

2007 DRAFTING REQUEST

Bill

Received: **03/15/2007**

Received By: **mglass**

Wanted: **As time permits**

Identical to LRB:

For: **Judith Robson (608) 266-2253**

By/Representing: **Nadine Gratz**

This file may be shown to any legislator: **NO**

Drafter: **mglass**

May Contact:

Addl. Drafters:

Subject: **Buildings/Safety - fire safety**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Robson@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Fire safety standards for cigarettes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	mglass 04/20/2007 jkreye 04/20/2007	wjackson 04/26/2007	nnatzke 04/26/2007	_____	sbasford 04/26/2007		State
/2	mglass 09/06/2007 jkreye	wjackson 09/07/2007 wjackson	pgreensl 09/11/2007 rschluet	_____	sbasford 09/13/2007		State

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/3	mglass 10/29/2007 mglass 11/01/2007	wjackson 10/30/2007 wjackson 11/01/2007	pgreensl 10/31/2007 nnatzke 11/01/2007	_____	lparisi 11/01/2007	sbasford 11/12/2007	

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<END>

↪ At Intro.

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13 w/ 10/30
10/30/08
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/?	mglass	1 WLJ 4/23	nwn 4/26	nwn/pg 4/26			

FE Sent For:

<END>

M66

Parisi, Lori

From: Gratz, Nadine
Sent: Monday, March 05, 2007 11:43 AM
To: LRB.Legal
Subject: Message for Mary Gibson-Glass

Mary:

22231

Regarding bill draft LRB 1520/1 (fire-safe cigarettes), we would like to change that portion of the bill relating to the rules for fire safety standards for cigarettes sold in WI. We would like to remove the current language (167.35 (2) that calls for the Dept of Commerce to promulgate rules. We would like to replace this language with provisions that are consistent with the KY and NJ statutes which call for testing of cigarettes conducted in accordance with the ASTM standard for testing the ignition strength of cigarettes. I will fax a copy of the language to you. I believe that this language is also found in the NY law, but I'd appreciate it if you could confirm that for me.

The goal here to blunt some of the opposition to this bill by making WI law relating to the standards for this product consistent with other states' laws..

I'll also give you a call to see if you have any questions on this change. Thanks.

Nadine Gratz
266-2253

Copy -

sent to you also
via e-mail -

boston.com

THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Ky. considering 'fire-safe' cigarettes

AP Associated Press

By Bruce Schreiner, Associated Press Writer | February 22, 2007

BARDSTOWN, Ky. --Debbie Coulter said she supports the right to smoke at her restaurant, but the 52-year-old shudders when she recalls a recent incident in which she fell asleep smoking and her bathrobe caught fire.

"It scares me to death," said Coulter, whose husband helped extinguish the fire. "I could have lost everything -- my husband would have had to bury me."

But 10 others at a recent house fire in the town died after, investigators believe, a lit cigarette set a chair aflame. That fire has sparked calls from fire prevention advocates to require all cigarettes sold in the state to be "fire safe," or made to extinguish when dropped or not inhaled for a period.

"We should act quickly to make sure we don't have those kinds of tragedies in the future," said Lorraine Carli, a spokeswoman for the National Fire Protection Association, which is supporting measures in the state House of Representatives and Senate. Her group says lawmakers in at least 19 other states are considering similar legislation.

The state Senate passed a measure that would require the conversion to fire-safe cigarettes on Tuesday, and a similar one has cleared a state House of Representatives committee.

Persuading smokers to quit would be a tough proposition in Kentucky, where tobacco has deep cultural roots. The state has traditionally been one of nation's leading producers of burley tobacco, an ingredient in cigarettes. And Kentucky's 2005 adult smoking rate of 28.7 percent ranked first in the U.S.

But Carli says the push to switch to fire-safe cigarettes is not anti-smoking, it is to improve public safety.

"It has little to do with smoking and has everything to do with saving lives," she said.

Nationally, 700 to 900 people die each year from fires caused by smoking materials such as cigarettes, according to the fire prevention group.

In Kentucky, about a third of fire deaths are caused by blazes sparked by cigarettes or other smoking materials, according to State Fire Marshal Rodney Raby.

In 2004, New York became the first state to require fire-safe cigarettes to be sold, and fire officials there have noticed a difference.

"We are comfortable that the 'fire-safe' cigarettes have reduced the number of fires and fatalities," said Eamon Moynihan, a spokesman for the New York State Office of Fire Prevention and Control.

