

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3446/1dn

RJM:jld:rs

October 17, 2003

Senator Robson:

1. Unlike the New York legislation, this bill does not create a cigarette fire safety fund into which forfeitures for a violation of the bill must be deposited. Article 10, section 2, of the Wisconsin Constitution requires all money forfeited to the state to be deposited into the school fund. The only way to allow forfeitures for violations of this bill to be deposited into a cigarette fire safety fund would be to amend the Wisconsin Constitution.
2. This bill like, the New York legislation, requires the fire safety standards to ensure either that cigarettes stop burning within a specified time if not smoked or that cigarettes meet performance standards to limit the risk of certain household fires. Another option would be to require the fire safety standards to include both of these standards. I believe this option was part of similar legislation in Massachusetts.
3. Generally, the Department of Commerce is the agency in this state that is responsible for fire safety. The bill, therefore, requires the Department of Commerce to establish fire safety standards for cigarettes. Similarly to the New York legislation, this bill requires the attorney general to enforce the bill upon the request of the Department of Commerce. You may want to contact the Department of Commerce and the attorney general in order to determine whether this enforcement procedure is feasible. Another option would be to have district attorneys prosecute violations.
4. The nonstatutory and effective date provisions in this bill require the Department of Commerce to promulgate proposed fire safety standards for cigarettes within approximately four months after the date of the bill's enactment, but delay the effective date of the standards and the other requirements of the bill until approximately one year after the date of the bill's enactment. This delay is intended to provide sufficient time for cigarette manufacturers, wholesalers, retailers, and vending machine operators to adjust their business practices in order to conform with the new requirements. Please let me know if you do not approve of this procedure.
5. The tobacco settlement agreement this state entered into on November 23, 1998, raises a potential issue. Under the settlement agreement, this state released tobacco product manufacturers covered by the agreement from, among other things, certain claims that in any way relate to the use of tobacco products manufactured in the ordinary course of business. Arguably, the certification requirement in proposed s.

167.35 (3) (a) indirectly relates to the use of tobacco products because, under the bill, cigarettes may not be sold in this state unless a proper certification is filed. Thus, it is possible to argue that the settlement agreement would prohibit the state from enforcing proposed s. 167.35 (3) (a) against tobacco product manufacturers that are covered by the agreement.

I am by no means an expert in the complicated details of the tobacco litigation but I would be happy to discuss any questions you may have. You may also want to contact assistant attorney general Edwin Hughes to discuss this issue.

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