

Second Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0625.01 Duane Gall

SENATE BILL 08-026

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SENATE SPONSORSHIP

Hagedorn,

HOUSE SPONSORSHIP

(None),

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Senate Committees

Health and Human Services

House Committees

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A BILL FOR AN ACT

101      **CONCERNING A REQUIREMENT THAT CIGARETTES SOLD IN COLORADO**  
102           **MEET SPECIFIED STANDARDS FOR REDUCED IGNITION**  
103           **PROPENSITY.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Requires all cigarettes sold in Colorado on or after July 31, 2009, to be tested for, and to meet, specified standards for reduced ignition propensity. Specifies labeling to identify complying cigarettes. Prescribes the testing methods to be used. Requires manufacturers to certify in writing that their cigarettes have been tested and meet the standards.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

Prescribes penalties for failure to properly test cigarettes, to maintain records of such tests for at least 3 years, or to sell cigarettes that do not meet the standards. Grants primary authority over the administration and enforcement of the testing and certification program to the division of fire safety in the department of public safety (division). Gives additional enforcement authority to the attorney general and the department of revenue.

Imposes certification fees on cigarette manufacturers to defray the costs of the program. Creates a fund, known as the reduced cigarette ignition propensity standards and firefighter protection act enforcement fund, into which such fees and penalty assessments are to be deposited and from which the division may support processing, testing, enforcement, and oversight activities.

Designates noncomplying cigarettes sold or offered for sale after July 31, 2009, as contraband under the criminal forfeiture statutes. Exempts cigarettes intended only for sale outside the state. Preempts conflicting local regulations.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 24-33.5-1202, Colorado Revised Statutes, is  
3 amended BY THE ADDITION OF THE FOLLOWING NEW  
4 SUBSECTIONS to read:

5 **24-33.5-1202. Definitions.** As used in this part 12, unless the  
6 context otherwise requires:

7 (1.4) "AGENT" MEANS A PERSON LICENSED BY THE DEPARTMENT  
8 OF REVENUE TO PURCHASE AND AFFIX ADHESIVE OR METER STAMPS ON  
9 PACKAGES OF CIGARETTES.

10 (1.7) "ASTM INTERNATIONAL" MEANS THE AMERICAN SOCIETY  
11 FOR TESTING AND MATERIALS OR ITS SUCCESSOR ORGANIZATION.

12 (3.3) "CIGARETTE" MEANS ANY ROLL FOR SMOKING, WHETHER  
13 MADE WHOLLY OR PARTLY OF TOBACCO OR ANY OTHER SUBSTANCE,  
14 IRRESPECTIVE OF SIZE OR SHAPE, AND WHETHER OR NOT SUCH TOBACCO OR  
15 SUBSTANCE IS FLAVORED, ADULTERATED, OR MIXED WITH ANY OTHER  
16 INGREDIENT, THE WRAPPER OR COVER OF WHICH IS MADE OF PAPER OR ANY

1 OTHER SUBSTANCE OR MATERIAL EXCEPT TOBACCO.

2 (7.7) "MANUFACTURER" MEANS ANY ONE OR MORE OF THE  
3 FOLLOWING:

4 (a) AN ENTITY THAT MANUFACTURES OR OTHERWISE PRODUCES  
5 CIGARETTES OR CAUSES CIGARETTES TO BE MANUFACTURED WITH THE  
6 INTENT THAT SUCH CIGARETTES BE SOLD IN COLORADO, REGARDLESS OF  
7 WHERE THE CIGARETTES ARE MANUFACTURED OR PRODUCED AND  
8 REGARDLESS OF WHETHER THEY ARE IMPORTED FROM OUTSIDE THE  
9 UNITED STATES;

10 (b) THE FIRST PURCHASER ANYWHERE THAT INTENDS TO RESELL,  
11 IN THE UNITED STATES, CIGARETTES MANUFACTURED OUTSIDE THE  
12 UNITED STATES THAT THE ORIGINAL MANUFACTURER OR PRODUCER DOES  
13 NOT INTEND TO BE SOLD IN THE UNITED STATES; OR

14 (c) AN ENTITY THAT BECOMES A SUCCESSOR TO AN ENTITY  
15 DESCRIBED IN PARAGRAPH (a) OR (b) OF THIS SUBSECTION (7.7).

16 (9) "QUALITY CONTROL AND QUALITY ASSURANCE PROGRAM"  
17 MEANS A SET OF LABORATORY PROCEDURES IMPLEMENTED TO ENSURE  
18 THAT:

19 (a) OPERATOR BIAS, SYSTEMATIC AND NONSYSTEMATIC  
20 METHODOLOGICAL ERRORS, AND EQUIPMENT-RELATED PROBLEMS DO NOT  
21 AFFECT THE RESULTS OF CIGARETTE TESTING; AND

22 (b) THE TESTING REPEATABILITY REMAINS WITHIN THE REQUIRED  
23 REPEATABILITY VALUES STATED IN SECTION 24-33.5-1212 (2) (a) (II) (F)  
24 FOR ALL TEST TRIALS USED TO CERTIFY CIGARETTES IN ACCORDANCE WITH  
25 SECTION 24-33.5-1212 (3).

