

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)

SENATE
S. B. No. _____

Introduced by Senator Miriam Defensor Santiago

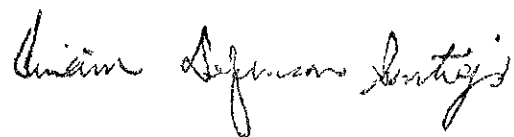
EXPLANATORY NOTE

A fire-safe cigarette has a reduced propensity to burn when left unattended. The most common fire-safe technology used by cigarette manufacturers is to wrap cigarettes with two or three thin bands of less-porous paper that act as “speed bumps” to slow down a burning cigarette. If a fire-safe cigarette is left unattended, the burning tobacco will reach one of these speed bumps and self-extinguish.

The idea for fire safe cigarettes is not new. In 1929, a cigarette-ignited fire in Lowell, MA, caught the attention of U.S. Congresswoman Edith Nourse Rogers; she called for the National Bureau of Standards (Bureau) to develop technology for “self-snubbing” cigarettes. Sometime in 1932, after three years of research, the Bureau had developed a “self-snubbing” cigarette and the Bureau suggested that cigarette manufacturers “take up the idea.” No cigarette manufacturer took the advice of the Bureau. Likewise, there were other attempts to make it a legal requirement for cigarette manufacturers to make their cigarettes fire-safe but these initiatives were defeated by tobacco lobbyists.

In 2004, New York State saw a dramatic decline in deaths caused by cigarette fires in the first few months alone following its adoption of its Fire Safe Cigarettes Act. Since then, not only other US states but also other countries have begun to realize the use of cigarettes with a proven, reduced propensity to ignite other materials saves lives and offers the best opportunity to achieve the next big leap forward in fire protection.

This bill seeks to create the Philippines' own Fire Safe Cigarettes law, in an attempt to reduce – if not eliminate – fire accidents caused by cigarette fires.



MIRIAM DEFENSOR SANTIAGO



SENATE
S. B. No. 33

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AN ACT
REQUIRING CIGARETTES TO MANUFACTURED PUSUANT TO
FIRE SAFETY STANDARDS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act shall be known as “Fire Safe Cigarettes Act of 2007.”

SECTION 2. *Declaration of Policy.* – It is the policy of the State to promote the general welfare of the people. Pursuant to this policy, this Act seeks to protect people from fire accidents caused by cigarettes.

SECTION 3. *Definition of Terms.* – For purposes of this Act:

(A) “Agent” shall mean any person authorized by the Bureau of Internal Revenue to purchase and affix tax stamps on packages of cigarettes;

(B) “Cigarette” shall mean:

- (1) Any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, other than leaf tobacco; or
- (2) Any roll for smoking wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its

packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as described in Paragraph 1 above.

- (C) “Consumer testing” shall mean an assessment of cigarettes that is conducted by a manufacturer or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment, and in a controlled setting where the cigarettes are either consumed on-site or returned to the testing administrators at the conclusion of the testing;
- (D) “Director” shall mean the Director of the Bureau of Fire Protection;
- (E) “Manufacturer” shall mean:
 - (1) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in the Philippines, including cigarettes intended to be sold in the Philippines through an importer; or
 - (2) The first purchaser anywhere that intends to resell in the Philippines cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the Philippines; or
 - (3) Any entity that becomes a successor of an entity described in Paragraph (1) or (2) above.
- (F) “Quality control and quality assurance program” shall mean the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of *the testing*. Such a program ensures that the testing repeatability remains within the required repeatability values stated in Section 4 of this Act for all test trials used to certify cigarettes in accordance with this Act;
- (G) “Repeatability” shall mean the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time;
- (H) “Retail dealer” shall mean any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products;

- (I) "Sale" shall mean any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts, and the exchanging of cigarettes for any consideration other than money, are considered sales;
- (J) "Sell" shall mean to sell, or to offer or agree to do the same; and
- (K) "Wholesale dealer" shall mean any person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

SECTION 4. *Test Method and Performance Standard.* – (A) Except as provided in Paragraph (G) of this Section, no cigarettes may be sold or offered for sale in this State or offered for sale or sold to persons located in the Philippines unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the Bureau of Fire Protection in accordance with Section 5 of this Act, and the cigarettes have been marked in accordance with Section 6 of this Act.

In addition, the following guidelines regarding the test method and performance standard of cigarettes shall be observed:

- (1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials ("ASTM") standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."
- (2) Testing shall be conducted on 10 layers of filter paper.
- (3) No more than 25 percent of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

- (4) The performance standard required by this section shall only be applied to a complete test trial.
- (5) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (“ISO”), or other comparable accreditation standard required by the Bureau of Fire Protection.
- (6) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.
- (7) This section does not require additional testing if cigarettes are tested consistent with this Act for any other purpose.
- (8) Testing performed or sponsored by the Bureau of Fire Protection to determine a cigarette’s compliance with the performance standard required shall be conducted in accordance with this section.