The special smokes are wrapped in thin bands of paper that work like "speed bumps" to slow the burning of cigarettes not being puffed. They extinguish when the burning tobacco reaches a "speed bump." The lower-ignition paper does not otherwise reduce the health consequences of smoking.

Philip Morris USA Inc., the nation's leading cigarette maker and subsidiary of Altria Group, has made its Merit brand in self-extinguish paper nationwide since 2000, and it hasn't really affected the brand's market share, said company spokesman David Sutton.

The company supports the Kentucky legislation, and Sutton said changing to fire-safe cigarettes shouldn't affect the price consumers will pay.

He cautioned, though, that smokers shouldn't feel lulled by fire-safe cigarettes into a false sense of security.

"There's reduced ignition propensity, which yields safer products if handled properly," he said. "What it doesn't yield, no matter how you handle it, is something that's completely fire safe or fire proof. So people have to be very careful."

R.J. Reynolds Tobacco Co. has opposed such legislation, and company spokesman David Howard said there's "no convincing evidence" that the specially made cigarettes will significantly reduce fires caused by careless handling of cigarettes.

"Identifying cigarettes as 'fire safe' certainly carries some risk of giving a false sense of security to consumers," he said. "The bottom line is even in this legislation, these products are still burned So if carelessly handled, they still may cause fires."

He said the emphasis should be put on such preventive measures as smoke detectors and fire-retardant furnishings.

Norman Shipp, 70, who was eating at a smoke-free restaurant in Bardstown, said he wants to quit smoking, but if he can't he would buy "fire-safe" cigarettes. He said he had burned holes in two pairs of jeans by falling asleep with lit cigarettes.

"Those cigarettes would be a good deal," he said. ■

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Post-It™ brand fax transmittal memo 7671		# of pages ▶ 9
To	Mary Gibson-Glass	From Nadine Gratz
Co.		Co. Sn. Robson
Dept.	LRB	Phone # 6-2253
Fax #	269-6948	Fax #

Kentucky Draft of December 13, 2006

At

AN ACT establishing reduced ignition propensity standards for cigarettes; authorizing the state fire marshal to monitor and the Attorney General to enforce such standards; establishing penalties for violations; and providing an effective date.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of this section:

(a) "Agent" shall mean any person authorized by the Department of Revenue to purchase and affix stamps on packages of cigarettes.

(b) "Cigarette" shall mean 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 except tobacco.

(c) "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 subparagraph 1 or 2 of this paragraph.

(d) "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 subparagraph 6 of paragraph (a) of subsection (2) of this Act for all test trials used to certify cigarettes in accordance with this Act.

(e) "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.

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

(g) "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.

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

(i) "Wholesale dealer" shall mean any person 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.

(2)(a) Except as provided in paragraph (g) of this subsection, 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 subsection, a written certification has been filed by the manufacturer with the state fire marshal in accordance with subsection (3) of this Act, and the cigarettes have been marked in accordance with subsection (4) 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 fire marshal.

6. Laboratories conducting testing in accordance with this subsection shall implement a quality control and quality assurance program that includes a

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 ten thousand dollars (\$10,000) for each day after the sixtieth day that the manufacturer does not make such copies available.

(e) The state fire marshal 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 subparagraph 3 of paragraph (a) of this subsection.

(f) The state fire marshal shall review the effectiveness of this subsection and report every three years to the Legislature the fire marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this subsection. The report and legislative recommendations shall be submitted no later than [date] of each three-year period.

(g) The requirements of paragraph (a) of this subsection shall not prohibit 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 if 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.

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

(3)(a) Each manufacturer shall submit the state fire marshal a written certification attesting that:

1. Each cigarette listed in the certification has been tested in accordance with subsection (2) of this Act; and
2. Each cigarette listed in the certification meets the performance standard set forth in subparagraph (3) of paragraph (a) of subsection (2) of this Act.

(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;

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 fire marshal to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this subsection.

(b) Each cigarette listed in a certification submitted pursuant to subsection (5) of this Act that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this subsection 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 fire marshal determines cannot be tested in accordance with the test method prescribed in subparagraph 1 of subsection (a) of this subsection shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subparagraph 3 of paragraph (a) of this subsection, the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to subsection (5) of this Act. If the state fire marshal 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 fire marshal 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 subsection, then the state fire marshal 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 fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under this Act. All other applicable requirements of this subsection 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 fire marshal and the Attorney General upon

6. Filter or non-filter;
7. Package description, such as soft pack or box;
8. Marking approved in accordance with subsection (4) 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 Department of Revenue for the purposes of ensuring compliance with this subsection.