26 (10) "REPEATABILITY", WITH RESPECT TO A CIGARETTE TEST  
27 TRIAL, REFERS TO THE RANGE OF VALUES WITHIN WHICH THE REPEAT

1 RESULTS OF CIGARETTE TEST TRIALS FROM A SINGLE LABORATORY WILL  
2 FALL NINETY-FIVE PERCENT OF THE TIME.

3 (11) "RETAIL DEALER" MEANS ANY PERSON, OTHER THAN A  
4 MANUFACTURER OR WHOLESALE DEALER, ENGAGED IN SELLING  
5 CIGARETTES OR TOBACCO PRODUCTS.

6 (12) "SALE" MEANS ANY TRANSFER OF TITLE, POSSESSION, OR  
7 BOTH, OR EXCHANGE OR BARTER, CONDITIONAL OR OTHERWISE, IN ANY  
8 MANNER OR BY ANY MEANS OR ANY AGREEMENT. IN ADDITION TO CASH  
9 AND CREDIT SALES, THE GIVING OF CIGARETTES AS SAMPLES, PRIZES, OR  
10 GIFTS, AND THE EXCHANGING OF CIGARETTES FOR ANY CONSIDERATION  
11 OTHER THAN MONEY, ARE CONSIDERED SALES.

12 (13) "SELL" MEANS TO SELL OR TO OFFER OR AGREE TO SELL.

13 (14) "UPC SYMBOL" MEANS THE SYMBOL SIGNIFYING THE  
14 UNIVERSAL PRODUCT CODE.

15 (15) "WHOLESALE DEALER" MEANS:

16 (a) ANY PERSON, OTHER THAN A MANUFACTURER, WHO SELLS  
17 CIGARETTES OR TOBACCO PRODUCTS TO RETAIL DEALERS OR OTHER  
18 PERSONS FOR PURPOSES OF RESALE; AND

19 (b) ANY PERSON WHO OWNS, OPERATES, OR MAINTAINS ONE OR  
20 MORE CIGARETTE OR TOBACCO PRODUCT VENDING MACHINES IN, AT, OR  
21 UPON PREMISES OWNED OR OCCUPIED BY ANY OTHER PERSON.

22 **SECTION 2.** Part 12 of article 33.5 of title 24, Colorado Revised  
23 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
24 read:

25 **24-33.5-1212. Fire-safe cigarettes - repeal. (1) Short title.**  
26 THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "REDUCED  
27 CIGARETTE IGNITION PROPENSITY STANDARDS AND FIREFIGHTER

1 PROTECTION ACT".

2 (2) **Testing - performance standard.** (a) (I) EXCEPT AS  
3 OTHERWISE PROVIDED IN PARAGRAPH (g) OF THIS SUBSECTION (2), NO  
4 CIGARETTES SHALL BE SOLD OR OFFERED FOR SALE IN THIS STATE, OR  
5 OFFERED FOR SALE OR SOLD TO PERSONS LOCATED IN THIS STATE, AFTER  
6 JULY 31, 2009, UNLESS:

7 (A) THE CIGARETTES HAVE BEEN TESTED IN ACCORDANCE WITH  
8 THE TEST METHOD AND MEET THE PERFORMANCE STANDARD SPECIFIED IN  
9 THIS SUBSECTION (2);

10 (B) A WRITTEN CERTIFICATION HAS BEEN FILED BY THE  
11 MANUFACTURER WITH THE DIRECTOR IN ACCORDANCE WITH SUBSECTION  
12 (3) OF THIS SECTION; AND

13 (C) THE CIGARETTES HAVE BEEN MARKED IN ACCORDANCE WITH  
14 SUBSECTION (4) OF THIS SECTION.

15 (II) IN ADDITION TO ANY OTHER REQUIREMENTS IMPOSED BY LAW,  
16 THE FOLLOWING CONDITIONS SHALL APPLY TO TESTING AND  
17 CERTIFICATION:

18 (A) TESTING OF CIGARETTES SHALL BE CONDUCTED IN  
19 ACCORDANCE WITH ASTM INTERNATIONAL STANDARD E2187-04,  
20 "STANDARD TEST METHOD FOR MEASURING THE IGNITION STRENGTH OF  
21 CIGARETTES", OR A SUCCESSOR STANDARD.

22 (B) TESTING SHALL BE CONDUCTED ON TEN LAYERS OF FILTER  
23 PAPER.

24 (C) NO MORE THAN TWENTY-FIVE PERCENT OF THE CIGARETTES  
25 TESTED IN A TEST TRIAL IN ACCORDANCE WITH THIS SUBSECTION (2) SHALL  
26 EXHIBIT FULL-LENGTH BURNS. FORTY REPLICATE TESTS SHALL  
27 CONSTITUTE A COMPLETE TEST TRIAL FOR EACH CIGARETTE TESTED.

1 (D) THE PERFORMANCE STANDARD REQUIRED BY THIS SUBSECTION  
2 (2) SHALL BE APPLIED ONLY TO A COMPLETE TEST TRIAL.

