SUBSTITUTE FOR

SENATE BILL NO. 264

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) "ASTM" means ASTM international, formerly the American
- 7 society for testing and materials.

- 1 (c) "Cigarette" means that term as defined in section 2 of the
- 2 tobacco products tax act, MCL 205.422.
- 3 (d) "Department" means the department of energy, labor, and
- 4 economic growth.
- (e) "Director" means the director of the department.
- 6 (f) "Manufacturer" means any of the following:
- 7 (i) A manufacturer as defined in section 2 of the tobacco
- 8 products tax act, MCL 205.422.
- 9 (ii) The first purchaser of gray market cigarettes, as that
- 10 term is defined in section 2 of the tobacco products tax act, MCL
- 11 205.422, if that purchaser intends to resell the cigarettes in the
- 12 United States.
- 13 (iii) A successor to a person described in subparagraph (i) or
- **14** (*ii*).
- 15 (g) "New York fire safety standards for cigarettes" means the
- 16 New York executive law, section 156-c, and the New York fire safety
- 17 standards for cigarettes, New York compilation of codes, rules, and
- 18 regulations, title 19, sections 429.1 to 429.10.
- 19 (h) "Quality control and quality assurance program" means
- 20 laboratory procedures implemented to ensure that operator bias,
- 21 systematic and nonsystematic methodological errors, and equipment-
- 22 related problems do not affect the results of the testing of
- 23 cigarettes and ensure that testing repeatability remains within the
- 24 required repeatability values stated in section 5(2)(g) for all
- 25 test trials used to certify cigarettes under this act.
- 26 (i) "Repeatability" means the range of values within which the
- 27 repeat results of cigarette test trials from a single laboratory

- 1 will fall 95% of the time.
- 2 (j) "Retail dealer" means a retailer, as that term is defined

- 3 in section 2 of the tobacco products tax act, MCL 205.422.
- 4 (k) "Sale" means that term as defined in section 2 of the
- 5 tobacco products tax act, MCL 205.422.
- (l) "Secondary wholesaler" means that term as defined in
- 7 section 2 of the tobacco products tax act, MCL 205.422.
- 8 (m) "Sell" means to sell or to offer or agree to sell.
- 9 (n) "Tobacco products tax act" means the tobacco products tax
- 10 act, 1993 PA 327, MCL 205.421 to 205.436.
- 11 (o) "Unclassified acquirer" means that term as defined in
- 12 section 2 of the tobacco products tax act, MCL 205.422.
- 13 (p) "Wholesale dealer" means a wholesaler, as that term is
- 14 defined in section 2 of the tobacco products tax act, MCL 205.422.
- 15 Sec. 5. (1) Except as provided in subsection (12), a person
- 16 shall not sell cigarettes in this state or sell cigarettes to a
- 17 person located in this state unless the cigarettes are tested in
- 18 accordance with the test method described in subsection (2), the
- 19 cigarettes meet the performance standard described in subsection
- 20 (3), the manufacturer has filed a written certification with the
- 21 department under section 7, and the cigarettes are marked in
- 22 compliance with section 11.
- 23 (2) All of the following apply to the testing of cigarettes
- 24 for the purposes of this section:
- 25 (a) Except as provided in subsection (7), testing of
- 26 cigarettes is conducted in accordance with ASTM standard E2187-04,
- 27 "Standard Test Method for Measuring the Ignition Strength of