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

(e) For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a two hundred fifty dollar (\$250) fee. The state fire marshal 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 "Reduced Cigarette Ignition Propensity 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 fire marshal solely to support processing, testing, enforcement and oversight activities under this Act.

(g) If a manufacturer has certified a cigarette pursuant to this subsection, 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 subparagraph 1 of paragraph (a) of subsection (2) of this Act and maintains records of that retesting as required by subsection (2) of this Act. Any altered cigarette which does not meet the performance standard set forth in subparagraph 3 of paragraph (a) of subsection (2) of this Act may not be sold in this state.

(4)(a) Cigarettes that are certified by a manufacturer in accordance with subsection (3) of this Act shall be marked to indicate compliance with the requirements of subsection (2) 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 subsection.

(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 fire marshal 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 fire marshal for approval. Upon receipt of the request, the state fire marshal shall approve or disapprove the marking offered, except that the state fire marshal shall approve any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes. Proposed markings shall be deemed approved if the state fire marshal 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 fire marshal in accordance with this subsection.

(f) Manufacturers certifying cigarettes in accordance with subsection (3) 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 subsection 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 fire marshal, the Department of Revenue, the Attorney General and their employees to inspect markings of cigarette packaging marked in accordance with this subsection.

(5)(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 subsection (2) of this Act, for a first offense shall be liable to a civil penalty not to exceed ten thousand dollars (\$10,000) per each sale of such cigarettes, and for a subsequent offense shall be liable to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per each sale of such cigarettes provided that in no case shall the penalty against any such person or entity exceed one hundred thousand dollars (\$100,000) during any thirty-day period.

(b) A retail dealer who knowingly sells cigarettes in violation of subsection (2) of this Act shall:

1. For a first offense be liable to a civil penalty not to exceed five hundred dollars (\$500), and for a subsequent offense be liable to a civil penalty not to exceed two thousand dollars (\$2,000), per each such sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale in such sale does not exceed 1,000 cigarettes; or

2. For a first offense be liable to a civil penalty not to exceed one thousand dollars (\$1,000), and for a subsequent offense be liable to a civil penalty not to exceed five thousand dollars (\$5,000), per each such sale or offer for sale of such cigarettes, if the total number of cigarettes sold or offered for sale in such sale exceeds 1,000 cigarettes

provided that this penalty against any retail dealer shall not exceed twenty-five thousand dollars (\$25,000) during a 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 subsection (3) of this Act shall, for a first offense, be liable to a civil penalty of at least seventy-five thousand dollars (\$75,000), and for a subsequent offense a civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) for each such false certification.

(d) Any person violating any other provision in this subsection shall be liable to a civil penalty for a first offense not to exceed one thousand dollars (\$1,000), and for a subsequent offense liable to a civil penalty not to exceed five thousand dollars (\$5,000), 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 subsection (2) of this Act shall be subject to forfeiture in accordance with the provisions of KRS 138.165; 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.

(f) In addition to any other remedy provided by law, the state fire marshal or Attorney General may file an action in Circuit 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 subsection, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this subsection or of rules or regulations adopted under this section constitutes a separate civil violation for which the state fire marshal or Attorney General may obtain relief.

(6)(a) The state fire marshal may promulgate administrative regulations if necessary to effectuate the purposes of this Act in accordance with the provisions of KRS Chapter 13A.

(b) The Department of Revenue in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, as authorized under the provisions of KRS 138.130 to 138.205, may inspect such cigarettes to determine if the cigarettes are marked as required by subsection (4) of this Act. If the cigarettes are not marked as required, the Department of Revenue shall notify the state fire marshal.

(7) To enforce the provisions of this Act, the Attorney General and the state fire marshal 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 and the state fire marshal the means, facilities and opportunity for the examinations authorized by this subsection.

(8) There is hereby established in the State Treasury a special fund to be known as the "Fire Prevention and Public Safety Fund." The fund shall consist of all monies recovered as penalties under subsection (5) 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 fire marshal to support fire safety and prevention programs.

(9) 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 subsection (2) 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.

(10) This Act shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this Act is adopted and becomes effective.

(11) Notwithstanding any other provision of law, the local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this Act or with any policy of this state expressed by this Act, whether that policy be expressed by inclusion of a provision in this Act or by exclusion of that subject from this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

Effective Date: This Act shall take effect on [insert date one year following the close of the session].

