§ 156-c. Fire safety standards for cigarettes. 1. a. When used in this section, the word "cigarette" shall mean any roll for smoking made wholly or in part of tobacco or of 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 except tobacco.

b. When used in this section, the word "sell" shall mean to sell, or to offer or agree to do the same.

2. a. Within two years after this section takes effect, the office of fire prevention and control shall promulgate fire safety standards for cigarettes sold or offered for sale in this state. Such standards shall take effect as provided in subdivision four of this section and shall insure either:

(1) That such cigarettes, if ignited, will stop burning within a time period specified by the standards if the cigarettes are not smoked during that period; or

(2) That such cigarettes meet performance standards prescribed by the office of fire prevention and control to limit the risk that such cigarettes will ignite upholstered furniture, mattresses or other household furnishings.

b. In promulgating fire safety standards for cigarettes pursuant to this section, the office of fire prevention and control, in consultation with the department of health, shall consider whether cigarettes manufactured in accordance with such standards may reasonably result in increased health risks to consumers.

c. The office of fire prevention and control shall be responsible for administering the provisions of this section.

d. The office of fire prevention and control shall report to the governor and the legislature no later than eighteen months after this section takes effect on the status of its work in promulgating the fire safety standards required by this subdivision.

e. When a cigarette is suspected of having ignited a fire, and the office of fire prevention and control receives information regarding the brand and style of such cigarette pursuant to section two hundred four-d or ninety-one-a of the general municipal law, and where such brand and style had been previously certified pursuant to subdivision three of this section and the package has been marked as required by subdivision six of this section, the office of fire prevention and control shall conduct random testing on cigarettes of the same brand and style in order to determine whether such cigarettes meet the fire safety standards mandated by this section; provided however that such testing shall not be required if the office of fire prevention and control has tested such brand and style within the preceding three months.

3. On and after the date the fire safety standards take effect in accordance with subdivision four of this section, no cigarettes shall be sold or offered for sale in this state unless the manufacturer thereof has certified in writing to the office of fire prevention and control that such cigarettes meet the performance standards prescribed by the office of fire prevention and control pursuant to subdivision two of this section.

(a) Such certifications must be based upon testing conducted by a laboratory that has been accredited pursuant to Standard ISO/IEC 17025 of the international organization for standardization, or such other comparable accreditation standard as the office of fire prevention and control shall require by regulation.

(b) Such certification shall be signed by an officer of the manufacturer and shall contain for each cigarette brand style such information as shall be deemed necessary by the office of fire prevention and control, including but not limited to: (i) the brand and style; (ii) length in millimeters; (iii) circumference in millimeters; (iv) flavor, if applicable; (v) filter or non-filter; (vi) package description; (vii) the name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; (viii) the date that the testing occurred; and (ix) a notarized statement from an officer or director of the laboratory certifying that the cigarette meets the performance standards prescribed by the office

of fire prevention and control.

(c) If a manufacturer has certified a cigarette pursuant to this subdivision, and thereafter makes any change to such cigarette that is likely to alter its compliance with the fire safety standards mandated by this section, then before such cigarette may be sold or offered for sale in this state such manufacturer shall retest such cigarette in accordance with the testing standards prescribed by the office of fire prevention and control and maintain records of such retesting as required by subdivision seven of this section. Any such altered cigarette which does not meet the performance standard prescribed by the office of fire prevention and control may not be sold in the state. Copies of such written certifications shall be provided by the certifying manufacturer to all wholesale dealers, as defined in subdivision eight of section four hundred seventy of the tax law, and all agents, as defined in subdivision eleven of section four hundred seventy of the tax law. The office of fire prevention and control shall prescribe procedures by which stamping agents, wholesale dealers or retail dealers are notified of which cigarettes have been certified by manufacturers as meeting the performance standards prescribed by the office of fire prevention and control, which may include the maintenance of a website listing certified cigarette brands and styles.

4. The fire safety standards required pursuant to subdivision two of this section shall take effect on such date as the office of fire prevention and control shall specify in promulgating such standards and such date shall be the earliest practicable date by which manufacturers of cigarettes can comply with such standards; provided, however, that such date shall not be later than one hundred eighty days after such standards are promulgated. On and after such date, no person or entity shall sell in this state cigarettes that have not been certified by the manufacturer in accordance with subdivision three of this section or that have not been marked in the manner required by subdivision six of this section; provided, however, that nothing in this subdivision shall be construed to prohibit any person or entity from selling or offering for sale cigarettes that have not been certified by the manufacturer in accordance with subdivision three of this section and have not been marked in the manner required by subdivision six of this section if such

cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States.