- 1 Cigarettes".
- 2 (b) Testing is conducted on 10 layers of filter paper.
- 3 (c) Forty replicate tests compose a complete test trial for
- 4 each cigarette tested.
- 5 (d) The performance standard described in subsection (3) is
- 6 only applied to a complete test trial.
- 7 (e) Testing is conducted by a laboratory that is accredited
- 8 pursuant to standard ISO/IEC 17025:2005 of the international
- 9 organization for standardization or other comparable accreditation
- 10 standard required by the department.
- 11 (f) A laboratory conducting testing has implemented a quality
- 12 control and quality assurance program that includes a procedure
- 13 that will determine the repeatability of the testing results.
- 14 (g) The repeatability value of the testing results is 0.19 or
- 15 less.
- 16 (3) When a cigarette is tested under subsection (2), no more
- 17 than 25% of the cigarettes tested in a test trial shall exhibit
- 18 full-length burns.
- 19 (4) This section does not require additional testing if
- 20 cigarettes are tested consistently with this act for any other
- 21 purpose.
- 22 (5) Any testing performed or sponsored by the department to
- 23 determine a cigarette's compliance with the performance standard
- 24 described in subsection (3) must comply with this section.
- 25 (6) A cigarette listed in a certification submitted under
- 26 section 7 that uses lowered permeability bands in the cigarette
- 27 paper to achieve compliance with the performance standard described

- 1 in subsection (3) must have at least 2 nominally identical bands on
- 2 the paper surrounding the tobacco column, with at least 1 complete
- 3 band located at least 15 millimeters from the lighting end of the
- 4 cigarette. For cigarettes on which the bands are positioned by
- 5 design, the cigarette must have at least 2 bands fully located at
- 6 least 15 millimeters from the lighting end and 10 millimeters from
- 7 the filter end of the tobacco column or, for nonfiltered
- 8 cigarettes, 10 millimeters from the labeled end of the tobacco
- 9 column.
- 10 (7) A manufacturer of a cigarette that the department
- 11 determines cannot be tested in compliance with subsection (2)(a)
- 12 shall propose a test method and performance standard for the
- 13 cigarette to the department. If the department approves of the
- 14 proposed test method and determines that the performance standard
- 15 proposed by the manufacturer is equivalent to the performance
- 16 standard prescribed in subsection (3), the manufacturer may employ
- 17 that test method and performance standard to certify the cigarette
- 18 under section 7. If the department determines that another state
- 19 has enacted reduced cigarette ignition propensity standards that
- 20 include a test method and performance standard that are the same as
- 21 those contained in this act and the department finds that the
- 22 officials responsible for implementing those requirements have
- 23 approved the proposed alternative test method and performance
- 24 standard for a particular cigarette proposed by a manufacturer as
- 25 meeting the fire safety standards of that state's law or regulation
- 26 under a legal provision comparable to this section, the department
- 27 shall authorize that manufacturer to employ the alternative test

1 method and performance standard to certify that cigarette for sale

- 2 in this state, unless the department demonstrates a reasonable
- 3 basis why the alternative test should not be accepted. All other
- 4 applicable requirements of this section apply to the manufacturer.
- 5 (8) A manufacturer shall maintain copies of the reports of all
- 6 tests conducted under this act on all cigarettes offered for sale
- 7 in this state for a period of 3 years and make copies of these
- 8 reports available to the department or the attorney general upon
- 9 written request. Any manufacturer who fails to make copies of these
- 10 reports available within 60 days of receiving a written request
- 11 from the department or the attorney general is subject to a civil
- 12 fine of not more than \$10,000.00 for each day after the sixtieth
- 13 day that the manufacturer does not make the copies available to the
- 14 department or the attorney general.
- 15 (9) The department may adopt a subsequent ASTM standard test
- 16 method for measuring the ignition strength of cigarettes if it
- 17 finds that the subsequent method does not result in a change in the
- 18 percentage of full-length burns exhibited by any tested cigarette
- 19 when compared to the percentage of full-length burns the same
- 20 cigarette would exhibit when tested in accordance with the ASTM
- 21 standard described in subsection (2)(a) and the performance
- 22 standard described in subsection (3).
- 23 (10) The department shall implement this section in accordance
- 24 with the implementation and substance of the New York fire safety
- 25 standards for cigarettes.
- 26 (11) The department shall review the effectiveness of this
- 27 section and report every 3 years to the legislature the

