(Model Legislation)
THE CIGARETTE FIRE SAFETY STANDARD AND
FIREFIGHTER PROTECTION ACT

**1**. **Title**. This Act shall be known and may be cited as the "Fire Safety Standard and Firefighter Protection Act."

**2**. **Findings**.

The Legislature finds and declares that:

a. Cigarettes are the leading cause of fire deaths in this State and the nation;

b. Each year in the United States, 700-900 persons are killed due to cigarette fires and 3,000 are injured in fires ignited by cigarettes, while in this State [ ] residential fires and [ ] fatalities were attributable to cigarettes in years [_ _ _ _-2005];

c. A high proportion of the victims of cigarette fires are non-smokers, including senior citizens and young children;

d. Cigarette-caused fires result in billions of dollars of property losses and damages in the United States and millions of dollars in this State;

e. Cigarette fires unnecessarily jeopardize firefighters and result in avoidable emergency response costs for municipalities;

f. In 2004, New York State implemented a cigarette fire safety regulation requiring cigarettes sold in that state to meet a fire safety performance standard; in 2005, Vermont and California enacted cigarette fire safety laws directly incorporating New York's regulation into statute; and, in 2006, Illinois, New Hampshire and Massachusetts joined these states in enacting such laws.

g. In 2005, Canada implemented the New York State fire safety standard contained in the other state laws, becoming the first nation to have a cigarette fire safety standard;

h. New York State's cigarette fire safety standard is based upon decades of research by the National Institute of Standards and Technology, Congressional research groups, and private industry;

i. This cigarette fire safety standard minimizes costs to the State and minimally burdens cigarette manufacturers, distributors and retail sellers, and, therefore, should become law in this State; and

j. It is therefore fitting and proper for this State to adopt the cigarette fire safety standard that is in effect in New York State to reduce the likelihood that cigarettes will cause fires and result in deaths, injuries and property damages.

**3. Definitions.** For the purposes of this Act:

(a) "Agent" shall mean any person authorized by the [state entity that administers cigarette tax stamps] to purchase and affix stamps on packages of cigarettes.

(b) "Cigarette" shall mean:

1) any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, other than leaf tobacco; or

2) any roll for smoking wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as described in subparagraph 1 above.

(c) "Director" shall mean the Director of the [state entity responsible for administering the provisions of this Act].

(d) "Manufacturer" shall mean:

(1) any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer; or
(2) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or
(3) any entity that becomes a successor of an entity described in paragraph (1) or (2) of this subsection.

(e) "Quality control and quality assurance program" shall mean the 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. Such a program ensures that the testing repeatability remains within the required repeatability values stated in paragraph

(6) of subsection (a) of Section 4 of this Act for all test trials used to certify cigarettes in accordance with this Act.

(f) "Repeatability" shall mean the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(g) "Retail dealer" shall mean any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(h) "Sale" shall mean any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts, and the exchanging of cigarettes for any consideration other than money, are considered sales.

(i) "Sell" shall mean to sell, or to offer or agree to do the same.

(j) "Wholesale dealer" shall mean any person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

**4. Test Method and Performance Standard.**

(a) Except as provided in subsection (g) of this section, no cigarettes may be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the [state entity responsible for administering the provisions of this Act] in accordance with section 5 of this Act, and the cigarettes have been marked in accordance with section 6 of this Act.

(1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials ("ASTM") standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

(2) Testing shall be conducted on 10 layers of filter paper.

(3) No more than 25 percent of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(4) The performance standard required by this section shall only be applied to

a complete test trial.

(5) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization ("ISO"), or other comparable accreditation standard required by the [state entity responsible for administering the provisions of this Act].

(6) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

(7) This section does not require additional testing if cigarettes are tested consistent with this Act for any other purpose.

(8) Testing performed or sponsored by the [state entity responsible for administering the provisions of this Act] to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.

(b) Each cigarette listed in a certification submitted pursuant to section 5 of this Act that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco column for non-filtered cigarettes.

(c) A manufacturer of a cigarette that the [state entity responsible for administering the provisions of this Act] determines cannot be tested in accordance with the test method prescribed in paragraph (1) of subsection (a) of this section shall propose a test method and performance standard for the cigarette to the [state entity responsible for administering the provisions of this Act]. Upon approval of the proposed test method and a determination by the [state entity responsible for administering the provisions of this Act] that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (a) (3) of this section, the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to section 5 of this Act. If the [state entity responsible for administering the provisions of this Act] 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 [state entity responsible for administering the provisions of this Act] 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, then the [state entity responsible for administering the provisions of this Act] shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this State, unless the [state entity responsible for administering the provisions of this Act] demonstrates a reasonable basis why the alternative test should not be accepted under this Act. All other applicable requirements of this section shall apply to the manufacturer.

