

Senate Bill 487

By: Senators Balfour of the 9th and Schaefer of the 50th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 25 of the Official Code of Georgia Annotated, relating to fire protection and
2 safety, so as to prohibit the sale of cigarettes unless the manufacturer of those cigarettes
3 certifies to the Safety Fire Commissioner that the cigarettes have been tested by the
4 manufacturer and meet certain standards; to provide for a short title; to provide for legislative
5 findings; to provide for definitions; to provide for standards for testing of cigarettes; to
6 provide for written certification; to provide for required marking of cigarettes; to provide for
7 seizure; to provide civil penalties; to provide for inspections; to provide for preemption; to
8 provide for related matters; to provide an effective date; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 25 of the Official Code of Georgia Annotated, relating to fire protection and safety, is
13 amended by adding a new chapter to the end of such title to read as follows:

14 "CHAPTER 14

15 25-14-1.

16 This chapter shall be known and may be cited as the 'Georgia Cigarette Fire Safety and
17 Firefighter Protection Act.'

18 25-14-2.

19 (a) The General Assembly finds and declares as follows:

20 (1) Cigarettes are the leading cause of fire deaths in the United States each year, claiming
21 approximately 1,000 lives and causing nearly 2,000 injuries and nearly \$400 million in
22 direct property damage;

- 1 (2) Technology exists to reduce significantly the number of fires caused by cigarettes;
 2 and
 3 (3) Cigarettes meeting fire safety standards have been found not to increase the costs to
 4 consumers.
 5 (b) The General Assembly hereby determines that it is in the best interests of the health
 6 and safety of the people of this state to establish fire safety standards for cigarettes sold in
 7 this state.

8 25-14-3.

9 As used in this chapter, the term:

- 10 (1) 'Cigarette' means any roll for smoking made wholly or in part of tobacco when the
 11 cover of the roll is paper or any substance other than tobacco.
 12 (2) 'Cigarette dealer' means any person located within the borders of this state who sells
 13 or distributes cigarettes to a consumer in this state.
 14 (3) 'Commissioner' means the Safety Fire Commissioner.
 15 (4) 'Distributor' means any person, whether located within or outside the borders of this
 16 state, other than a cigarette dealer, who sells or distributes cigarettes within or into the
 17 boundaries of this state and who:
 18 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 19 contact and call on cigarette dealers; and
 20 (B) Is engaged in the business of:
 21 (i) Importing cigarettes into this state or purchasing cigarettes from other
 22 manufacturers or distributors; and
 23 (ii) Selling the cigarettes to cigarette dealers in this state for resale but is not in the
 24 business of selling the cigarettes directly to the ultimate consumer of the cigarettes.
 25 Such term shall not include any cigarette manufacturer, export warehouse proprietor, or
 26 cigarette importer with a valid permit under 26 U.S.C. Section 5712, if such person sells
 27 or distributes cigarettes in this state only to cigarette distributors who hold valid and
 28 current licenses under Code Section 48-11-4 or to an export warehouse proprietor or
 29 another cigarette manufacturer with a valid permit under 26 U.S.C. Section 5712.
 30 (4) 'Manufacturer' means any person who manufactures, fabricates, assembles, processes,
 31 or labels a finished cigarette.
 32 (5) 'Offer to sell' means to offer or agree to sell.
 33 (6) 'Package' means the individual packet, box, or other container in which retail sales
 34 of cigarettes are normally made or intended to be made. This term shall not include
 35 containers such as cartons, cases, bales, or boxes which contain smaller packaging units
 36 of cigarettes.

1 (7) 'Quality control and quality assurance program' means the laboratory procedures
2 implemented to ensure that operator bias, systematic and nonsystematic methodological
3 errors, and equipment related problems do not affect the results of the testing and that the
4 testing repeatability remains within the required repeatability values stated in paragraph
5 (5) of subsection (a) of Code Section 25-14-5 for all test trials used to certify cigarettes
6 in accordance with this chapter.