3 (E) WRITTEN CERTIFICATIONS SHALL BE BASED UPON TESTING  
4 CONDUCTED BY A LABORATORY THAT HAS BEEN ACCREDITED PURSUANT  
5 TO STANDARD ISO/IEC 17025:2005 OF THE INTERNATIONAL  
6 ORGANIZATION FOR STANDARDIZATION OR ANOTHER COMPARABLE  
7 ACCREDITATION STANDARD SPECIFIED BY THE DIVISION.

8 (F) A LABORATORY CONDUCTING TESTING IN ACCORDANCE WITH  
9 THIS SUBSECTION (2) SHALL IMPLEMENT A QUALITY CONTROL AND  
10 QUALITY ASSURANCE PROGRAM THAT INCLUDES A PROCEDURE THAT WILL  
11 DETERMINE THE REPEATABILITY OF THE TESTING RESULTS AND LIMIT THE  
12 REPEATABILITY VALUE TO NO GREATER THAN NINETEEN PERCENT.

13 (G) THIS SUBSECTION (2) SHALL NOT REQUIRE ADDITIONAL  
14 TESTING OF CIGARETTES THAT HAVE BEEN TESTED FOR OTHER PURPOSES  
15 IN A MANNER CONSISTENT WITH THIS SECTION.

16 (H) TESTING PERFORMED OR SPONSORED BY THE DIVISION IN  
17 ORDER TO DETERMINE A CIGARETTE'S COMPLIANCE WITH THE  
18 PERFORMANCE STANDARD REQUIRED BY THIS SUBSECTION (2) SHALL BE  
19 CONDUCTED IN ACCORDANCE WITH THIS SUBSECTION (2).

20 (b) EACH CIGARETTE LISTED IN A CERTIFICATION SUBMITTED  
21 PURSUANT TO SUBSECTION (3) OF THIS SECTION THAT USES LOWERED  
22 PERMEABILITY BANDS IN THE CIGARETTE PAPER TO ACHIEVE COMPLIANCE  
23 WITH THE PERFORMANCE STANDARD SET FORTH IN THIS SUBSECTION (2)  
24 SHALL HAVE AT LEAST TWO NOMINALLY IDENTICAL BANDS ON THE PAPER  
25 SURROUNDING THE TOBACCO COLUMN. AT LEAST ONE COMPLETE BAND  
26 SHALL BE LOCATED AT LEAST FIFTEEN MILLIMETERS FROM THE LIGHTING  
27 END OF THE CIGARETTE. FOR CIGARETTES ON WHICH THE BANDS ARE

1 POSITIONED BY DESIGN, THERE SHALL BE AT LEAST TWO BANDS FULLY  
2 LOCATED AT LEAST FIFTEEN MILLIMETERS FROM THE LIGHTING END AND  
3 TEN MILLIMETERS FROM THE FILTER END OF THE TOBACCO COLUMN OR TEN  
4 MILLIMETERS FROM THE LABELED END OF THE TOBACCO COLUMN FOR  
5 NONFILTERED CIGARETTES.

6 (c) A MANUFACTURER OF A CIGARETTE THAT THE DIVISION  
7 DETERMINES CANNOT BE TESTED IN ACCORDANCE WITH THE TEST METHOD  
8 PRESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL PROPOSE A  
9 TEST METHOD AND PERFORMANCE STANDARD FOR THE CIGARETTE TO THE  
10 DIVISION. UPON APPROVAL OF THE PROPOSED TEST METHOD AND A  
11 DETERMINATION BY THE DIVISION THAT THE PERFORMANCE STANDARD  
12 PROPOSED BY THE MANUFACTURER IS EQUIVALENT TO THE PERFORMANCE  
13 STANDARD PRESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS  
14 SUBSECTION (2), THE MANUFACTURER MAY EMPLOY SUCH TEST METHOD  
15 AND PERFORMANCE STANDARD TO CERTIFY SUCH CIGARETTE PURSUANT  
16 TO THIS SUBSECTION (2). IF THE DIVISION DETERMINES THAT ANOTHER  
17 STATE HAS ENACTED REDUCED CIGARETTE IGNITION PROPENSITY  
18 STANDARDS THAT INCLUDE A TEST METHOD AND PERFORMANCE  
19 STANDARD THAT ARE SUBSTANTIALLY SIMILAR TO THOSE CONTAINED IN  
20 THIS SUBSECTION (2), AND THE DIVISION FINDS THAT THE OFFICIALS  
21 RESPONSIBLE FOR IMPLEMENTING THOSE REQUIREMENTS HAVE APPROVED  
22 THE PROPOSED ALTERNATIVE TEST METHOD AND PERFORMANCE  
23 STANDARD FOR A PARTICULAR CIGARETTE PROPOSED BY A  
24 MANUFACTURER AS MEETING THE REDUCED CIGARETTE IGNITION  
25 PROPENSITY STANDARDS OF SUCH STATE'S LAWS OR RULES UNDER A LEGAL  
26 PROVISION COMPARABLE TO THIS SUBSECTION (2), THEN THE DIVISION  
27 SHALL AUTHORIZE THE MANUFACTURER TO EMPLOY THE ALTERNATIVE

1 TEST METHOD AND PERFORMANCE STANDARD TO CERTIFY SUCH  
2 CIGARETTE FOR SALE IN COLORADO UNLESS THE DIVISION DEMONSTRATES  
3 A REASONABLE BASIS WHY THE ALTERNATIVE TEST SHOULD NOT BE  
4 ACCEPTED. ALL OTHER APPLICABLE REQUIREMENTS OF THIS SUBSECTION  
5 (2) SHALL APPLY TO THE MANUFACTURER.

