

**SUBSTITUTE FOR
SENATE BILL NO. 1621**

A bill to prohibit the sale of certain uncertified cigarettes; to provide standards for testing and fire safety certification of cigarettes; to provide remedies and civil sanctions; to provide for the powers and duties of certain state governmental officers and entities; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "fire
2 safety standard and firefighter protection act".

3 Sec. 3. As used in this act:

4 (a) "Agent" means a stamping agent, as defined in section 2 of
5 the tobacco products tax act, MCL 205.422.

6 (b) "Cigarette" means that term as defined in section 2 of the
7 tobacco products tax act, MCL 205.422.

8 (c) "Department" means the department of energy, labor, and

1 economic growth.

2 (d) "Director" means the director of the department.

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

4 (i) A manufacturer as defined in section 2 of the tobacco
5 products tax act, MCL 205.422.

6 (ii) The first purchaser of gray market cigarettes, as that
7 term is defined in section 2 of the tobacco products tax act, MCL
8 205.422, if that purchaser intends to resell the cigarettes in the
9 United States.

10 (iii) A successor to a person described in subparagraph (i) or

11 (ii).

12 (f) "New York fire safety standards for cigarettes" means
13 section 156-c of the New York executive law, as amended, and the
14 New York fire safety standards for cigarettes, part 429 of title 19
15 of the official compilation of codes, rules, and regulations of the
16 state of New York.

17 (g) "Quality control and quality assurance program" means
18 laboratory procedures implemented to ensure that operator bias,
19 systematic and nonsystematic methodological errors, and equipment-
20 related problems do not affect the results of the testing of
21 cigarettes and ensure that testing repeatability remains within the
22 required repeatability values stated in section 5(2)(g) for all
23 test trials used to certify cigarettes under this act.

24 (h) "Repeatability" means the range of values within which the
25 repeat results of cigarette test trials from a single laboratory
26 will fall 95% of the time.

27 (i) "Retail dealer" means a retailer, as that term is defined

1 in section 2 of the tobacco products tax act, MCL 205.422.

2 (j) "Sale" means that term as defined in section 2 of the
3 tobacco products tax act, MCL 205.422.

4 (k) "Secondary wholesaler" means that term as defined in
5 section 2 of the tobacco products tax act, MCL 205.422.

6 (l) "Sell" means to sell or to offer or agree to sell.

7 (m) "Tobacco products tax act" means the tobacco products tax
8 act, 1993 PA 327, MCL 205.421 to 205.436.

9 (n) "Unclassified acquirer" means that term as defined in
10 section 2 of the tobacco products tax act, MCL 205.422.

11 (o) "Wholesale dealer" means a wholesaler, as that term is
12 defined in section 2 of the tobacco products tax act, MCL 205.422.

13 Sec. 5. (1) Except as provided in subsection (11), a person
14 shall not sell cigarettes in this state or sell cigarettes to a
15 person located in this state unless the cigarettes are tested in
16 accordance with the test method described in subsection (2), the
17 cigarettes meet the performance standard described in subsection
18 (3), the manufacturer has filed a written certification with the
19 department under section 7, and the cigarettes are marked in
20 compliance with section 11.

21 (2) All of the following apply to the testing of cigarettes
22 for the purposes of this section:

23 (a) Testing of cigarettes is conducted in accordance with the
24 American society of testing and materials (ASTM) standard E2187-04,
25 "Standard Test Method for Measuring the Ignition Strength of
26 Cigarettes".

27 (b) Testing is conducted on 10 layers of filter paper.

1 (c) Forty replicate tests compose a complete test trial for
2 each cigarette tested.

3 (d) The performance standard described in subsection (3) is
4 only applied to a complete test trial.

5 (e) Testing is conducted by a laboratory that is accredited
6 pursuant to standard ISO/IEC 17025:2005 of the international
7 organization for standardization (ISO) or other comparable
8 accreditation standard required by the department.

9 (f) A laboratory conducting testing has implemented a quality
10 control and quality assurance program that includes a procedure
11 that will determine the repeatability of the testing results.

12 (g) The repeatability value of the testing results is 0.19 or
13 less.

14 (3) When a cigarette is tested under subsection (2), no more
15 than 25% of the cigarettes tested in a test trial shall exhibit
16 full-length burns.

17 (4) This section does not require additional testing if
18 cigarettes are tested consistently with this act for any other
19 purpose.

20 (5) Any testing performed or sponsored by the department to
21 determine a cigarette's compliance with the performance standard
22 described in subsection (3) must comply with this section.