3007
D-Note
Wlj

4-20-07

2007
2005 SENATE BILL 398

October 21, 2005 - Introduced by Senators ROBSON, BROWN, RISSER and HANSEN, cosponsored by Representatives MOLEPSKE, KREIBICH, BERCEAU, SHERIDAN, WASSERMAN, FIELDS and BENEDICT, by request of Professional Firefighters of Wisconsin; Brad Liggett, City of Beloit Fire Chief; Larry Grorud, City of Janesville Fire Chief; City of Two Rivers Fire Department; Manitowoc County Tobacco Control Coalition; Association of Local Health Departments and Boards (WALHDAB); American Heart Association, Greater Midwest Affiliate; and American Lung Association of Wisconsin. Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

Regen

LPS: Please PWF in 20.143(3)(j).

1 **AN ACT to amend** 20.143 (3) (j); and **to create** 101.19 (1) (k), 165.25 (4) (ag) and
2 167.35 of the statutes; **relating to:** ~~establishing~~ ^{performance} fire safety standards for
3 cigarettes, granting rule-making authority, making an appropriation, and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law does not require cigarettes to meet any standards with regard to fire safety. This bill requires the Department of Commerce (department), by rule, to establish fire safety standards that all cigarettes sold or offered for sale in this state must meet. In particular, the fire safety standards must require cigarettes to stop burning within a specified period of time if the cigarettes are not smoked and must require cigarettes to meet performance standards with regard to reducing the risk of certain household fires.

Under the bill, every cigarette manufacturer that seeks to permit cigarettes it manufactures to be sold or offered for sale in this state must certify to the department that the cigarettes meet all applicable fire safety standards. The manufacturer must also provide a copy of this certification to each wholesaler that is authorized to sell cigarettes in this state and that purchases the cigarettes from the manufacturer. With certain limited exceptions, the bill prohibits the sale of uncertified cigarettes in this state.

SENATE BILL 398

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

This is a preliminary draft. An analysis will be provided in a later version.

1 SECTION 1. 20.143 (3) (j) of the statutes is amended to read:
2 20.143 (3) (j) *Safety and building operations.* The amounts in the schedule for
3 the purposes of chs. 101, 145, and 168 and ss. 167.35, 236.12 (2) (a), 236.13 (1) (d) and
4 (2m), and 236.335. All moneys received under ch. 145, ss. 101.177 (4) (a) 4., 101.178,
5 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.9205 (3), 101.9208 (1) (b),
6 101.9213 (8), 101.935, 101.951 (2), 101.952 (2), 101.955 (2), 101.973 (7), and 236.12
7 (7), and 2001 Wisconsin Act 16, section 9110 (3z), shall be credited to this
8 appropriation.

except moneys received under s. 101.9208 (2m), and all moneys transferred under 2005 Wisconsin Act 45, section 76 (6) 3

9 SECTION 2. 101.19 (1) (k) of the statutes is created to read:
10 101.19 (1) (k) Processing certifications filed by cigarette manufacturers under
11 s. 167.35 (3) (a) (2) (a)

12 SECTION 3. 165.25 (4) (ag) of the statutes is created to read:
13 165.25 (4) (ag) The department of justice shall furnish legal services upon
14 request of the department of commerce under s. 167.35 (6).

15 SECTION 4. 167.35 of the statutes is created to read:
16 **167.35 Fire safety standards for cigarettes.** (1) DEFINITIONS. In this
17 section:

18 (a) "Cigarette" means any roll of tobacco wrapped in paper or any substance
19 other than tobacco.

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SENATE BILL 398

1 (b) "Cigarette vending machine" means any mechanical device that
2 automatically dispenses cigarettes when money or tokens are deposited in the device
3 in payment for the cigarettes.

4 (c) "Cigarette vending machine operator" means a person who acquires
5 cigarettes and sells them through the use of cigarette vending machines that the
6 person owns, operates, or services and that are located on premises that are owned
7 or under the control of other persons.

8 (d) "Department" means the department of commerce.

9 (e) "Wholesaler" means a person who has a permit authorizing the person to
10 sell cigarettes at wholesale in this state to any of the following:

- 11 1. A person who sells cigarettes at retail.
- 12 2. A cigarette vending machine operator.
- 13 3. Another person who sells cigarettes at wholesale.