6 (d) EACH MANUFACTURER SHALL MAINTAIN COPIES OF THE  
7 REPORTS OF ALL TESTS CONDUCTED ON ALL CIGARETTES OFFERED FOR  
8 SALE FOR A PERIOD OF THREE YEARS AND SHALL MAKE COPIES OF THESE  
9 REPORTS AVAILABLE TO THE DIVISION AND THE ATTORNEY GENERAL UPON  
10 WRITTEN REQUEST. ANY MANUFACTURER WHO FAILS TO MAKE COPIES OF  
11 SUCH REPORTS AVAILABLE WITHIN SIXTY DAYS AFTER RECEIVING A  
12 WRITTEN REQUEST SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED  
13 TEN THOUSAND DOLLARS FOR EACH DAY AFTER THE SIXTIETH DAY THAT  
14 THE MANUFACTURER DOES NOT MAKE SUCH COPIES AVAILABLE.

15 (e) THE DIVISION MAY ADOPT A SUBSEQUENT ASTM  
16 INTERNATIONAL STANDARD TEST METHOD FOR MEASURING THE IGNITION  
17 STRENGTH OF CIGARETTES UPON A FINDING THAT SUCH SUBSEQUENT  
18 METHOD DOES NOT RESULT IN A CHANGE IN THE PERCENTAGE OF  
19 FULL-LENGTH BURNS EXHIBITED BY ANY TESTED CIGARETTE WHEN  
20 COMPARED TO THE PERCENTAGE OF FULL-LENGTH BURNS THE SAME  
21 CIGARETTE WOULD EXHIBIT WHEN TESTED IN ACCORDANCE WITH ASTM  
22 INTERNATIONAL STANDARD E2187-04 AND THE PERFORMANCE STANDARD  
23 IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (2).

24 (f) ON OR BEFORE JUNE 30, 2010, AND ON OR BEFORE JUNE 30 OF  
25 EVERY THIRD YEAR THEREAFTER, THE DIVISION SHALL REVIEW THE  
26 EFFECTIVENESS OF THIS SUBSECTION (2) AND REPORT TO THE GENERAL  
27 ASSEMBLY THE DIVISION'S FINDINGS AND, IF APPROPRIATE,

1 RECOMMENDATIONS FOR LEGISLATION TO IMPROVE THE EFFECTIVENESS OF  
2 THIS SECTION.

3 (g) THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION  
4 (2) SHALL NOT BE CONSTRUED TO PROHIBIT:

5 (I) WHOLESALE OR RETAIL DEALERS FROM SELLING THEIR  
6 EXISTING INVENTORY OF CIGARETTES ON OR AFTER JULY 31, 2009, IF A  
7 WHOLESALE OR RETAILER DEALER CAN ESTABLISH THAT STATE TAX  
8 STAMPS WERE AFFIXED TO THE CIGARETTES BEFORE SAID DATE AND THAT  
9 THE INVENTORY WAS PURCHASED BEFORE SAID DATE IN COMPARABLE  
10 QUANTITY TO THE INVENTORY PURCHASED DURING THE SAME PERIOD OF  
11 THE IMMEDIATELY PRECEDING YEAR; OR

12 (II) THE SALE OF CIGARETTES SOLELY FOR THE PURPOSE OF  
13 CONSUMER TESTING. AS USED IN THIS SUBPARAGRAPH (II), "CONSUMER  
14 TESTING" MEANS AN ASSESSMENT OF CIGARETTES THAT IS CONDUCTED BY,  
15 OR UNDER THE CONTROL AND DIRECTION OF, A MANUFACTURER FOR THE  
16 PURPOSE OF EVALUATING CONSUMER ACCEPTANCE OF SUCH CIGARETTES,  
17 UTILIZING ONLY THE QUANTITY OF CIGARETTES THAT IS REASONABLY  
18 NECESSARY FOR SUCH ASSESSMENT.

19 (h) TO THE EXTENT PRACTICABLE, THE DIVISION SHALL IMPLEMENT  
20 THIS SECTION SUBSTANTIALLY IN ACCORDANCE WITH THE  
21 IMPLEMENTATION IN NEW YORK OF THE NEW YORK FIRE SAFETY  
22 STANDARDS FOR CIGARETTES.

23 (3) **Certification.** (a) EACH MANUFACTURER SHALL SUBMIT TO  
24 THE DIRECTOR A WRITTEN CERTIFICATION ATTESTING THAT EACH  
25 CIGARETTE LISTED IN THE CERTIFICATION:

26 (I) HAS BEEN TESTED IN ACCORDANCE WITH SUBSECTION (2) OF  
27 THIS SECTION; AND

1 (II) MEETS THE PERFORMANCE STANDARD SET FORTH IN  
2 SUBSECTION (2) OF THIS SECTION.