23 (6) A cigarette listed in a certification submitted under
24 section 7 that uses lowered permeability bands in the cigarette
25 paper to achieve compliance with the performance standard described
26 in subsection (3) must have at least 2 nominally identical bands on
27 the paper surrounding the tobacco column, with at least 1 complete

1 band located at least 15 millimeters from the lighting end of the
2 cigarette. For cigarettes on which the bands are positioned by
3 design, the cigarette must have at least 2 bands fully located at
4 least 15 millimeters from the lighting end and 10 millimeters from
5 the filter end of the tobacco column or, for nonfiltered
6 cigarettes, 10 millimeters from the labeled end of the tobacco
7 column.

8 (7) A manufacturer of a cigarette that the department
9 determines cannot be tested in compliance with subsection (2)(a)
10 shall propose a test method and performance standard for the
11 cigarette to the department. If the department approves of the
12 proposed test method and determines that the performance standard
13 proposed by the manufacturer is equivalent to the performance
14 standard prescribed in subsection (3), the manufacturer may employ
15 that test method and performance standard to certify the cigarette
16 under section 7. If the department determines that another state
17 has enacted reduced cigarette ignition propensity standards that
18 include a test method and performance standard that are the same as
19 those contained in this act and the department finds that the
20 officials responsible for implementing those requirements have
21 approved the proposed alternative test method and performance
22 standard for a particular cigarette proposed by a manufacturer as
23 meeting the fire safety standards of that state's law or regulation
24 under a legal provision comparable to this section, then the
25 department shall authorize that manufacturer to employ the
26 alternative test method and performance standard to certify that
27 cigarette for sale in this state, unless the department

1 demonstrates a reasonable basis as to why the alternative test
2 should not be accepted for the purposes of this act. All other
3 applicable requirements of this section apply to the manufacturer.

4 (8) A manufacturer shall maintain copies of the reports of all
5 tests conducted under this act on all cigarettes offered for sale
6 in this state for a period of 3 years and make copies of these
7 reports available to the department or the attorney general upon
8 written request. Any manufacturer who fails to make copies of these
9 reports available within 60 days of receiving a written request
10 from the department or the attorney general is subject to a civil
11 fine of not more than \$10,000.00 for each day after the sixtieth
12 day that the manufacturer does not make the copies available to the
13 department or the attorney general.

14 (9) The department may adopt a subsequent ASTM standard test
15 method for measuring the ignition strength of cigarettes if it
16 finds that the subsequent method does not result in a change in the
17 percentage of full-length burns exhibited by any tested cigarette
18 when compared to the percentage of full-length burns the same
19 cigarette would exhibit when tested in accordance with the ASTM
20 standard described in subsection (2)(a) and the performance
21 standard described in subsection (3).

22 (10) The department shall implement this section in accordance
23 with the implementation and substance of the New York fire safety
24 standards for cigarettes.

25 (11) The department shall review the effectiveness of this
26 section and report every 3 years to the legislature the
27 department's findings and, if appropriate, recommendations for

1 legislation to improve the effectiveness of this act. The
2 department shall submit the report and legislative recommendations
3 no later than the first June 30 following the conclusion of each 3-
4 year period.

5 (12) This section does not prohibit any of the following:

6 (a) A wholesale or retail dealer from selling its existing
7 inventory of cigarettes if the wholesale or retail dealer can
8 establish that state tax stamps were affixed to the cigarettes
9 before the effective date of this act and the wholesale or retail
10 dealer can establish that the inventory was purchased before the
11 effective date of this act in comparable quantity to the inventory
12 purchased during the same period of the preceding year.

13 (b) The sale of cigarettes solely for the purpose of consumer
14 testing. For purposes of this subdivision, "consumer testing" means
15 an assessment of cigarettes that is conducted by a manufacturer, or
16 under the control and direction of a manufacturer, for the purpose
17 of evaluating consumer acceptance of those cigarettes, utilizing
18 only the quantity of cigarettes that is reasonably necessary for
19 that assessment.

20 Sec. 7. (1) A manufacturer shall certify cigarettes for the
21 purposes of this act by submitting a written certification to the
22 department attesting that each cigarette listed in the
23 certification has been tested in compliance with section 5 and that
24 each cigarette listed in the certification meets the performance
25 standard described in section 5(3).

26 (2) A manufacturer shall include in the certification
27 described in subsection (1) all of the following information for

1 each cigarette listed in the certification:

2 (a) Its brand or the trade name on the package.

3 (b) Its style, such as light or ultra light.

4 (c) Its length in millimeters.

5 (d) Its circumference in millimeters.

6 (e) Its flavor, such as menthol or chocolate, if applicable.

7 (f) Whether it is a filter or nonfilter cigarette.

8 (g) A package description, such as soft pack or box.

9 (h) The package markings under section 11.

10 (i) If it is a person other than the manufacturer, the name,
11 address, and telephone number of the laboratory that conducted the
12 test of the cigarette.