14 (2) FIRE SAFETY STANDARDS. The department shall promulgate rules
15 establishing fire safety standards for all cigarettes sold or offered for sale in this
16 state. The rules shall establish standards that reduce the risk of fire caused by
17 cigarettes. In promulgating the rules, the department shall consult with the
18 department of health and family services to ensure that the rules do not establish
19 fire safety standards that result in increased health risks to individuals who smoke
20 cigarettes. The rules shall establish at least one of the following fire safety standards
21 for all cigarettes sold or offered for sale in this state, in addition to other fire safety
22 standards that the department of commerce determines are appropriate:

23 (a) A standard that the cigarettes, if ignited, stop burning within a time period
24 specified in the rules if no individual inhales through the cigarettes during that
25 period.

SENATE BILL 398

1 (b) A standard that the cigarettes meet performance standards specified in the
2 rules that are established for the purpose of limiting the risk that the cigarettes will
3 ignite upholstered furniture, mattresses, or other household furnishings.

4 (3) CERTIFICATION FILED BY CIGARETTE MANUFACTURER. (a) Each cigarette
5 manufacturer that seeks to permit cigarettes it manufactures to be sold or offered
6 for sale in this state shall file a written certification with the department, certifying
7 that the cigarettes meet all applicable fire safety standards contained in the rules
8 promulgated under sub. (2). Upon filing a certification under this subsection, a
9 cigarette manufacturer shall provide a copy of the certification to every wholesaler
10 that purchases the cigarettes that are the subject of the certification from the
11 cigarette manufacturer.

12 (b) The department shall promptly forward a copy of each certification it
13 receives under par. (a) to the attorney general. The department shall establish a
14 procedure by which persons who sell cigarettes at retail in this state and cigarette
15 vending machine operators in this state may obtain notification of which cigarettes
16 are the subject of a certification filed under par. (a).

17 (c) The department shall establish a fee under s. 101.19 (1) ~~(k)~~ for processing
18 certifications filed under par. (a).

19 (4) SALE OF UNCERTIFIED CIGARETTES PROHIBITED. (a) Except as provided in par.
20 (b), no person may sell cigarettes in this state, unless the cigarettes are the subject
21 of a certification filed under sub. (3) (a).

22 (b) Paragraph (a) does not prohibit any person from selling cigarettes or
23 offering to sell cigarettes that are not the subject of a certification filed under sub.

24 (3) (a), if the cigarettes are to be sold in another state or outside of the United States.

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SENATE BILL 398

1 (5) PENALTIES. (a) Any wholesaler who knowingly sells cigarettes at wholesale
2 in violation of sub. (4) (a) may be required to forfeit not more than \$10,000 for each
3 sale.

4 (b) Any person other than a wholesaler who knowingly sells cigarettes in
5 violation of sub. (4) (a) may be required to forfeit:

- 6 1. Not more than \$500 for each sale of not more than 1,000 cigarettes.
- 7 2. Not more than \$1,000 for each sale of more than 1,000 cigarettes.

8 (c) Any cigarette manufacturer that knowingly files a false certification under
9 sub. (3) (a) may be required to forfeit not more than \$10,000. Each false certification
10 constitutes a separate offense.

11 (6) ENFORCEMENT. The attorney general shall take all necessary action, upon
12 the request of the department, to enforce compliance with subs. (2) and (4) and rules
13 promulgated under sub. (2).

SECTION 5. Nonstatutory provisions.

(1) PROMULGATION OF FIRE SAFETY STANDARDS. Not later than the first day of the
12th month beginning after the effective date of this subsection, the department of
commerce shall submit in proposed form the rules required under section 167.35 (2)
of the statutes, as created by this act, to the legislative council staff under section
227.15 (1) of the statutes.

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(8) date (ff) SECTION 6. Effective dates. This act takes effect on the first day of the 18th
month beginning after publication, except as follows:

(1) PROMULGATION OF FIRE SAFETY STANDARDS. SECTION 5 (1) of this act takes effect
on the day after publication.

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extra spaces.

fire safety

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Current law does not require cigarettes to meet any standards with regard to fire safety. Under this bill, cigarettes sold in Wisconsin must meet the performance standard specified in the bill. The performance standard requires that not more than 25 percent of the cigarettes tested may exhibit full-length burns. The bill establishes requirements for the testing procedures and also allows a cigarette manufacturer to submit to the Department of Commerce (Commerce) an alternative method and testing and performance standards if Commerce determines that a type or brand of cigarette made by the manufacturer cannot be tested using the method specified in the bill.

establishes

The bill requires the manufacturer to file a written certification with Commerce stating the cigarettes it seeks to sell in Wisconsin meet the performance standard. The manufacturer must also provide a copy of this certification to each wholesale that is authorized to sell cigarettes in this state. The bill also requires the manufacturer to mark cigarette packaging to show that the cigarettes being sold are covered by a certification. FE - S

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(e) "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.