7 (8) 'Repeatability' means the range of values within which the repeat results of cigarette
8 test trials from a single laboratory will fall 95 percent of the time.

9 (9) 'Retailer' means a person who engages in the sale of cigarettes, but not for the
10 purpose of resale.

11 (10) 'Sale' or 'sell' means any sale, transfer, exchange, theft, barter, gift, or offer for sale
12 and distribution in any manner or by any means whatever. The giving of cigarettes as
13 samples, prizes, or gifts and the exchanging of cigarettes for any consideration other than
14 money are considered sales.

15 (11) 'Stamp and meter impression' means the indicia of payment of tax, as required by
16 Chapter 11 of Title 48, which include, but are not limited to, stamps, meter impressions,
17 or any other indicia developed using current technology.

18 (12) 'Wholesaler' means any person, other than a licensed distributor, who engages in
19 this state in making sales for resale of cigarettes that are contained in packages to which
20 are affixed stamps or meter impressions.

21 25-14-4.

22 (a) A person shall not sell, offer, or possess for sale in this state cigarettes unless:

23 (1) The cigarettes are tested by the manufacturer in accordance with the test method
24 prescribed in subsection (a) of Code Section 25-14-5;

25 (2) The cigarettes meet the performance standard specified in subsection (b) of Code
26 Section 25-14-5;

27 (3) The cigarettes meet the marking requirement of Code Section 25-14-7; and

28 (4) A written certification is filed by the manufacturer with the Commissioner in
29 accordance with Code Section 25-14-6.

30 (b) This Code section shall not be construed to prohibit distributors, wholesalers, or
31 retailers from selling their inventory of cigarettes existing on January 1, 2007, if both of
32 the following conditions are met:

33 (1) The distributors, wholesalers, or retailers can establish that Georgia tax stamps or
34 meter impressions were affixed to the cigarettes pursuant to Chapter 11 of Title 48 before
35 January 31, 2007; and

1 (2) The distributors, wholesalers, or retailers can establish that the inventory was
2 purchased before January 1, 2007, in comparable quantity to the inventory purchased
3 during the same period in 2005.

4 (c) This Code section shall not be construed to prohibit a person or entity from
5 manufacturing or selling cigarettes that do not meet the requirements of subsection (a) of
6 this Code section if the cigarettes are or will be stamped or metered for sale in another state
7 or are packaged for sale outside the United States.

8 25-14-5.

9 (a)(1) Testing of cigarettes shall be conducted in accordance with the American Society
10 of Testing and Materials (ASTM) Standard E2187-04, 'Standard Test Method for
11 Measuring the Ignition Strength of Cigarettes.' However, a subsequent ASTM Standard
12 Test Method may be adopted by the Commissioner upon finding that the subsequent
13 method does not result in a change in the percentage of full-length burns exhibited by any
14 tested cigarette when compared to the percentage of full-length burns that the same
15 cigarette would exhibit when tested in accordance with ASTM Standard E2187-04, the
16 testing requirements in paragraphs (2) through (5) of this subsection, and the performance
17 standard specified in subsection (b) of this Code section.

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

19 (3) Forty replicate tests shall comprise a complete test trial for each cigarette tested.

20 (4) The performance standard required by subsection (b) of this Code section shall only
21 be applied to a complete test trial.

22 (5) Laboratories conducting testing in accordance with this subsection shall implement
23 a quality control and quality assurance program that includes a procedure that will
24 determine the repeatability of the testing results. The repeatability value shall be no
25 greater than 0.19 pursuant to subsection (b) of this Code section.

26 (b) When tested in accordance with subsection (a) of this Code section, no more than 25
27 percent of the cigarettes tested in a test trial shall exhibit full-length burns.