3 (b) EACH CIGARETTE LISTED IN THE CERTIFICATION SUBMITTED  
4 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL BE  
5 DESCRIBED WITH THE FOLLOWING INFORMATION:

6 (I) BRAND OR TRADE NAME ON THE PACKAGE;

7 (II) STYLE, SUCH AS LIGHT OR ULTRA LIGHT;

8 (III) LENGTH IN MILLIMETERS;

9 (IV) CIRCUMFERENCE IN MILLIMETERS;

10 (V) FLAVOR, SUCH AS MENTHOL OR CHOCOLATE IF APPLICABLE;

11 (VI) FILTER OR NONFILTER;

12 (VII) PACKAGE DESCRIPTION, SUCH AS SOFT PACK OR BOX;

13 (VIII) MARKING PURSUANT TO SUBSECTION (4) OF THIS SECTION;

14 (IX) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE  
15 LABORATORY THAT CONDUCTED THE TESTS, IF DIFFERENT FROM THAT OF  
16 THE MANUFACTURER; AND

17 (X) THE DATE THAT THE TESTING OCCURRED.

18 (c) CERTIFICATIONS UNDER THIS SUBSECTION (3) SHALL BE MADE  
19 AVAILABLE TO THE ATTORNEY GENERAL FOR PURPOSES CONSISTENT WITH  
20 THIS SECTION AND TO THE DEPARTMENT OF REVENUE FOR THE PURPOSE OF  
21 ENSURING COMPLIANCE WITH THIS SUBSECTION (3).

22 (d) EACH CIGARETTE CERTIFIED UNDER THIS SUBSECTION (3)  
23 SHALL BE SUBJECT TO RETESTING AND RECERTIFICATION EVERY THREE  
24 YEARS.

25 (e) AT THE TIME IT SUBMITS A WRITTEN CERTIFICATION UNDER  
26 THIS SUBSECTION (3), A MANUFACTURER SHALL PAY TO THE DEPARTMENT  
27 OF PUBLIC SAFETY A FEE OF ONE THOUSAND DOLLARS FOR EACH BRAND

1 FAMILY OF CIGARETTES LISTED IN THE CERTIFICATION. THE FEE PAID  
2 SHALL APPLY TO ALL CIGARETTES WITHIN THE BRAND FAMILY CERTIFIED  
3 AND SHALL INCLUDE ANY NEW CIGARETTE CERTIFIED WITHIN THE BRAND  
4 FAMILY DURING THE THREE-YEAR CERTIFICATION PERIOD.

5 (f) THERE IS HEREBY ESTABLISHED, IN THE STATE TREASURY, THE  
6 REDUCED CIGARETTE IGNITION PROPENSITY STANDARDS AND FIREFIGHTER  
7 PROTECTION ACT ENFORCEMENT FUND, ALSO REFERRED TO IN THIS  
8 SECTION AS THE "FUND". THE FUND SHALL CONSIST OF ALL CERTIFICATION  
9 FEES AND CIVIL PENALTIES COLLECTED PURSUANT TO THIS SECTION AND  
10 SHALL, IN ADDITION TO ANY OTHER MONEYS MADE AVAILABLE FOR SUCH  
11 PURPOSE, BE AVAILABLE TO THE DIVISION SOLELY TO SUPPORT  
12 PROCESSING, TESTING, ENFORCEMENT, AND OVERSIGHT ACTIVITIES UNDER  
13 THIS SECTION.

14 (g) IF A MANUFACTURER HAS CERTIFIED A CIGARETTE PURSUANT  
15 TO THIS SUBSECTION (3), AND THEREAFTER MAKES ANY CHANGE TO SUCH  
16 CIGARETTE THAT IS LIKELY TO ALTER ITS COMPLIANCE WITH THE REDUCED  
17 CIGARETTE IGNITION PROPENSITY STANDARD REQUIRED BY THIS SECTION,  
18 SUCH CIGARETTE SHALL NOT BE SOLD OR OFFERED FOR SALE IN THIS STATE  
19 UNTIL THE MANUFACTURER RETESTS THE CIGARETTE IN ACCORDANCE  
20 WITH THE TESTING STANDARDS SET FORTH IN SUBSECTION (2) OF THIS  
21 SECTION AND MAINTAINS RECORDS OF THE RETESTING AS REQUIRED BY  
22 SAID SUBSECTION (2). ANY ALTERED CIGARETTE THAT DOES NOT MEET  
23 THE PERFORMANCE STANDARD SET FORTH IN SAID SUBSECTION (2) MAY  
24 NOT BE SOLD IN THIS STATE.

25 (4) **Labeling.** (a) CIGARETTES THAT ARE CERTIFIED BY A  
26 MANUFACTURER IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION  
27 SHALL BE MARKED TO INDICATE COMPLIANCE WITH THE REQUIREMENTS OF

1 THIS SECTION. SUCH MARKING SHALL BE IN EIGHT-POINT TYPE OR LARGER  
2 AND SHALL CONSIST OF ONE OR MORE OF THE FOLLOWING:

3 (I) MODIFICATION OF THE PACKAGE'S UPC SYMBOL TO INCLUDE  
4 A VISIBLE MARK PRINTED AT OR AROUND THE AREA OF THE UPC SYMBOL.  
5 THE MARK MAY CONSIST OF ALPHANUMERIC OR SYMBOLIC CHARACTERS  
6 PERMANENTLY STAMPED, ENGRAVED, EMBOSSED, OR PRINTED IN  
7 CONJUNCTION WITH THE UPC SYMBOL.