- 1 department's findings and, if appropriate, recommendations for
- 2 legislation to improve the effectiveness of this act. The
- 3 department shall submit the report and legislative recommendations
- 4 no later than the first June 30 following the conclusion of each 3-
- 5 year period.
- 6 (12) This section does not prohibit any of the following:
- 7 (a) A wholesale or retail dealer from selling its existing
- 8 inventory of cigarettes if the wholesale or retail dealer can
- 9 establish that state tax stamps were affixed to the cigarettes
- 10 before the effective date of this act and the wholesale or retail
- 11 dealer can establish that the inventory was purchased before the
- 12 effective date of this act in comparable quantity to the inventory
- 13 purchased during the same period of the preceding year.
- 14 (b) The sale of cigarettes solely for the purpose of consumer
- 15 testing. For purposes of this subdivision, "consumer testing" means
- 16 an assessment of cigarettes that is conducted by a manufacturer, or
- 17 under the control and direction of a manufacturer, for the purpose
- 18 of evaluating consumer acceptance of those cigarettes, utilizing
- 19 only the quantity of cigarettes that is reasonably necessary for
- 20 that assessment.
- 21 Sec. 7. (1) A manufacturer shall certify cigarettes for the
- 22 purposes of this act by submitting a written certification to the
- 23 department attesting that each cigarette listed in the
- 24 certification has been tested in compliance with section 5 and that
- 25 each cigarette listed in the certification meets the performance
- 26 standard described in section 5(3).
- 27 (2) A manufacturer shall include in the certification

- 1 described in subsection (1) all of the following information for
- 2 each cigarette listed in the certification:
- 3 (a) Its brand or the trade name on the package.
- 4 (b) Its style, such as light or ultra light.
- 5 (c) Its length in millimeters.
- 6 (d) Its circumference in millimeters.
- 7 (e) Its flavor, such as menthol or chocolate, if applicable.
- **8** (f) Whether it is a filter or nonfilter cigarette.
- 9 (g) A package description, such as soft pack or box.
- 10 (h) The package markings under section 11.
- 11 (i) If it is a person other than the manufacturer, the name,
- 12 address, and telephone number of the laboratory that conducted the
- 13 test of the cigarette.
- 14 (j) The date that the testing of the cigarette occurred.
- 15 (3) The department shall make the certifications submitted to
- 16 it under subsection (1) available to the attorney general and the
- 17 department of treasury for the purpose of ensuring compliance with
- 18 this act or any other purpose consistent with this act.
- 19 (4) A manufacturer must recertify any cigarette certified
- 20 under this section every 3 years.
- 21 (5) If a manufacturer makes a change to a cigarette certified
- 22 pursuant to this section that is likely to alter its compliance
- 23 with the reduced cigarette ignition propensity standards required
- 24 by this act, a person shall not sell that cigarette in this state
- 25 until the manufacturer retests the cigarette under section 5 and
- 26 maintains records of that retesting as required under section 5(8).
- 27 A person shall not sell in this state an altered cigarette that

- 1 does not meet the performance standard described in section 5(3).
- 2 Sec. 9. (1) At the time it submits a written certification or

- 3 recertification under section 7, a manufacturer shall pay to the
- 4 department a fee of \$1,250.00 for each brand family of cigarette
- 5 listed in the certification. A fee paid for a brand family under
- 6 this subsection applies to all cigarettes within the brand family
- 7 listed in the certification and to any new cigarette in that brand
- 8 family certified during the 3-year certification period for which
- 9 the fee is paid.
- 10 (2) The fire safety standard and firefighter protection act
- 11 enforcement fund is created within the state treasury. The
- 12 department shall deposit fees paid under this section into the
- 13 fund. The state treasurer may receive money or other assets from
- 14 any other source for deposit into the fund. The state treasurer
- 15 shall direct the investment of the fund. The state treasurer shall
- 16 credit to the fund interest and earnings from fund investments.
- 17 Money in the fund at the close of the fiscal year shall remain in
- 18 the fund and shall not lapse to the general fund. The department
- 19 shall be the administrator of the fund for auditing purposes. The
- 20 department shall expend money from the fund, upon appropriation,
- 21 only for processing, testing, enforcement, and oversight activities
- 22 under this act.
- 23 Sec. 11. (1) A manufacturer shall mark any cigarettes
- 24 certified by the manufacturer under section 7 to indicate
- 25 compliance with the requirements of section 5. The marking shall be
- 26 in 8-point type or larger and consist of 1 of the following:
- 27 (a) Modification of the product UPC to include a visible mark