28 (c) Each cigarette listed in a certification submitted pursuant to Code Section 25-14-6 that
29 uses lowered permeability bands in the cigarette paper to achieve compliance with the
30 performance standard set forth in subsection (b) of this Code section shall have at least two
31 nominally identical bands on the paper surrounding the tobacco column. At least one
32 complete band shall be located at least 15 millimeters from the lighting end of the cigarette.
33 For cigarettes on which the bands are positioned by design, there shall be at least two bands
34 fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter
35 end of the tobacco column or 10 millimeters from the labeled end of the tobacco column
36 for a nonfiltered cigarette.

1 (d) The manufacturer or manufacturers of a cigarette that cannot be tested in accordance
2 with the test method prescribed in subsection (a) of this Code section may employ a test
3 method and performance standard for that cigarette that is equivalent to the performance
4 standard prescribed in subsection (b) of this Code section. The manufacturer or
5 manufacturers may employ that test method and performance standard to certify that
6 cigarette pursuant to Code Section 25-14-6. All other applicable requirements of this
7 chapter shall apply to the manufacturer or manufacturers of that cigarette.

8 (e) This Code section shall not be construed to require additional testing if cigarettes are
9 tested consistent with this Code section for any other purpose.

10 (f) In order to ensure compliance with the performance standard specified in subsection
11 (b) of this Code section, data from testing conducted by manufacturers to comply with this
12 performance standard shall be kept on file by these manufacturers for a period of three
13 years after the initial date of certification and for a period of three years after each
14 recertification required by subsection (c) of Code Section 25-14-6 and shall be sent to the
15 Commissioner and the Attorney General upon his or her request.

16
17 25-14-6.

18 (a) Each manufacturer shall submit a written certification to the Commissioner attesting
19 that each cigarette listed in the certification has been tested in accordance with subsection
20 (a) of Code Section 25-14-5 and meets the performance standard set forth in subsection (b)
21 of Code Section 25-14-5.

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

24 (1) Brand;

25 (2) Style (for example, light, ultra light);

26 (3) Length in millimeters;

27 (4) Circumference in millimeters;

28 (5) Flavor (for example, menthol, chocolate) if applicable;

29 (6) Filter or nonfilter;

30 (7) Package description (for example, soft pack, box); and

31 (8) Marking approved in accordance with Code Section 25-14-7.

32 (c) Each cigarette certified under this Code section shall be recertified every three years.

33 (d) Manufacturers certifying cigarettes in accordance with this Code section shall provide
34 a copy of the certifications to all distributors and wholesalers to which they sell cigarettes
35 and shall also provide sufficient copies of an illustration of the cigarette packaging marking
36 utilized by the manufacturer pursuant to Code Section 25-14-7 for each retailer to which
37 the distributors and wholesalers sell cigarettes. Distributors and wholesalers shall provide

1 a copy of these cigarette packaging markings received from manufacturers to all retailers
2 to which they sell cigarettes.

3 25-14-7.

4 (a) Cigarettes that are certified by a manufacturer in accordance with Code Section
5 25-14-6 shall be marked on the packaging and case to indicate compliance with the
6 requirements of this chapter. Marking shall be in eight-point type or larger and consist of
7 one of the following:

8 (1) Modification of the universal product code to include a visible mark printed at or
9 around the area of that code. The mark may consist of alphanumeric or symbolic
10 characters permanently stamped, engraved, embossed, or printed in conjunction with the
11 universal product code;

12 (2) Any visible combination of alphanumeric or symbolic characters permanently
13 stamped, engraved, or embossed upon the cigarette packaging or cellophane wrap; or

14 (3) Printed, stamped, engraved, or embossed text on the cigarette packaging that
15 indicates that the cigarettes meet Georgia standards.

16 (b) Before a certified cigarette can be sold in this state, a manufacturer shall submit its
17 proposed marking to the Commissioner. The Commissioner shall approve the marking
18 upon a finding that it is compliant with the criteria outlined in subsection (a) of this Code
19 section. Proposed markings shall be deemed approved if the Commissioner fails to act
20 within ten business days of receiving a proposed marking.