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(2) CERTIFICATION FILED BY CIGARETTE MANUFACTURERS. (a) Each cigarette manufacturer that seeks to permit cigarettes it manufactures to be sold or offered for sale in this state shall file a written certification with the department, certifying that the cigarettes meet the applicable performance standard under sub. (3). Upon filing a certification under this subsection, a cigarette manufacturer shall provide a copy of the certification to every wholesaler that purchases from the manufacturer cigarettes that are the subject of the certification.

fire safety

Insert 4-24

(3) TESTING METHODS; PERFORMANCE STANDARDS. (a) *Method of testing.* For purposes of this section, testing of cigarettes shall meet all of the following requirements:

1 1. The testing shall be conducted in accordance with the standard test method
 2 for measuring the ignition strength of cigarettes established by ~~the~~ American
 3 Society of Testing and Materials.

4 2. The testing shall be conducted on 10 layers of filter paper and shall consist
 5 of ⁴⁰forty replicate tests for each cigarette tested.

6 3. Each laboratory conducting the testing shall implement a quality control
 7 program that meets the requirements under par. (b) ^{extra space} and that includes a procedure
 8 that will determine the repeatability of the results from the testing. The
 9 repeatability value may not be ~~any~~ greater than 0.19.

10 (b) *Quality control and assurance program.* For purposes of par. (a) 3. a quality
 11 control program shall include a laboratory procedure that ensure^s that operator bias,
 12 systemic and nonsystemic methodological errors, and equipment-related problems
 13 do not affect the results of the testing conducted in accordance with the procedure.

14 (c) *Performance standard.* 1. A testing of cigarettes shall ^{does not} meet the ^{applicable fire} performance ^{safety}
 15 standard ^{unless} ~~only if~~ no more than 25 percent of the cigarettes tested as required under
 16 par. (a) exhibit full-length burns.

17 2. For purposes ^{of} testing under this ^{subsection} ~~section~~, each type of ^{of} cigarette tested that
 18 uses lowered permeability bands in the cigarette paper in order to meet the
 19 ^{fire safety} performance standard under subd 1. shall meet one of the following requirements:

20 a. For a cigarette that has bands positioned by design, the cigarette shall have
 21 at least 4 nominally identical ~~of~~ complete bands on the paper surrounding the tobacco
 22 column. At least one of these bands shall be located at least 15 millimeters from the
 23 lighting end of the tobacco column and at least 2 of the bands shall be located at least
 24 10 millimeters from the filter end of the tobacco column, or at least 10 millimeters
 25 from the labeled end of the tobacco column ^{for} a nonfiltered cigarette.

1 b. For a cigarette that does not have bands positioned by design, the cigarette
 2 shall have at least 2 nominally identical complete bands on the paper surrounding
 3 the tobacco column. At least one of these band shall be located a least 15 millimeters
 4 from the lighting end of the tobacco column.

5 (d) *Alternative testing method and performance standards.* 1. If the
 6 department determines that a type or brand of cigarette cannot be tested in
 7 accordance with the requirements under par. (a), the manufacturer of the type or
 8 brand shall propose an alternative testing method and ^{alternative fire safety} alternate performance
 9 standard for approval by the department.

10 2. If the department determine^s that the alternative ^{fire safety} performance standard
 11 proposed under subd. 1. is equivalent to the applicable performance standard under
 12 par. (c) and determines that the alternative testing method^s is effective for testing
 13 for the alternative performance standard, the department shall approve the
 14 alternative testing method and the alternative performance standard for use by the
 15 manufacturer.

16 (e) *Use of other state's alternatives.* In lieu of approving an alternative testing
 17 method and alternative performance standard under par. (d), the department may
 18 review the cigarette fire safety requirements enacted or otherwise adopted by
 19 another state. If the department determines that the safety requirements are
 20 comparable to the safety requirements under this section, ^{the same} that the other state's
 21 safety requirements specify the same testing method and performance standard that
 22 are specified in pars. (a) and (c), and that the other state has approved an alternative
 23 testing method and alternative performance standard as meeting the requirements
 24 under that state's cigarette fire safety requirements, the department shall allow a
 25 cigarette manufacturer to use the results of the other state's alternative testing

1 method and alternative performance standard for purpose of certification under sub.
 2 (2) (a), unless the department determines that it is not reasonable for the results to
 3 be used for this purpose.