(d) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the [state entity responsible for administering the provisions of this Act] and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request shall be subject to a civil penalty not to exceed $10,000 for each day after the sixtieth day that the manufacturer does not make such copies available.

(e) The [state entity responsible for administering the provisions of this Act] may adopt a subsequent ASTM Standard Test Method for measuring the Ignition Strength of Cigarettes upon a finding that such 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 ASTM Standard E2187-04 and the performance standard in subsection (a)(3) of this section.

(f) The [state entity responsible for administering the provisions of this Act] shall review the effectiveness of this section and report every three years to the Legislature [the state entity's] findings and, if appropriate, recommendations for legislation to improve the effectiveness of this Act. The report and legislative recommendations shall be submitted no later than June thirtieth following the conclusion of each three-year period.

(g) The requirements of subsection (a) of this section shall not prohibit:

(1) wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this Act if the wholesale or retailer dealer can establish that state tax stamps were affixed to the cigarettes prior to the effective date and the wholesale or retailer dealer can establish that the

inventory was purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year; or

(2) the sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" shall mean 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 such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment, and in a controlled setting where the cigarettes are either consumed on-site or returned to the testing administrators at the conclusion of the testing.

(h) This Act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.

**5. Certification and Product Change.**

(a) Each manufacturer shall submit [to the state entity responsible for administering the provisions of this Act] a written certification attesting that:

(1) each cigarette listed in the certification has been tested in accordance with section 4 of this Act; and
(2) each cigarette listed in the certification meets the performance standard set forth in section 4.

(b) Each cigarette listed in the certification shall be described with the following information:

(1) brand, or trade name on the package;
(2) style, such as light or ultra light;
(3) length in millimeters;
(4) circumference in millimeters;
(5) flavor, such as menthol or chocolate, if applicable;
(6) filter or non-filter;
(7) package description, such as soft pack or box;
(8) marking pursuant to section 6 of this Act;
(9) the name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
(10) the date that the testing occurred.

(c) The certifications shall be made available to the Attorney General for purposes consistent with this Act and the [state entity responsible for administering the state cigarette tax act] for the purposes of ensuring compliance with this section.

(d) Each cigarette certified under this section shall be re-certified every three years.

(e) For each cigarette listed in a certification, a manufacturer shall pay to the [state entity responsible for administering the provisions of this Act] a $250 fee. The [state entity responsible for administering the provisions of this Act] is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement and oversight activities required by this Act.

(f) There is established in the [state treasury] a separate, nonlapsing fund to be known as the "Fire Safety Standard and Firefighter Protection Act Enforcement Fund." The fund shall consist of all certification fees submitted by manufacturers, and shall, in addition to any other monies made available for such purpose, be available to the [state entity responsible for administering the provisions of this

Act] solely to support processing, testing, enforcement and oversight activities under this Act.

(g) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this Act, that cigarette shall not be sold or offered for sale in this State until the manufacturer retests the cigarette in accordance with the testing standards set forth in section 4 of this Act and maintains records of that retesting as required by section 4 of this Act. Any altered cigarette which does not meet the performance standard set forth in Section 4 of this Act may not be sold in this State.

**6. Marking of Cigarette Packaging.**

(a) Cigarettes that are certified by a manufacturer in accordance with section 5 of this Act shall be marked to indicate compliance with the requirements of section 4 of this Act. The marking shall be in eight point type or larger and consist of:

(1) Modification of the product UPC Code to include a visible mark printed at or around the area of the UPC Code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed or printed in conjunction with the UPC; or
(2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the cigarette package or cellophane wrap; or
(3) Printed, stamped, engraved or embossed text that indicates that the cigarettes meet the standards of this Act.

(b) A manufacturer shall use only one marking, and shall apply this marking uniformly for all packages, including but not limited to packs, cartons, and cases, and brands marketed by that manufacturer.

(c) The [state entity responsible for administering the provisions of this Act] shall be notified as to the marking that is selected.

