

# HOUSE BILL No. 5110

August 21, 2007, Introduced by Reps. Sak, Johnson, Scott, Marleau, Wojno, Bieda, Ward,  
Virgil Smith, Tobocman, Farrah, Gaffney and Dean and referred to the Committee on  
Regulatory Reform.

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.

1 (c) "Department" means the department of labor and economic  
2 growth.

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

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

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

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

11 (iii) A successor to a person described in subparagraph (i) or  
12 (ii).

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

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

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

1 (i) "Retail dealer" means a retailer, as that term is defined  
2 in section 2 of the tobacco products tax act, MCL 205.422.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 cigarette for sale in this state, unless the department  
2 demonstrates a reasonable basis as to why the alternative test  
3 should not be accepted for the purposes of this act. 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, and in a controlled setting where the cigarettes  
21 are either consumed on site or returned to the testing  
22 administrators at the conclusion of the testing.

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

1 standard described in section 5(3).

2 (2) A manufacturer shall include in the certification  
3 described in subsection (1) all of the following information for  
4 each cigarette listed in the certification:

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

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

7 (c) Its length in millimeters.

8 (d) Its circumference in millimeters.

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

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

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

12 (h) The package markings under section 11.

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

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

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

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

23 (5) If a manufacturer makes a change to a cigarette certified  
24 pursuant to this section that is likely to alter its compliance  
25 with the reduced cigarette ignition propensity standards required  
26 by this act, a person shall not sell that cigarette in this state  
27 until the manufacturer retests the cigarette under section 5 and

1 maintains records of that retesting as required under section 5(8).  
2 A person shall not sell in this state an altered cigarette that  
3 does not meet the performance standard described in section 5(3).

4       Sec. 9. (1) At the time it submits a written certification  
5 under section 7, a manufacturer shall pay to the department a fee  
6 of \$1,000.00 for each brand of cigarette listed in the  
7 certification. The department may annually adjust this fee to  
8 ensure that it defrays the actual costs of the processing, testing,  
9 enforcement, and oversight activities required by this act.

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, 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, and the department, their duly  
22 authorized representatives, and any other law enforcement personnel  
23 may examine the books, papers, invoices, and other records of any  
24 person in possession, control, or occupancy of any premises where  
25 cigarettes are placed, stored, sold, or offered for sale and the  
26 stock of cigarettes on the premises. Every person in the  
27 possession, control, or occupancy of any premises where cigarettes

1 are placed, sold, or offered for sale must give the attorney  
2 general, the department of treasury, and the department, their duly  
3 authorized representatives, and any other law enforcement personnel  
4 the means, facilities, and opportunity to conduct the examinations  
5 authorized under this section.

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

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

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

21       Enacting section 1. This act takes effect January 1, 2009.

22       Enacting section 2. This act does not take effect unless  
23 Senate Bill No. \_\_\_\_\_ or House Bill No. 5111(request no.  
24 02225'07 a \*\*) of the 94th Legislature is enacted into law.