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

(C) A manufacturer of a cigarette that the Bureau of Fire Protection determines cannot be tested in accordance with the test method prescribed in Paragraph (A)(1) of this section shall propose a test method and performance standard for the cigarette to the Bureau of Fire Protection. Upon approval of the proposed test method and a determination by the Bureau of Fire Protection that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in Paragraph (A)(3) of this Section, the manufacturer may

employ such test method and performance standard to certify such cigarette pursuant to Section 5 of this Act. If the Bureau of Fire Protection determines that another state has enacted reduced *cigarette ignition propensity* standards that include a test method and performance standard that are the same as those contained in this Act, and the Bureau of Fire Protection finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this Section, then the Bureau of Fire Protection shall authorize that manufacturer to employ the alternative test method and performance standard to certify that *cigarette for sale in this State*, unless the Bureau of Fire demonstrates a reasonable basis why the alternative test should not be accepted under this Act. All other applicable requirements of this section shall apply to the manufacturer.

(D) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three (3) years, and shall make copies of these reports available to the Bureau of Fire Protection and other government agencies upon written request. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request shall be subject to a penalty not to exceed Ten Thousand Pesos (P10,000.00) for each day after the sixtieth day that the manufacturer does not make such copies available.

(E) The Bureau of Fire Protection may adopt a subsequent ASTM Standard Test Method for measuring the Ignition Strength of Cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in Paragraph (A)(3) of this Section.

(F) The Bureau of Fire Protection shall review the effectiveness of this section and report every three (3) years to the Legislature its findings and, if appropriate, recommendations for legislation to improve the effectiveness of this Act. The report and legislative

recommendations shall be submitted no later than June thirtieth following the conclusion of each three-year period.

(G) The requirements of Paragraph (A) of this section shall not prohibit:

- (1) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this Act if the wholesale or retailer dealer can establish that state tax stamps were affixed to the cigarettes prior to the effective date and the wholesale or retailer dealer can establish 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; or
- (2) The sale of cigarettes solely for the purpose of consumer testing.

SECTION 5. *Certification and Product Change.* – (A) Each manufacturer shall submit Bureau of Fire Protection a written certification attesting that:

- (1) Each cigarette listed in the certification has been tested in accordance with Section 4 of this Act; and
- (2) Each cigarette listed in the certification meets the performance standard set forth in Section 4.

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

- (1) Brand, or trade name on the package;
- (2) Style, such as light or ultra light;
- (3) Length in millimeters;
- (4) Circumference in millimeters;
- (5) Flavor, such as menthol or chocolate, if applicable;
- (6) Filter or non-filter;
- (7) Package description, such as soft pack or box;
- (8) Marking pursuant to Section 6 of this Act;
- (9) The name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and

(10) The date that the testing occurred.

(C) The certifications shall be made available to any government agency for purposes consistent with this Act and the Bureau of Fire Protection for the purposes of ensuring compliance with this Section.

(D) Each cigarette certified under this section shall be re-certified every three (3) years.

(E) For each cigarette listed in a certification, a manufacturer shall pay to the Bureau of fire protection a fee of Five Hundred Pesos (P500.00). The Bureau of Fire Protection is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement and oversight activities required by this Act.

(F) There is established in the National Treasury a separate, nonlapsing fund to be known as the "Cigarette Fire Safety Standard Act Enforcement Fund." The fund shall consist of all certification fees submitted by manufacturers, and shall, in addition to any other monies made available for such purpose, subject to relevant Commission on Audit rules and regulations regarding the disposition funds, be available to the Bureau of Fire Protection solely to support processing, testing, enforcement and oversight activities under this Act.

(G) If a manufacturer has certified a cigarette pursuant to this Section, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this Act, that cigarette shall not be sold or offered for sale in the Philippines until the manufacturer retests the cigarette in accordance with the testing standards set forth in Section 4 of this Act and maintains records of that retesting as required by Section 4 of this Act. Any altered cigarette which does not meet the performance standard set forth in Section 4 of this Act may not be sold in the Philippines.

SECTION 6. *Marking of Cigarette Packaging.* – (A) Cigarettes that are certified by a manufacturer in accordance with Section 5 of this Act shall be marked to indicate compliance with the requirements of Section 4 of this Act. The marking shall be in eight point type or larger and consist of:

(1) *Modification of the product UPC Code to include a visible mark printed at or around the area of the UPC Code. The mark may consist of alphanumeric or*

symbolic characters permanently stamped, engraved, embossed or printed in conjunction with the UPC; or

- (2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the cigarette package or cellophane wrap; or
- (3) Printed, stamped, engraved or embossed text that indicates that the cigarettes meet the standards of this Act.