(d) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the [state entity responsible for administering the provisions of this Act] for approval. Upon receipt of the request, the [state entity responsible for administering the provisions of this Act] shall approve or disapprove the marking offered, except that the [state entity responsible for administering the provisions of this Act] shall approve:
(1) any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes, or

(2) the letters "FSC," which signifies Fire Standards Compliant appearing in 8 point type or larger and be permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

Proposed markings shall be deemed approved if the [state entity responsible for administering the provisions of this Act] fails to act within 10 business days of receiving a request for approval.

(e) No manufacturer shall modify its approved marking unless the modification has been approved by the [state entity responsible for administering the provisions of this Act] in accordance with this section.

(f) Manufacturers certifying cigarettes in accordance with section 5 of this Act shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents and retail dealers shall permit the [state entity responsible for administering the provisions of this Act], the [state entity responsible for administering the provisions of the state cigarette tax act], the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

**7. Penalties.**

(a) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 4 of this Act, shall be subject to a civil penalty not to exceed one hundred ($100) dollars for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any such person or entity exceed one hundred thousand ($100,000) dollars during any thirty-day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of section 4 of this Act shall be subject to a civil penalty not to exceed one hundred ($100) dollars for each pack of such cigarettes sold or offered for sale, provided that in no case shall the penalty against any retail dealer exceed twenty-five thousand ($25,000) dollars for sales or offers to sell during any thirty-day period.

(c) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to section 5 of this Act shall be subject to a civil penalty of at least seventy-five thousand ($75,000)

dollars and not to exceed two-hundred fifty thousand ($250,000) dollars for each such false certification.

(d) Any person violating any other provision in this Act shall be subject to a civil penalty for a first offense not to exceed one thousand ($1,000) dollars, and for a subsequent offense subject to a civil penalty not to exceed five thousand ($5,000) dollars for each such violation.

(e) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by section 4 of this Act shall be subject to forfeiture [under the pertinent provision of state law having to do with forfeiture of contraband]. Cigarettes forfeited pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any cigarette forfeited pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(f) In addition to any other remedy provided by law, the [state entity responsible for administering the provisions of this Act] or Attorney General may file an action in [name of court] for a violation of this Act, including petitioning for injunctive relief or to recover any costs or damages suffered by the State because of a violation of this Act, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this Act or of rules or regulations adopted under this Act constitutes a separate civil violation for which the [state entity responsible for administering the provisions of this Act] or Attorney General may obtain relief.

(g) Whenever any law enforcement personnel or duly authorized representative of the [state entity responsible for administering the provisions of this Act] shall discover any cigarettes that have not been marked in the manner required by section 6 of this Act, such personnel is hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the [department of taxation and finance], and shall be forfeited to the state. Cigarettes seized pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

**8. Implementation.**

(a) The [state entity responsible for administering the provisions of this Act] may promulgate rules and regulations, pursuant to the [state administrative procedures act], necessary to effectuate the purposes of this Act.

(b) The [state entity responsible for administration of the state cigarette tax act] in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, as authorized under the [state cigarette tax act] may inspect such cigarettes to determine if the cigarettes are marked as required by section 6 of this Act. If the cigarettes are not marked as required, the [state entity responsible for administration of the state cigarette tax act] shall notify the [state entity responsible for administering the provisions of this Act].

**9.** **Inspection.** To enforce the provisions of this Act, the Attorney General, the [state department of taxation and finance] and the [state entity responsible for administering the provisions of this Act], their duly authorized representatives and other law enforcement personnel are hereby authorized to 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, as well as 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, is hereby directed and required to give the Attorney General, the [state department of taxation and finance] and the [state entity responsible for administering the provisions of this Act], their duly authorized representatives and other law enforcement personnel the means, facilities and opportunity for the examinations authorized by this section.

**10.** **Cigarette Fire Safety Standard and Firefighter Protection Act Fund.** There is hereby established in the State Treasury a special fund to be known as the "Cigarette Fire Safety Standard and Firefighter Protection Act Fund." The fund shall consist of all monies recovered as penalties under section 7 of this Act. The monies shall be deposited to the credit of the fund and shall, in addition to any other monies made available for such purpose, be made available to the state entity responsible for administering the provisions of this Act to support fire safety and prevention programs.

**11.** **Sale Outside of [state name].** Nothing in this Act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section 4 of this Act 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 or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this State.

**12.** **Preemption.** This Act shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this Act is adopted and becomes effective.

**13.** **Effective Date.** This Act shall take effect on the first day of the thirteenth month after enactment.