8 (II) ANY VISIBLE COMBINATION OF ALPHANUMERIC OR SYMBOLIC  
9 CHARACTERS PERMANENTLY STAMPED, ENGRAVED, EMBOSSED, OR  
10 PRINTED ON THE CIGARETTE PACKAGE OR CELLOPHANE WRAP; OR

11 (III) STAMPED, ENGRAVED, EMBOSSED, OR PRINTED TEXT THAT  
12 INDICATES THAT THE CIGARETTES MEET THE STANDARDS OF THIS SECTION.

13 (b) A MANUFACTURER SHALL USE ONLY ONE MARKING AND SHALL  
14 APPLY THE MARKING UNIFORMLY TO ALL BRANDS AND PACKAGES,  
15 INCLUDING BUT NOT LIMITED TO PACKS, CARTONS, AND CASES, MARKETED  
16 BY THE MANUFACTURER.

17 (c) THE MANUFACTURER SHALL NOTIFY THE DIVISION AS TO THE  
18 MARKING SELECTED BY THE MANUFACTURER.

19 (d) PRIOR TO THE CERTIFICATION OF ANY CIGARETTE, THE  
20 MANUFACTURER SHALL PRESENT ITS PROPOSED MARKING TO THE DIVISION,  
21 WHICH SHALL HAVE DISCRETION TO APPROVE OR DISAPPROVE THE  
22 MARKING; EXCEPT THAT:

23 (I) THE DIVISION SHALL APPROVE:

24 (A) ANY MARKING IN USE AND APPROVED FOR SALE IN NEW YORK  
25 PURSUANT TO THE NEW YORK FIRE SAFETY STANDARDS FOR CIGARETTES;  
26 OR

27 (B) THE LETTERS "FSC", SIGNIFYING "FIRE STANDARDS

1 COMPLIANT", APPEARING IN EIGHT-POINT TYPE OR LARGER AND  
2 PERMANENTLY STAMPED, ENGRAVED, EMBOSSED, OR PRINTED ON THE  
3 PACKAGE AT OR NEAR THE UPC SYMBOL; AND

4 (II) PROPOSED MARKINGS SHALL BE DEEMED APPROVED IF THE  
5 DIVISION FAILS TO ACT WITHIN TEN BUSINESS DAYS AFTER RECEIVING A  
6 REQUEST FOR APPROVAL.

7 (e) A MANUFACTURER SHALL NOT MODIFY ITS APPROVED MARKING  
8 UNLESS THE MODIFICATION HAS BEEN APPROVED BY THE DIVISION IN  
9 ACCORDANCE WITH THIS SUBSECTION (4).

10 (f) MANUFACTURERS CERTIFYING CIGARETTES IN ACCORDANCE  
11 WITH SUBSECTION (2) OF THIS SECTION SHALL PROVIDE A COPY OF THE  
12 CERTIFICATIONS TO ALL WHOLESALE DEALERS AND AGENTS TO WHICH  
13 THEY SELL CIGARETTES AND SHALL ALSO PROVIDE SUFFICIENT COPIES OF  
14 AN ILLUSTRATION OF THE PACKAGE MARKING UTILIZED BY THE  
15 MANUFACTURER PURSUANT TO THIS SUBSECTION (4) FOR EACH RETAIL  
16 DEALER TO WHICH THE WHOLESALE DEALERS OR AGENTS SELL  
17 CIGARETTES. WHOLESALE DEALERS AND AGENTS SHALL PROVIDE COPIES  
18 OF THESE PACKAGE MARKINGS RECEIVED FROM MANUFACTURERS TO ALL  
19 RETAIL DEALERS TO WHICH THEY SELL CIGARETTES. WHOLESALE  
20 DEALERS, AGENTS, AND RETAIL DEALERS SHALL PERMIT THE DIRECTOR,  
21 THE DEPARTMENT OF REVENUE, THE ATTORNEY GENERAL, AND  
22 EMPLOYEES THEREOF TO INSPECT MARKINGS OF CIGARETTE PACKAGING  
23 MARKED IN ACCORDANCE WITH THIS SUBSECTION (4).

24 (5) **Penalties - forfeiture.** (a) A MANUFACTURER, WHOLESALE  
25 DEALER, AGENT, OR OTHER PERSON OR ENTITY WHO KNOWINGLY SELLS OR  
26 OFFERS TO SELL CIGARETTES, OTHER THAN AT RETAIL, IN VIOLATION OF  
27 SUBSECTION (2) OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY

1 NOT TO EXCEED ONE HUNDRED DOLLARS FOR EACH PACK OF SUCH  
2 CIGARETTES SOLD OR OFFERED FOR SALE; EXCEPT THAT THE PENALTY  
3 AGAINST ANY SUCH PERSON OR ENTITY SHALL NOT EXCEED ONE HUNDRED  
4 THOUSAND DOLLARS DURING ANY THIRTY-DAY PERIOD.

