****** Act 56 of 2009 THIS ACT IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT
Act 56 of 2009

AN ACT 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.

History: 2009, Act 56, Eff. Jan. 1, 2010.

The People of the State of Michigan enact:

****** 29.491 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

29.491 Short title.

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

History: 2009, Act 56, Eff. Jan. 1, 2010.

****** 29.493 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

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29.493 Definitions.

Sec. 3. As used in this act:

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

(b) "ASTM" means ASTM international, formerly the American society for testing and materials.

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

(d) "Department" means the department of energy, labor, and economic growth.

(e) "Director" means the director of the department.

(f) "Manufacturer" means any of the following:

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

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

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

(g) "New York fire safety standards for cigarettes" means the New York executive law, section 156-c, and the New York fire safety standards for cigarettes, New York compilation of codes, rules, and regulations, title 19, sections 429.1 to 429.10.

(h) "Quality control and quality assurance program" means 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 of cigarettes and ensure that testing repeatability remains within the required repeatability values stated in section 5(2)(g) for all test trials used to certify cigarettes under this act.

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

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

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

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

(m) "Sell" means to sell or to offer or agree to sell.

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

(o) "Unclassified acquirer" means that term as defined in section 2 of the tobacco products tax act, MCL

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205.422.

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

History: 2009, Act 56, Eff. Jan. 1, 2010.

****** 29.495 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

29.495 Cigarettes; testing requirements.

Sec. 5. (1) Except as provided in subsection (12), a person shall not sell cigarettes in this state or sell cigarettes to a person located in this state unless the cigarettes are tested in accordance with the test method described in subsection (2), the cigarettes meet the performance standard described in subsection (3), the manufacturer has filed a written certification with the department under section 7, and the cigarettes are marked in compliance with section 11.

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

(a) Except as provided in subsection (7), testing of cigarettes is conducted in accordance with ASTM standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes".

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

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

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

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

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

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

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

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

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

(6) A cigarette listed in a certification submitted under section 7 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard described in subsection (3) must have at least 2 nominally identical bands on the paper surrounding the tobacco column, with at least 1 complete band located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, the cigarette must have at least 2 bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or, for nonfiltered cigarettes, 10 millimeters from the labeled end of the tobacco column.

(7) A manufacturer of a cigarette that the department determines cannot be tested in compliance with subsection (2)(a) shall propose a test method and performance standard for the cigarette to the department. If the department approves of the proposed test method and determines that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (3), the manufacturer may employ that test method and performance standard to certify the cigarette under section 7. If the department 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 department 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, the department shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the department demonstrates a reasonable basis why the alternative test should not be accepted. All other applicable requirements of this section apply to the manufacturer.

(8) A manufacturer shall maintain copies of the reports of all tests conducted under this act on all cigarettes offered for sale in this state for a period of 3 years and make copies of these reports available to the department or the attorney general upon written request. Any manufacturer who fails to make copies of these

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reports available within 60 days of receiving a written request from the department or the attorney general is subject to a civil fine of not more than $10,000.00 for each day after the sixtieth day that the manufacturer does not make the copies available to the department or the attorney general.

(9) The department may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes if it finds that the 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 the ASTM standard described in subsection (2)(a) and the performance standard described in subsection (3).

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

(11) The department shall review the effectiveness of this section and report every 3 years to the legislature the department's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this act. The department shall submit the report and legislative recommendations no later than the first June 30 following the conclusion of each 3-year period.

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

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

(b) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subdivision, "consumer testing" means 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 those cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for that assessment.

History: 2009, Act 56, Eff. Jan. 1, 2010.

****** 29.497 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

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29.497 Certification or recertification.

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

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

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

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

(c) Its length in millimeters.

(d) Its circumference in millimeters.

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

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

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

(h) The package markings under section 11.

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

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

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

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

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

History: 2009, Act 56, Eff. Jan. 1, 2010.

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****** 29.499 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

29.499 Fees; fire safety standard and firefighter protection act enforcement fund.

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

(2) The fire safety standard and firefighter protection act enforcement fund is created within the state treasury. The department shall deposit fees paid under this section into the fund. The state treasurer may receive money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes. The department shall expend money from the fund, upon appropriation, only for processing, testing, enforcement, and oversight activities under this act.

History: 2009, Act 56, Eff. Jan. 1, 2010.

****** 29.501 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

29.501 Marking.

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

(a) Modification of the product UPC to include a visible mark printed at or around the area of the UPC. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, debossed, or printed in conjunction with the UPC.

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

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

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

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

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

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

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

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

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

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modification under this subsection.

(7) A manufacturer certifying cigarettes under section 7 shall provide a copy of the certification to each wholesale dealer, unclassified acquirer, and agent to which the manufacturer sells cigarettes and shall provide sufficient copies of an illustration of the package marking utilized by the manufacturer under this section for each secondary wholesaler and retail dealer to which the wholesale dealer, unclassified acquirer, or agent sells cigarettes. A wholesale dealer or agent shall provide a copy of package markings received from a manufacturer under this subsection to each secondary wholesaler and retail dealer to which it sells cigarettes. A wholesale dealer, unclassified acquirer, agent, secondary wholesaler, or retail dealer shall permit the department, the department of treasury, the attorney general, and their employees to inspect markings of cigarette packaging marked under this section.

History: 2009, Act 56, Eff. Jan. 1, 2010.

****** 29.503 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

29.503 Violation; civil fines; limitation; additional remedies; cigarette fire safety standard and firefighter protection act fund.

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

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

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

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

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

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

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

(c) Reasonable attorney fees and costs.

(6) The cigarette fire safety standard and firefighter protection act fund is created within the state treasury. All civil fines recovered under this section shall be deposited in the fund. The state treasurer may receive money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes. The department shall expend money from the fund, upon appropriation, only for fire safety and prevention programs.

History: 2009, Act 56, Eff. Jan. 1, 2010.

****** 29.505 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

29.505 Rules.

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

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History: 2009, Act 56, Eff. Jan. 1, 2010.

****** 29.507 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

29.507 Examination of books, papers, invoices, and other records.

Sec. 17. To enforce the provisions of this act, the attorney general, the department of treasury, the department, or their duly authorized representatives; the state fire marshal; the commanding officer, or a uniformed firefighter acting under the orders and direction of the commanding officer, of the fire department of a city, village, township, or county; or any law enforcement personnel may 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 and 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 must give the attorney general, the department of treasury, the department, or their duly authorized representatives; the state fire marshal; the commanding officer, or a uniformed firefighter acting under the orders and direction of the commanding officer, of the fire department of a city, village, township, or county; or any law enforcement personnel the means, facilities, and opportunity to conduct the examinations authorized under this section.

History: 2009, Act 56, Eff. Jan. 1, 2010.

****** 29.509 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

29.509 Exception.

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

History: 2009, Act 56, Eff. Jan. 1, 2010.

****** 29.511 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

29.511 Repeal of act; conditions.

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

History: 2009, Act 56, Eff. Jan. 1, 2010.

****** 29.513 THIS SECTION IS REPEALED BY ACT 56 OF 2009 ON THE DATE THAT THE DIRECTOR NOTIFIES THE SECRETARY OF STATE IN WRITING THAT A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT PREEMPTS THIS ACT HAS BEEN ADOPTED AND IS IN EFFECT: See 29.511 ******

29.513 Adoption or enforcement of local law, ordinance, resolution, or rule; conflict.

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

History: 2009, Act 56, Eff. Jan. 1, 2010.

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