

SENATE BILL No. 264

February 19, 2009, Introduced by Senators HUNTER, BASHAM, SCOTT, BRATER and THOMAS and referred to the Committee on Commerce and Tourism.

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.

5 (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.

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

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

26 (a) Modification of the product UPC to include a visible mark
27 printed at or around the area of the UPC. The mark may consist of

1 alphanumeric or symbolic characters permanently stamped, engraved,
2 embossed, debossed, or printed in conjunction with the UPC.

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

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

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

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

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

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

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

1 safety standards for cigarettes.

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

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

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

1 Sec. 13. (1) A manufacturer, wholesale dealer, agent, or any
2 other person other than a retail dealer that knowingly sells or
3 offers to sell cigarettes, other than through retail sale, in
4 violation of section 5 of this act is subject to a civil fine of
5 not more than \$100.00 for each pack of those cigarettes sold or
6 offered for sale. However, the aggregate liability of a person for
7 civil fines under this subsection for multiple violations that
8 arise during any 30-day period shall not exceed \$100,000.00.

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

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

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

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

1 more of the following forms of relief for each violation:

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

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

6 (c) Reasonable attorney fees and costs.

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

17 Sec. 15. The department may promulgate rules under the
18 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
19 24.328, necessary to implement and enforce this act.

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

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

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

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

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

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

1 Enacting section 2. This act does not take effect unless
2 Senate Bill No. 265
3 of the 95th Legislature is enacted into law.