13 (j) The date that the testing of the cigarette occurred.

14 (3) The department shall make the certifications submitted to
15 it under subsection (1) available to the attorney general and the
16 department of treasury for the purpose of ensuring compliance with
17 this act or any other purpose consistent with this act.

18 (4) A manufacturer must recertify any cigarette certified
19 under this section every 3 years.

20 (5) If a manufacturer makes a change to a cigarette certified
21 pursuant to this section that is likely to alter its compliance
22 with the reduced cigarette ignition propensity standards required
23 by this act, a person shall not sell that cigarette in this state
24 until the manufacturer retests the cigarette under section 5 and
25 maintains records of that retesting as required under section 5(8).
26 A person shall not sell in this state an altered cigarette that
27 does not meet the performance standard described in section 5(3).

1 Sec. 9. (1) At the time it submits a written certification or
2 recertification under section 7, a manufacturer shall pay to the
3 department a fee of \$1,250.00 for each brand family of cigarette
4 listed in the certification. A fee paid for a brand family under
5 this subsection applies to all cigarettes within the brand family
6 listed in the certification and to any new cigarette in that brand
7 family certified during the 3-year certification period for which
8 the fee is paid.

9 (2) The department of treasury shall establish and administer
10 the fire safety standard and firefighter protection act enforcement
11 fund as a restricted account in the general fund for the
12 administration and enforcement of this act. The department of
13 treasury shall credit to the account all certification fees
14 submitted by manufacturers under this section, money received from
15 any other source, and earnings on the account. The department of
16 treasury shall use the money in the account only to provide money
17 to the department to support processing, testing, enforcement, and
18 oversight activities under this act. Money in the account at the
19 end of a fiscal year shall not revert to the general fund but shall
20 be carried over in the account to the next fiscal year.

21 Sec. 11. (1) A manufacturer shall mark any cigarettes
22 certified by the manufacturer under section 7 to indicate
23 compliance with the requirements of section 5. The marking shall be
24 in 8-point type or larger and consist of 1 of the following:

25 (a) Modification of the product UPC to include a visible mark
26 printed at or around the area of the UPC. The mark may consist of
27 alphanumeric or symbolic characters permanently stamped, engraved,

1 embossed, debossed, or printed in conjunction with the UPC.

2 (b) A visible combination of alphanumeric or symbolic
3 characters permanently stamped, engraved, or embossed upon the
4 cigarette package or cellophane wrap.

5 (c) Printed, stamped, engraved, or embossed text that
6 indicates that the cigarettes meet the standards of this act.

7 (2) A manufacturer shall use the same marking on all brands
8 marketed by that manufacturer and apply that marking uniformly on
9 all packs, cartons, cases, and other packages of its cigarettes.

10 (3) A manufacturer shall notify the department which marking
11 the manufacturer has selected under subsection (1) for its
12 cigarettes.

13 (4) Before certification of any cigarette under section 7, a
14 manufacturer must submit a request to the department for approval
15 of its proposed marking. Subject to subsection (5), when it
16 receives a request under this subsection, the department shall
17 approve or disapprove the marking submitted. A proposed marking is
18 considered approved by the department if the department fails to
19 approve or disapprove of the proposed marking within 10 business
20 days after receiving a request for approval of that proposed
21 marking under this subsection.

22 (5) The department shall approve of any marking submitted to
23 it under subsection (4) if the marking meets either of the
24 following:

25 (a) The marking includes the acronym "FSC", signifying that
26 the cigarettes are fire standards compliant under the New York fire
27 safety standards for cigarettes.

1 (b) The marking is in use and approved for sale in New York
2 pursuant to the New York fire safety standards for cigarettes.

3 (6) A manufacturer shall not modify a marking approved by the
4 department under subsection (4) unless the manufacturer submits a
5 request to the department for approval of the modification. When it
6 receives a request under this subsection, the department shall
7 approve or disapprove the modification to the marking submitted. A
8 modification to a marking is considered approved by the department
9 if the department fails to approve or disapprove the modification
10 within 10 business days after receiving a request for approval of
11 that modification under this subsection.

12 (7) A manufacturer certifying cigarettes under section 7 shall
13 provide a copy of the certification to each wholesale dealer,
14 unclassified acquirer, and agent to which the manufacturer sells
15 cigarettes and shall provide sufficient copies of an illustration
16 of the package marking utilized by the manufacturer under this
17 section for each secondary wholesaler and retail dealer to which
18 the wholesale dealer, unclassified acquirer, or agent sells
19 cigarettes. A wholesale dealer or agent shall provide a copy of
20 package markings received from a manufacturer under this subsection
21 to each secondary wholesaler and retail dealer to which it sells
22 cigarettes. A wholesale dealer, unclassified acquirer, agent,
23 secondary wholesaler, or retail dealer shall permit the department,
24 the department of treasury, the attorney general, and their
25 employees to inspect markings of cigarette packaging marked under
26 this section.