21 (c) A manufacturer must use only one marking and must apply this marking uniformly for
22 all packagings, including, but not limited to, packages, cartons, and cases, and brands
23 marketed by that manufacturer.

24 (d) A manufacturer who modifies its marking shall notify the Commissioner of this change
25 and submit to the Commissioner a copy of the new marking which shall comply with
26 subsections (a) and (b) of this Code section.

27 25-14-8.

28 (a) Any manufacturer or any other person or entity that knowingly sells or offers to sell
29 cigarettes other than through retail sale in violation of this chapter is subject to a civil
30 penalty not to exceed \$10,000.00 for each sale.

31 (b) Any retailer, distributor, or wholesaler that knowingly sells or offers to sell cigarettes
32 in violation of this chapter shall be subject to the following:

33 (1) A civil penalty not to exceed \$500.00 for each sale or offer for sale in which the total
34 number of cigarettes sold or offered for sale does not exceed 50 packages of cigarettes;

35 or

1 (2) A civil penalty not to exceed \$1,000.00 for each sale or offer for sale in which the
2 total number of cigarettes sold or offered for sale exceeds 50 packages of cigarettes.

3 (c) The civil penalties imposed pursuant to subsections (a) and (b) of this Code section
4 shall be deposited in the general fund of the State of Georgia.

5 (d) In addition to any other penalty prescribed by law, any corporation, partnership, sole
6 proprietor, limited partnership, or association engaged in the manufacture of cigarettes that
7 knowingly makes a false certification pursuant to Code Section 25-14-6 shall be subject
8 to a civil penalty not to exceed \$10,000.00 for each false certification.

9 (e) Any person violating any other provision in this chapter shall be subject to a civil
10 penalty not to exceed \$1,000.00 for each violation. Any cigarettes that have been sold or
11 offered for sale that do not comply with the performance standard required by Code
12 Section 25-14-5 shall be deemed contraband and subject to seizure and disposal by the
13 Commissioner or a law enforcement agency.

14 (f) The Attorney General of this state may bring an action on behalf of the people of the
15 state to restrain further violations of this chapter and for any other relief that may be
16 appropriate. In any action by the Attorney General to enforce this chapter, the Attorney
17 General shall be entitled to recover costs of investigation, expert witness fees, costs of the
18 action, and reasonable attorney's fees.

19 (g) It shall be a defense in any action for civil penalties that a distributor, wholesaler,
20 retailer, or any person in the stream of commerce relied in good faith on the manufacturer's
21 certificate or marking that the cigarettes comply with the requirements of this chapter.

22 25-14-9.

23 (a) Inspections may be made at any place where cigarettes are sold, offered for sale, or
24 stored or at any site where there is evidence of a violation of subsection (a) of Code Section
25 25-14-4.

26 (b) Manufacturers, distributors, wholesalers, and retailers shall permit an employee of the
27 Commissioner, upon presentation of the appropriate identification and credentials, to enter
28 into and to conduct an inspection of any building, facility, site, or place described in
29 subsection (a) of this Code section.

30 (c) Any person who knowingly fails or refuses to allow an inspection by the Commissioner
31 pursuant to this Code section is subject to a civil penalty not to exceed \$1,000.00 for each
32 failure or refusal.

33 25-14-10.

34 Upon discovery by the Commissioner or a law enforcement agency that any person offers
35 or possesses for sale, or has made a sale of, cigarettes in violation of subsection (a) of Code

1 Section 25-14-4, the Commissioner or law enforcement agency may seize those cigarettes
2 possessed in violation of this chapter.

3 25-14-11.

4 This chapter shall cease to be applicable if federal fire safety standards for cigarettes that
5 preempt this chapter are enacted and take effect after January 1, 2007."

6 **SECTION 2.**

7 This Act shall become effective on January 1, 2007.

8 **SECTION 3.**

9 All laws and parts of laws in conflict with this Act are repealed.