5. a. Any wholesale dealer, as defined in subdivision eight of section four hundred seventy of the tax law, or any agent, as defined in subdivision eleven of section four hundred seventy of the tax law, or any other person or entity who knowingly sells or offers to sell cigarettes in violation of subdivision four of this section shall be subject to a civil penalty not to exceed one hundred dollars for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any wholesale dealer exceed one hundred thousand dollars for sales or offers to sell during any thirty day period. Any retail dealer, as defined in subdivision nine of section four hundred seventy of the tax law, who knowingly sells or offers to sell cigarettes in violation of subdivision four of this section shall be subject to a civil penalty not to exceed one hundred 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 dollars for sales or offers to sell during any thirty day period. Any person engaged in the business of selling cigarettes in or for shipment into New York who possesses cigarettes that have not been certified or marked in accordance with the requirements of this section shall be deemed to be offering such cigarettes for sale in New York. An agent licensed in more than one state may rebut such presumption by establishing: (i) that such cigarettes have been physically segregated from cigarettes offered for sale in New York; and (ii) no New York tax stamps have been placed on any cigarettes that have not been certified or marked in accordance with this section. In addition to any penalties imposed by this section the commissioner of taxation and finance, after an opportunity for a hearing has been afforded pursuant to subdivision five of section four hundred eighty of the tax law, shall suspend for six months the license of any agent issued pursuant to section four hundred seventy-two of the tax law, the license of any wholesale dealer issued pursuant to section four hundred eighty of the tax law, or the registration of any retail dealer issued pursuant to section four hundred eighty-a of the tax law, when such agent, wholesale dealer or retail dealer violates this section three or more times within a three

year period, provided such violations occurred on at least three separate calendar days.

b. In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, association or any other business entity engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to subdivision three of this section shall be subject to a civil penalty of at least seventy-five thousand dollars and not to exceed two hundred fifty thousand dollars for each such false certification, and any entity that fails to pay a civil penalty imposed pursuant to this paragraph within thirty days after such penalty is imposed, shall be subject to a bar from selling cigarettes covered by that false certification in this state until the state receives full payment of such penalty.

c. There is hereby established in the custody of the state comptroller a special fund to be known as the "Cigarette Fire Safety Act Fund". Such fund shall consist of all moneys recovered from the assessment of civil penalties authorized by this subdivision. Such monies shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for such purpose, be available to the office of fire prevention and control for the purpose of fire safety and prevention programs. All payments from the cigarette fire safety act fund shall be made on the audit and warrant of the state comptroller on vouchers certified and submitted by the state fire administrator.

6. No cigarettes shall be distributed, sold or offered for sale in this state unless the manufacturer has placed on each individual package the letters "FSC" which signifies Fire Standards Compliant. Such letters shall appear in eight point type and be permanently printed, stamped, engraved or embossed on the package at or near the UPC Code, if present. Any package containing such symbol is deemed to be in compliance with the office of fire prevention and control regulations set forth in 19 NYCRR 429.8.

7. a. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes for a period of three years, and shall

make copies of such reports available to the office of fire prevention and control and the attorney general upon written request; provided, however, that any manufacturer that fails to make copies of such reports available within sixty days of receiving such a written request shall be subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that such manufacturer does not make such copies available and shall be subject to a bar from selling or offering to sell cigarettes in New York until such copies are made available.

b. Testing performed or sponsored by the office of fire prevention and control in order to determine a cigarette's compliance with the fire safety standards mandated by this section shall be conducted (i) in accordance with the requirements applicable to manufacturers pursuant to the regulations of the office of fire prevention and control, and (ii) by a laboratory that has been accredited pursuant to Standard ISO/IEC 17025 of the international organization for standardization or such other comparable accreditation standard as the office of fire prevention and control shall require by regulation.

8. a. To enforce the provisions of this section, the commissioner of taxation and finance and the state fire administrator may take administrative action imposing the civil penalties and suspensions authorized by subdivision five of this section. In addition, the attorney general may bring an action on behalf of the people of the state of New York to enjoin acts in violation of this section and to recover any civil penalties unless civil penalties have been previously recovered in such administrative proceedings.

b. Any enforcement officer as defined in section thirteen hundred ninety-nine-t of the public health law shall have the power to impose upon any retail dealer the civil penalties authorized by subdivision five of this section, following a hearing conducted in the same manner as hearings conducted under article thirteen-E of the public health law.

c. To enforce the provisions of this section, the commissioner of taxation and finance and the state fire administrator, or their duly authorized representatives, 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 in any such 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 commissioner of taxation and finance and the state fire administrator, and their duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required.

d. Whenever any police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four and subdivision seventy-nine pertaining to the Office of Fire Prevention and Control, of section 2.10 of such law, acting pursuant to his or her special duties, shall discover any cigarettes which have not been marked in the manner required by subdivision six of this section, such officer is hereby authorized and empowered to seize and take possession of such cigarettes. Such seized cigarettes shall be turned over to the commissioner of taxation and finance, and shall be forfeited to the state. Cigarettes seized pursuant to this section shall be destroyed.

e. The commissioner of the division of homeland security and emergency services, in consultation with the state fire administrator, and the commissioner of taxation and finance are hereby authorized to promulgate such regulations as are deemed necessary to implement the provisions of this section.