27 Sec. 13. (1) A manufacturer, wholesale dealer, agent, or any

1 other person other than a retail dealer that knowingly sells or
2 offers to sell cigarettes, other than through retail sale, in
3 violation of section 5 of this act is subject to a civil fine of
4 not more than \$100.00 for each pack of those cigarettes sold or
5 offered for sale. However, the aggregate liability of a person for
6 civil fines under this subsection for multiple violations that
7 arise during any 30-day period shall not exceed \$100,000.00.

8 (2) A retail dealer that knowingly sells or offers to sell
9 cigarettes in violation of section 5 of this act is subject to a
10 civil fine of not more than \$100.00 for each pack of those
11 cigarettes sold or offered for sale. However, the aggregate
12 liability of a retail dealer for civil fines under this subsection
13 for multiple violations that arise during any 30-day period shall
14 not exceed \$25,000.00.

15 (3) In addition to any penalty prescribed by law, a person
16 engaged in the manufacture of cigarettes that knowingly makes a
17 false certification under section 7 is subject to a civil fine of
18 not less than \$75,000.00 and not more than \$100,000.00.

19 (4) Except as provided in subsection (1), (2), or (3), a
20 person that violates this act is subject to a civil fine of not
21 more than \$1,000.00 for the first violation and a civil fine of not
22 more than \$5,000.00 for each subsequent violation.

23 (5) In addition to any other remedy provided by law, the
24 department or attorney general may commence an action against a
25 person who violates this act or rules promulgated under this act.
26 The court in an action brought under this subsection may order 1 or
27 more of the following forms of relief for each violation:

1 (a) Injunctive or other equitable relief, as appropriate.

2 (b) Enforcement costs relating to the violation or any other
3 actual damages sustained by this state that are caused by the
4 violation.

5 (c) Reasonable attorney fees and costs.

6 (6) The department of treasury shall establish and administer
7 the cigarette fire safety standard and firefighter protection act
8 fund as a restricted account in the general fund. The department of
9 treasury shall credit to the account all money recovered from civil
10 fines under this section, money received from any other source, and
11 earnings on the account. The department of treasury shall use the
12 money in the account only to provide money to the department to
13 support fire safety and prevention programs. Money in the account
14 at the end of a fiscal year shall not revert to the general fund
15 but shall be carried over in the account to the next fiscal year.

16 Sec. 15. The department may promulgate rules under the
17 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
18 24.328, necessary to implement and enforce this act.

19 Sec. 17. To enforce the provisions of this act, the attorney
20 general, the department of treasury, the department, or their duly
21 authorized representatives; the state fire marshal; the commanding
22 officer, or a uniformed firefighter acting under the orders and
23 direction of the commanding officer, of the fire department of a
24 city, village, township, or county; or any law enforcement
25 personnel may examine the books, papers, invoices, and other
26 records of any person in possession, control, or occupancy of any
27 premises where cigarettes are placed, stored, sold, or offered for

1 sale and the stock of cigarettes on the premises. Every person in
2 the possession, control, or occupancy of any premises where
3 cigarettes are placed, sold, or offered for sale must give the
4 attorney general, the department of treasury, the department, or
5 their duly authorized representatives; the state fire marshal; the
6 commanding officer, or a uniformed firefighter acting under the
7 orders and direction of the commanding officer, of the fire
8 department of a city, village, township, or county; or any law
9 enforcement personnel the means, facilities, and opportunity to
10 conduct the examinations authorized under this section.

11 Sec. 19. This act does not prohibit any person from
12 manufacturing or selling cigarettes that do not meet the
13 requirements of section 5 if the cigarettes are or will be stamped
14 for sale in another state or are packaged for sale outside the
15 United States and that person has taken reasonable steps to ensure
16 that those cigarettes will not be sold or offered for sale to
17 persons located in this state.

18 Sec. 21. This act is repealed on the date that the director
19 notifies the secretary of state in writing that a federal reduced
20 cigarette ignition propensity standard that preempts this act has
21 been adopted and became effective.

22 Sec. 23. A city, county, township, or village may not adopt or
23 enforce a local law, ordinance, resolution, or rule that
24 duplicates, extends, revises, or conflicts with any provision of
25 this act or purports to regulate the subject matter of this act.

26 Enacting section 1. This act takes effect January 1, 2010.

27 Enacting section 2. This act does not take effect unless

1 Senate Bill No. 1620 of the 94th Legislature is enacted into law.