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

(C) The Bureau of Fire Protection shall be notified as to the marking that is selected.

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

- (1) Any marking in use and approved for sale in the Philippines pursuant to the Philippine Fire Safety Standards for Cigarettes, or
- (2) The letters "FSC," which signifies *Fire Standards Compliant* appearing in 8 point type or larger and be permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

Proposed markings shall be deemed approved if the Bureau of Fire Protection fails to act within fifteen (15) business days of receiving a request for approval.

(E) No manufacturer shall modify its approved marking unless the modification has been approved by the Bureau of Fire Protection in accordance with this Section.

(F) Manufacturers certifying cigarettes in accordance with Section 5 of this Act shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy

of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents and retail dealers shall permit the Bureau of Fire Protection, the Bureau of Internal revenue, the Department of Trade and Industry, and their employees to inspect markings of cigarette packaging marked in accordance with this Section.

SECTION 7. *Penalties.* – (A) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Section 4 of this Act, shall be subject to a penalty of not more than Two Hundred Pesos (P200.00) for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any such person or entity exceed Two Hundred Thousand Pesos (P200,000.00) during any thirty-day period.

(B) A retail dealer who knowingly sells or offers to sell cigarettes in violation of Section 4 of this Act shall be subject to a penalty of not more than Two Hundred Pesos (P200.00) for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any such person or entity exceed Two Hundred Thousand Pesos (P100,000.00) during any thirty-day period.

(C) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 5 of this Act shall be subject to a penalty of not less than One Hundred Thousand Pesos (P100,000.00) but not more than Five Hundred Thousand Pesos (P500,000.00) for each such false certification.

(D) Any person violating any other provision in this Act shall be subject to a penalty for a first offense of not more than One Thousand Pesos (P1,000.00), and for a subsequent offense subject to a penalty not to exceed Five Thousand Pesos (P5,000.00) for each such violation.

(E) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by Section 4 of this Act shall be subject to forfeiture [under the pertinent provision of state law having to do with forfeiture of contraband]. Cigarettes forfeited pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any

cigarette forfeited pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(F) In addition to any other remedy provided by law, the Bureau of Fire Protection, the Solicitor General or any other government agency adversely affected may file an action in the Regional Trial Court, subject to the rules on venue of actions under the Rules of Court, for a violation of this Act, including petitioning for injunctive relief or to recover any costs or damages suffered by the State because of a violation of this Act, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this Act or of the Rules and Regulations adopted under this Act constitutes a separate violation for which the Bureau of Fire Protection, Attorney General or any other government agency adversely affected may obtain relief.

(G) Whenever any law enforcement personnel or duly authorized representative of the Bureau of Fire Protection shall discover any cigarettes that have not been marked in the manner required by section 6 of this Act, such personnel is hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the Bureau of Internal Revenue, and shall be forfeited to the state. Cigarettes seized pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

SECTION 8. *Implementation.* – Within sixty (60) days from the promulgation of this Act, the Bureau of Fire Protection shall promulgate rules and regulations, pursuant to the law on publication, necessary to effectuate the purposes of this Act.

The Bureau of Internal Revenue or its representatives in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, as authorized under the National Internal Revenue Code, as amended, may inspect such cigarettes to determine if the cigarettes are marked as required by Section 6 of this Act. If the cigarettes are not marked as required, the Bureau of Internal Revenue or its representatives shall notify the Bureau of Fire Protection.

SECTION 9. *Inspection.* – To enforce the provisions of this Act, the Solicitor General, the Bureau of Internal Revenue and the Bureau of Fire Protection, their duly authorized representatives and other law enforcement personnel are hereby authorized to examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control or occupancy of any premises where cigarettes are placed, sold or offered for sale, is hereby directed and required to give the Solicitor General, the Bureau of Internal Revenue and the Bureau of Fire Protection, their duly authorized representatives and other law enforcement personnel the means, facilities and opportunity for the examinations authorized by this Section.

SECTION 10. *Cigarette Fire Safety Standard Fund.* – There is hereby established in the National Treasury a special fund to be known as the “Cigarette Fire Safety Standard Fund.” The fund shall consist of all monies recovered as penalties under Section 7 of this Act. The monies shall be deposited to the credit of the fund and shall, in addition to any other monies made available for such purpose, be made available to the Bureau of Fire Protection to support fire safety and prevention programs.

SECTION 11. *Sale Outside the Philippines.* – Nothing in this Act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 4 of this Act if the cigarettes are or will be stamped for sale in another country or are packaged for sale outside the Philippines and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in the Philippines.

SECTION 12. *Separability Clause.* – If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 13. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this act is hereby repealed, modified or amended accordingly.

SECTION 14. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,

/rgs