4 (4) MARKING OF CIGARETTES. (a) Each manufacturer of cigarettes that are the
 5 subject of a certification filed under sub. (2) (a) shall mark the cigarettes to show
 6 that the cigarettes meet the applicable performance standard under sub. (3). The
 7 marking shall be in 8 point font type or larger and shall be a modification of the
 8 universal product code that results in a visible mark being printed at or around the
 9 area of the universal product code. The visible mark shall consist of one of the
 10 following:

11 1. Alphanumeric or symbolic characters permanently stamped, engraved,
 12 embossed or printed in conjunction with the universal product code.

13 2. A visible combination of alphanumeric or symbolic characters permanently
 14 stamped, engraved, embossed, or printed upon the cigarette package or cellophane
 15 wrap.

16 3. Printed, stamped, engraved or embossed text that indicates that the
 17 cigarettes meet the applicable performance standard under sub. (3).

18 (b) A cigarette manufacturer shall use only one marking and shall use this
 19 marking uniformly for all types and brands of cigarettes marketed by the
 20 manufacturer and shall apply this marking to all packs, cartons, cases and other
 21 packages containing the cigarettes.

22 (c) Prior to the certification of a type or brand of cigarette, a cigarette
 23 manufacturer shall present its proposed marking to the department for approval.
 24 Upon receipt of the request, the department shall approve or disapprove the marking
 25 presented. If the department fails to act within 10 business days after receiving a

1 ~~request for approval~~ the proposed marking ^{the marking} shall be considered to have been
2 approved by the department.

3 (5) PROHIBITION ON SALES. (a) Except as provided in par. (b), no person may sell
4 cigarettes unless the cigarettes are the subject of a certification filed under sub. (2)
5 (a) and the cigarettes are marked in compliance with sub. (4).

6 (b) A person may sell cigarettes in this state that are not the subject of a
7 certification under sub. (2) (a) and not marked in compliance with sub. (4) if the
8 stamps acquired under s. 139.32 were affixed to the cigarette packages prior to the
9 effective date of this paragraph... [revisor inserts date] and if the quantity of such
10 cigarettes in the person's possession prior to the effective date of this paragraph ...
11 [revisor inserts date] is comparable to the quantity of cigarettes in the person's
12 possession during the same period of the previous year.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2251/1dn
MGG:wlj:wnw

April 26, 2007

Attention: Nadine Gratz

1. I have incorporated the parts of the Kentucky legislation, which is based on the Model Act, that were marked in the materials I was provided. However, this legislation, and the model act itself, are at times difficult to follow. ~~In order~~ to incorporate this language into the existing language found in 2005 Senate Bill 398 (LRB-2231/1) and to conform to our drafting goals, principals, and conventions, substantial changes needed to be made. Please have all interested parties review this bill very carefully.
2. Even though it was not requested, I thought there needed to be some marking requirements in order for the prohibition against sales to be easily enforced. See s. 167.35 (4).
3. Note that the "trigger" for being able to use alternative testing methods and alternative performance standards is that Commerce determines that the cigarette involved cannot be tested using the testing method specified in the bill. OK?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2251/1dn
MGG:wlj:wnw

April 26, 2007

Attention: Nadine Gratz

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Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

Laurie Plessala Duperier

Vice President and
Associate General Counsel

Altria Corporate Services, Inc.
101 Constitution Avenue, NW
Suite 400 W
Washington, DC 20001



Altria

202 354-1579
917 663-3661
202 354-1581 fax
laurie.duperier@altria.com

2007 Bill

AN ACT to amend 20.143 (3) (j); and to create 101.19 (1) (L), 165.25 (4) (ag) and 167.35 of the statutes; relating to: fire safety performance standards for cigarettes, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law does not require cigarettes to meet any standards with regard to fire safety. Under this bill, cigarettes sold in Wisconsin must meet the fire safety performance standard specified in the bill. The performance standard requires that not more than 25 percent of the cigarettes tested may exhibit full-length burns. The bill establishes requirements for the testing procedures and allows a cigarette manufacturer to submit to the Department of Commerce (Commerce) an alternative testing method and alternative performance standards if Commerce determines that a type or brand of cigarette made by the manufacturer cannot be tested using the method specified in the bill.