1 printed at or around the area of the UPC. The mark may consist of

- 2 alphanumeric or symbolic characters permanently stamped, engraved,
- 3 embossed, debossed, or printed in conjunction with the UPC.
- 4 (b) A visible combination of alphanumeric or symbolic
- 5 characters permanently stamped, engraved, or embossed upon the
- 6 cigarette package or cellophane wrap.
- 7 (c) Printed, stamped, engraved, or embossed text that
- 8 indicates that the cigarettes meet the standards of this act.
- 9 (2) A manufacturer shall use the same marking on all brands
- 10 marketed by that manufacturer and apply that marking uniformly on
- 11 all packs, cartons, cases, and other packages of its cigarettes.
- 12 (3) A manufacturer shall notify the department which marking
- 13 the manufacturer has selected under subsection (1) for its
- 14 cigarettes.
- 15 (4) Before certification of any cigarette under section 7, a
- 16 manufacturer must submit a request to the department for approval
- 17 of its proposed marking. Subject to subsection (5), when it
- 18 receives a request under this subsection, the department shall
- 19 approve or disapprove the marking submitted. A proposed marking is
- 20 considered approved by the department if the department fails to
- 21 approve or disapprove of the proposed marking within 10 business
- 22 days after receiving a request for approval of that proposed
- 23 marking under this subsection.
- 24 (5) The department shall approve of any marking submitted to
- 25 it under subsection (4) if the marking meets either of the
- 26 following:
- 27 (a) The marking includes the acronym "FSC", signifying that

- 1 the cigarettes are fire standards compliant under the New York fire
- 2 safety standards for cigarettes.
- 3 (b) The marking is in use and approved for sale in New York
- 4 pursuant to the New York fire safety standards for cigarettes.
- 5 (6) A manufacturer shall not modify a marking approved by the
- 6 department under subsection (4) unless the manufacturer submits a
- 7 request to the department for approval of the modification. When it
- 8 receives a request under this subsection, the department shall
- 9 approve or disapprove the modification to the marking submitted. A
- 10 modification to a marking is considered approved by the department
- 11 if the department fails to approve or disapprove the modification
- 12 within 10 business days after receiving a request for approval of
- 13 that modification under this subsection.
- 14 (7) A manufacturer certifying cigarettes under section 7 shall
- 15 provide a copy of the certification to each wholesale dealer,
- 16 unclassified acquirer, and agent to which the manufacturer sells
- 17 cigarettes and shall provide sufficient copies of an illustration
- 18 of the package marking utilized by the manufacturer under this
- 19 section for each secondary wholesaler and retail dealer to which
- 20 the wholesale dealer, unclassified acquirer, or agent sells
- 21 cigarettes. A wholesale dealer or agent shall provide a copy of
- 22 package markings received from a manufacturer under this subsection
- 23 to each secondary wholesaler and retail dealer to which it sells
- 24 cigarettes. A wholesale dealer, unclassified acquirer, agent,
- 25 secondary wholesaler, or retail dealer shall permit the department,
- 26 the department of treasury, the attorney general, and their
- 27 employees to inspect markings of cigarette packaging marked under

- 1 this section.
- 2 Sec. 13. (1) A manufacturer, wholesale dealer, agent, or any