5 (b) A RETAIL DEALER WHO KNOWINGLY SELLS OR OFFERS TO SELL  
6 CIGARETTES IN VIOLATION OF SUBSECTION (2) OF THIS SECTION SHALL BE  
7 SUBJECT TO A CIVIL PENALTY NOT TO EXCEED ONE HUNDRED DOLLARS FOR  
8 EACH PACK OF SUCH CIGARETTES SOLD OR OFFERED FOR SALE; EXCEPT  
9 THAT THE PENALTY AGAINST ANY SUCH RETAIL DEALER SHALL NOT  
10 EXCEED TWENTY-FIVE THOUSAND DOLLARS FOR SALES OR OFFERS TO SELL  
11 DURING ANY THIRTY-DAY PERIOD.

12 (c) IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, A  
13 CORPORATION, PARTNERSHIP, SOLE PROPRIETOR, LIMITED PARTNERSHIP,  
14 OR ASSOCIATION ENGAGED IN THE MANUFACTURE OF CIGARETTES THAT  
15 KNOWINGLY MAKES A FALSE CERTIFICATION PURSUANT TO SUBSECTION (2)  
16 OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF AT LEAST  
17 SEVENTY-FIVE THOUSAND DOLLARS, NOT TO EXCEED TWO HUNDRED FIFTY  
18 THOUSAND DOLLARS FOR EACH SUCH FALSE CERTIFICATION.

19 (d) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION FOR  
20 WHICH A PENALTY IS NOT SPECIFICALLY PROVIDED SHALL BE SUBJECT TO  
21 A CIVIL PENALTY OF UP TO ONE THOUSAND DOLLARS FOR A FIRST  
22 VIOLATION AND UP TO FIVE THOUSAND DOLLARS FOR A SECOND OR  
23 SUBSEQUENT VIOLATION.

24 (e) CIGARETTES THAT HAVE BEEN SOLD OR OFFERED FOR SALE AND  
25 THAT DO NOT COMPLY WITH THE PERFORMANCE STANDARD REQUIRED BY  
26 SUBSECTION (2) OF THIS SECTION SHALL BE SUBJECT TO FORFEITURE AS  
27 PROVIDED IN THE "COLORADO CONTRABAND FORFEITURE ACT", PART 5

1 OF ARTICLE 13 OF TITLE 16, C.R.S. CIGARETTES FORFEITED PURSUANT TO  
2 THIS PARAGRAPH (e) SHALL BE DESTROYED; EXCEPT THAT, BEFORE SUCH  
3 DESTRUCTION, THE TRUE HOLDER OF THE TRADEMARK RIGHTS IN THE  
4 CIGARETTE BRAND SHALL BE GIVEN A REASONABLE OPPORTUNITY TO  
5 INSPECT THE CIGARETTES IF DESIRED.

6 (f) IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW, THE  
7 DIRECTOR OR THE ATTORNEY GENERAL MAY FILE AN ACTION IN DISTRICT  
8 COURT FOR A VIOLATION OF THIS SECTION, INCLUDING PETITIONING FOR  
9 INJUNCTIVE RELIEF OR TO RECOVER ANY COSTS OR DAMAGES SUFFERED BY  
10 THE STATE AND ENFORCEMENT COSTS, INCLUDING ATTORNEY FEES,  
11 RELATING TO THE SPECIFIC VIOLATION. EACH VIOLATION OF THIS SECTION  
12 OR OF RULES ADOPTED UNDER THIS SECTION CONSTITUTES A SEPARATE  
13 CIVIL VIOLATION FOR WHICH THE DIRECTOR OR ATTORNEY GENERAL MAY  
14 OBTAIN RELIEF UNDER THIS PARAGRAPH (f).

15 (g) WHENEVER A LAW ENFORCEMENT OFFICER OR DULY  
16 AUTHORIZED AGENT OF THE DIRECTOR DISCOVERS CIGARETTES THAT HAVE  
17 NOT BEEN MARKED AS REQUIRED BY SUBSECTION (4) OF THIS SECTION,  
18 SUCH OFFICER OR AGENT IS HEREBY AUTHORIZED AND EMPOWERED TO  
19 SEIZE AND TAKE POSSESSION OF SUCH CIGARETTES. SUCH CIGARETTES  
20 SHALL BE TURNED OVER TO THE DEPARTMENT OF REVENUE AND SHALL BE  
21 FORFEITED TO THE STATE. CIGARETTES SEIZED PURSUANT TO THIS  
22 PARAGRAPH (g) SHALL BE DESTROYED; EXCEPT THAT, BEFORE SUCH  
23 DESTRUCTION, THE TRUE HOLDER OF THE TRADEMARK RIGHTS IN THE  
24 CIGARETTE BRAND SHALL BE GIVEN A REASONABLE OPPORTUNITY TO  
25 INSPECT THE CIGARETTES IF DESIRED.

