - See Comments Below		

- The Office of Legislative Services (OLS) estimates that expenditures associated with implementing this bill would be offset by fees set by the Director of the Division of Fire Safety.
- Establishes "The Reduced Cigarette Ignition Propensity and Firefighter Protection Act," which prohibits the sale of cigarettes in this State which do not meet the fire safety performance standard set forth in the act.
- Requires the Director of the Division of Fire Safety to review the effectiveness of the performance standard and report to the Legislature every three years.
- Establishes the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund" to be used by the Division of Fire Safety for the processing, testing, enforcement and oversight activities required under the bill.
- Provides the manufactures pay \$250 per cigarette certification, which is to be deposited in the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund."

- Authorizes the Attorney General and the Director of the Division of Fire Safety to examine any premises where cigarettes are stored or sold to enforce provisions of the bill.

## **BILL DESCRIPTION**

Senate Bill No. 2043 (1R) of 2006 establishes “The Reduced Cigarette Ignition Propensity and Firefighter Protection Act.” This act prohibits the sale of cigarettes in this State which do not meet fire safety performance standards.

This act is modeled on New York State’s 2004 fire safety performance standard law. Vermont, California, Illinois, New Hampshire, and Massachusetts have since adopted this standard. Specifically, cigarettes must be tested in accordance with a fire safety performance standard developed by the American Society of Testing and Materials.

The Director of the Division of Fire Safety is required to review the effectiveness of that performance standard and report to the Legislature every three years his findings, along with any recommendations for additional legislation.

Cigarette certifications are to be made available to the Attorney General and the Division of Taxation. The bill establishes a fee of \$250 per cigarette certification to be paid to the Director of the Division of Fire Safety. This fee can be annually adjusted by the director to defray any expenses related to the provisions of this bill. The fees are to be deposited in the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund” and used by the division for its processing, testing, enforcement and oversight activities associated implementing the bill.

Penalties and fees are established for manufacturers and wholesale dealers who knowingly sell or offer to sell cigarettes that do not meet the performance standard as well as a retail dealer who is violation of the bill. These fees will be placed into the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund.”

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS estimates that expenditures associated with implementing this bill would be offset by the fees set by the Director of the Division of Fire Safety.

The OLS estimates that additional temporary personnel may be needed by the Division of Fire Safety to process the initial cigarette certificate applications and fees.

The OLS also determines that the bill authorizes the Division of Fire Safety and the Attorney General to examine any premises where cigarettes are stored or sold to ensure compliance, however, the bill does not require enforcement. The Division of Taxation already conducts inspections and is required to notify the Director of the Division of Fire Safety if the requirements of the bill are not met.

Based on a 2005 Division of Taxation Annual Report, in 2003 there were roughly 309,042,364 packs of cigarettes sold in New Jersey. There are more than 50 varieties of cigarettes available to consumers in this State.

*Section: Law and Public Safety*

*Analyst: Kristin A. Brunner  
Associate Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

## May-04-07 Acting Governor Codey Signs Legislation

**FOR IMMEDIATE RELEASE:**  
May 4, 2007

**FOR MORE INFORMATION:**  
Press Office - 609-777-2600

### **ACTING GOVERNOR CODEY SIGNS LEGISLATION**

**TRENTON** – Acting Governor Richard J. Codey today signed the following bills into law:

**S-205/A-3416** (Allen/Fisher, Cruz-Perez, Burzichelli, Voss, Conners) – Requires the Department of Children and Families and the Department of Human Services to compile list of State properties suitable for residential treatment facilities for children in need of mental health services and housing for persons with mental illness or developmental disabilities.

**S-328/A-2728** (Madden, Sweeney/Mayer, Chivukula, Moriarty, Voss) – Requires school bus drivers to inspect bus for pupils remaining at end of route.

**S-1079/A-2026** (Singer, Allen/Dancer, Stender, Wisniewski, Munoz) – Establishes penalty for failing to comply with school crossing guard's signal to stop.

**S-1250/A-2925** (Vitale, Karcher/Conaway, Chivukula, Johnson, Stanley, Vainieri Huttie) – Requires ambulatory care facilities to provide uncompensated outpatient renal dialysis services for uninsured low-income persons.

**S-1760/A-3137** (Madden, Vitale/Conaway, Munoz, Gordon) – Requires MVC to share organ donor information with federally designated organ procurement organizations.

**S-2044/A-3375** (Lesniak/Cryan) – Revises and clarifies assessment funding mechanism for Division of Banking; provides certain uniform reporting and licensing requirements for regulated entities.

**A-515/S-60** (Bateman, Biondi/Kavanaugh, Sacco) – Permits criminal history record check for unpaid volunteers in schools and requires applicants to be reimbursed

for the cost of the record check; permits the reimbursement of paid school personnel for such costs.

**A-1038/S-1418** (Van Drew, Cohen, Barnes, Albano/Asselta, Madden) – Skinner’s and Michelle’s Law: increases penalties for leaving scene of motor vehicle accident resulting in death or serious bodily injury.

**A-2196/S-2158** (Barnes, Johnson, Albano/Sweeney) – Allows certain nonprofits to apply directly to Division of Highway Traffic Safety for federal grants.

**A-2568/S-276** (Van Drew, Albano/Sarlo) – Clarifies certain restrictions on sending unsolicited fax advertisements over telephone lines.

**A-2575/S-2043** (Conners, Wisniewski, Scalera, Conaway, Bramnick, Van Drew/Sarlo, Weinberg) – “The Reduced Cigarette Ignition Propensity and Firefighter Protection Act.”

**A-2985/S-2011** (Conaway, Conners/Turner, Allen) – Authorizes State Treasurer to sell former State Police Barracks in Edgewater Park, Burlington County, as surplus real property.

**A-3102/S-310** (Van Drew, Cruz-Perez, Albano, Cohen/Asselta, Gormley) – Prohibits certain deceptive advertising or concert performance practices with respect to live musical performances or productions.