- 3 other person other than a retail dealer that knowingly sells or
- 4 offers to sell cigarettes, other than through retail sale, in
- 5 violation of section 5 of this act is subject to a civil fine of
- 6 not more than \$100.00 for each pack of those cigarettes sold or
- 7 offered for sale. However, the aggregate liability of a person for
- 8 civil fines under this subsection for multiple violations that
- 9 arise during any 30-day period shall not exceed \$100,000.00.
- 10 (2) A retail dealer that knowingly sells or offers to sell
- 11 cigarettes in violation of section 5 of this act is subject to a
- 12 civil fine of not more than \$100.00 for each pack of those
- 13 cigarettes sold or offered for sale. However, the aggregate
- 14 liability of a retail dealer for civil fines under this subsection
- 15 for multiple violations that arise during any 30-day period shall
- 16 not exceed \$25,000.00.
- 17 (3) In addition to any penalty prescribed by law, a person
- 18 engaged in the manufacture of cigarettes that knowingly makes a
- 19 false certification under section 7 is subject to a civil fine of
- 20 not less than \$75,000.00 and not more than \$100,000.00.
- 21 (4) Except as provided in subsection (1), (2), or (3), a
- 22 person that violates this act is subject to a civil fine of not
- 23 more than \$1,000.00 for the first violation and a civil fine of not
- 24 more than \$5,000.00 for each subsequent violation.
- 25 (5) In addition to any other remedy provided by law, the
- 26 department or attorney general may commence an action against a
- 27 person who violates this act or rules promulgated under this act.

- 1 The court in an action brought under this subsection may order 1 or
- 2 more of the following forms of relief for each violation:
- 3 (a) Injunctive or other equitable relief, as appropriate.
- 4 (b) Enforcement costs relating to the violation or any other
- 5 actual damages sustained by this state that are caused by the
- 6 violation.
- 7 (c) Reasonable attorney fees and costs.
- 8 (6) The cigarette fire safety standard and firefighter
- 9 protection act fund is created within the state treasury. All civil
- 10 fines recovered under this section shall be deposited in the fund.
- 11 The state treasurer may receive money or other assets from any
- 12 other source for deposit into the fund. The state treasurer shall
- 13 direct the investment of the fund. The state treasurer shall credit
- 14 to the fund interest and earnings from fund investments. Money in
- 15 the fund at the close of the fiscal year shall remain in the fund
- 16 and shall not lapse to the general fund. The department shall be
- 17 the administrator of the fund for auditing purposes. The department
- 18 shall expend money from the fund, upon appropriation, only for fire
- 19 safety and prevention programs.
- Sec. 15. The department may promulgate rules under the
- 21 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
- 22 24.328, necessary to implement and enforce this act.
- 23 Sec. 17. To enforce the provisions of this act, the attorney
- 24 general, the department of treasury, the department, or their duly
- 25 authorized representatives; the state fire marshal; the commanding
- 26 officer, or a uniformed firefighter acting under the orders and
- 27 direction of the commanding officer, of the fire department of a

- 1 city, village, township, or county; or any law enforcement
- 2 personnel may examine the books, papers, invoices, and other
- 3 records of any person in possession, control, or occupancy of any

- 4 premises where cigarettes are placed, stored, sold, or offered for
- 5 sale and the stock of cigarettes on the premises. Every person in
- 6 the possession, control, or occupancy of any premises where
- 7 cigarettes are placed, sold, or offered for sale must give the
- 8 attorney general, the department of treasury, the department, or
- 9 their duly authorized representatives; the state fire marshal; the
- 10 commanding officer, or a uniformed firefighter acting under the
- 11 orders and direction of the commanding officer, of the fire
- 12 department of a city, village, township, or county; or any law
- 13 enforcement personnel the means, facilities, and opportunity to
- 14 conduct the examinations authorized under this section.
- 15 Sec. 19. This act does not prohibit any person from
- 16 manufacturing or selling cigarettes that do not meet the
- 17 requirements of section 5 if the cigarettes are or will be stamped
- 18 for sale in another state or are packaged for sale outside the
- 19 United States and that person has taken reasonable steps to ensure
- 20 that those cigarettes will not be sold or offered for sale to
- 21 persons located in this state.
- 22 Sec. 21. This act is repealed on the date that the director
- 23 notifies the secretary of state in writing that a federal reduced
- 24 cigarette ignition propensity standard that preempts this act has
- 25 been adopted and is in effect.
- Sec. 23. A city, county, township, or village may not adopt or
- 27 enforce a local law, ordinance, resolution, or rule that

- 1 duplicates, extends, revises, or conflicts with any provision of
- 2 this act or purports to regulate the subject matter of this act.
- 3 Enacting section 1. This act takes effect January 1, 2010.