26 (6) **Rules.** (a) THE DIRECTOR MAY PROMULGATE RULES IN  
27 ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT",

1 ARTICLE 4 OF THIS TITLE, AS NECESSARY TO ADMINISTER THIS SECTION.

2 (b) THE DEPARTMENT OF REVENUE, IN THE REGULAR COURSE OF  
3 CONDUCTING INSPECTIONS OF WHOLESALE DEALERS, AGENTS, AND RETAIL  
4 DEALERS AS AUTHORIZED BY LAW, MAY INSPECT CIGARETTES TO  
5 DETERMINE WHETHER THE CIGARETTES ARE MARKED AS REQUIRED BY  
6 SUBSECTION (4) OF THIS SECTION. IF THE CIGARETTES ARE NOT MARKED  
7 AS REQUIRED, THE DEPARTMENT OF REVENUE SHALL NOTIFY THE DIVISION.

8 (7) **Enforcement.** TO ENFORCE THIS SECTION, THE ATTORNEY  
9 GENERAL, THE DEPARTMENT OF REVENUE, THE DIVISION, ALL DULY  
10 AUTHORIZED EMPLOYEES AND AGENTS THEREOF, AND ALL LAW  
11 ENFORCEMENT PERSONNEL ARE HEREBY AUTHORIZED TO EXAMINE THE  
12 BOOKS, PAPERS, INVOICES, AND OTHER RECORDS OF ANY PERSON IN  
13 POSSESSION, CONTROL, OR OCCUPANCY OF ANY PREMISES WHERE  
14 CIGARETTES ARE PLACED, STORED, SOLD, OR OFFERED FOR SALE, AS WELL  
15 AS ANY CIGARETTES ON THE PREMISES. EVERY PERSON IN THE  
16 POSSESSION, CONTROL, OR OCCUPANCY OF ANY PREMISES WHERE  
17 CIGARETTES ARE PLACED, STORED, SOLD, OR OFFERED FOR SALE IS HEREBY  
18 DIRECTED AND REQUIRED TO GIVE THE ATTORNEY GENERAL, THE  
19 DEPARTMENT OF REVENUE, THE DIVISION, ALL DULY AUTHORIZED  
20 EMPLOYEES AND AGENTS THEREOF, AND ALL LAW ENFORCEMENT  
21 PERSONNEL THE MEANS, FACILITIES, AND OPPORTUNITY FOR THE  
22 EXAMINATIONS AUTHORIZED BY THIS SUBSECTION (7).

23 (8) **Exceptions.** NOTHING IN THIS SECTION SHALL BE CONSTRUED  
24 TO PROHIBIT ANY PERSON OR ENTITY FROM MANUFACTURING OR SELLING  
25 CIGARETTES THAT DO NOT MEET THE REQUIREMENTS OF SUBSECTION (2)  
26 OF THIS SECTION IF:

27 (a) THE CIGARETTES ARE OR WILL BE STAMPED FOR SALE IN

1 ANOTHER STATE OR ARE PACKAGED FOR SALE OUTSIDE THE UNITED  
2 STATES; AND

3 (b) THE PERSON OR ENTITY HAS TAKEN REASONABLE STEPS TO  
4 ENSURE THAT SUCH CIGARETTES WILL NOT BE SOLD OR OFFERED FOR SALE  
5 TO PERSONS LOCATED IN COLORADO.

6 (9) **Repeal.** (a) THE GENERAL ASSEMBLY INTENDS THAT THIS  
7 SECTION SHALL CEASE TO BE EFFECTIVE UPON THE EFFECTIVE DATE OF A  
8 FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD THAT  
9 PREEMPTS THIS SECTION. THE DIVISION, UPON RECEIVING NOTICE OF THE  
10 EFFECTIVENESS OF SUCH FEDERAL STANDARD, SHALL FORWARD SUCH  
11 NOTICE TO THE REVISOR OF STATUTES.

12 (b) THIS SECTION IS REPEALED, EFFECTIVE 12:01 A.M. THE DAY  
13 AFTER THE REVISOR OF STATUTES RECEIVES NOTICE FROM THE DIVISION AS  
14 DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (9).

15 (c) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE LOCAL  
16 GOVERNMENTAL UNITS OF THIS STATE MAY NEITHER ENACT NOR ENFORCE  
17 ANY ORDINANCE OR OTHER LOCAL LAW OR RULE CONFLICTING WITH, OR  
18 PREEMPTED BY, ANY PROVISION OF THIS SECTION OR WITH ANY POLICY OF  
19 THIS STATE EXPRESSED BY THIS SECTION.

20 **SECTION 3. Effective date - applicability.** (1) This act shall  
21 take effect January 1, 2009.

22 (2) However, if a referendum petition is filed against this act or  
23 an item, section, or part of this act during the 90-day period after final  
24 adjournment of the general assembly that is allowed for submitting a  
25 referendum petition pursuant to article V, section 1 (3) of the state  
26 constitution, then the act, item, section, or part, shall not take effect unless  
27 approved by the people at a biennial regular general election and shall

1 take effect on the date specified in subsection (1) or on the date of the  
2 official declaration of the vote thereon by proclamation of the governor,  
3 whichever is later.

4 (3) The provisions of this act shall apply to offenses committed on  
5 or after July 31, 2009.