The bill requires the manufacturer to file a written certification with Commerce stating the cigarettes it seeks to sell in Wisconsin meet the fire safety performance standard. The manufacturer must also provide a copy of this certification to each wholesaler that is authorized to sell cigarettes in this state. The bill also requires the manufacturer to mark cigarette packaging to show that the cigarettes being sold are covered by a certification.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.143 (3) (j) of the statutes is amended to read:

20.143 (3) (j) Safety and building operations. The amounts in the schedule for the purposes of chs. 101, 145, and 168 and ss. 167.35, 236.12 (2) (a), 236.13 (1) (d) and (2m), and 236.335. All moneys received under ch. 145, ss. 101.177 (4) (a) 4., 101.178, 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.955 (2), 101.973 (7), and 236.12 (7), except moneys received under s. 101.9208 (2m), and all moneys transferred under 2005 Wisconsin Act 45, section 76 (6), shall be credited to this appropriation.

SECTION 2. 101.19 (1) (L) of the statutes is created to read:

101.19 (1) (L) Processing certifications filed by cigarette manufacturers under s. 167.35 (2) (a).

Comment [#1]: PMUSA believes that reduced ignition propensity cigarettes should not be called "fire safe" because nothing that burns is "fire safe". The phrase "reduced cigarette ignition propensity" (RCIP) is used in the NFPA Model RCIP law, and in other states' RCIP laws.

*reduced
cigarette
ignition
propensity*

SECTION 3. 165.25 (4) (ag) of the statutes is created to read:

165.25 (4) (ag) The department of justice shall furnish legal services upon request of the department of commerce under s. 167.35 (7).

SECTION 4. 167.35 of the statutes is created to read:

167.35 Fire safety standards for cigarettes. (1) DEFINITIONS. In this section:

(a) "Agent" means any person licensed by the department of revenue to purchase and affix adhesive or meter stamps on packages of cigarettes.

(ab) "Cigarette" means any roll of tobacco wrapped in paper or in any substance other than tobacco.

(bc) "Cigarette vending machine" means any mechanical device that automatically dispenses cigarettes when money or tokens are deposited into the device in payment for the cigarettes.

(ed) "Cigarette vending machine operator" means a person who acquires cigarettes and sells them through the use of cigarette vending machines that the person owns, operates, or services and that are located on premises that are owned or under the control of other persons.

(e) "Cigarette Manufacturer" means:

1. Any person who 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 which becomes a successor of an entity described in subd. 1. or 2.

(df) "Department" means the department of commerce.

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

(h) "Retail dealer" means any person, other than a (cigarette manufacturer) or wholesale dealer, engaged in selling cigarettes or tobacco products.

(i) "Sale" means 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

Comment [#2]: The proposed additions to the definitions provisions would conform the proposed Wisconsin RCIP bill to other state RCIP laws and clarify which entities and transactions are subject to the requirements in the RCIP law.

Subj in 167

recognizing dealer roles

jt

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.

(j) "Sell" means to sell, or to offer or agree to do the same.

(k) "Wholesaler" means a person, other than a cigarette manufacturer, who has a permit authorizing the person to sell cigarettes at wholesale in this state to any of the following:

1. A person who sells cigarettes at retail.
2. A cigarette vending machine operator.
3. Another person who sells cigarettes at wholesale.

(2) CERTIFICATION FILED BY CIGARETTE MANUFACTURERS. (a) Each cigarette manufacturer that seeks to permit cigarettes it manufactures to be sold or offered for sale in this state shall file a written certification with the department, certifying that each cigarette listed in the certification has been tested in accordance with the test method under sub. (3) and the cigarettes meets the applicable fire safety performance standard under sub. (3).

(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 sub. (4);
9. The name, address and telephone number of the laboratory, if different than the cigarette manufacturer that conducted the test; and
10. The date that the testing occurred.

(c) Upon filing a certification under this subsection, a cigarette manufacturer shall provide a copy of the certification to every wholesaler and agent that purchases from the manufacturer cigarettes that are the subject of the certification. Cigarette manufacturers shall also provide to every such wholesaler and agent sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to sub. (4) for each retail dealer to which the

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Comment [#3]: The proposed additions to the certification provision would make the bill consistent with other states' RCIP laws and ensure consistency among manufacturers concerning the information that should be included with certifications filed in Wisconsin.

Brand
Basis for fees

Comment [#4]: This addition would make the bill consistent with the NY RCIP law, the NFPA Model law and other states' RCIP laws and ensures that all entities involved in cigarette distribution are provided information enabling them to recognize cigarettes which are marked in accordance with the Wisconsin RCIP law.

new in 74

notes to

wholesaler or agent sells cigarettes. Wholesalers and agents shall provide a copy of these package markings received from cigarette manufacturers to all retail dealers to which they sell cigarettes.

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

(b)(c) The department shall promptly forward a copy of each certification it receives under par. (a) to the attorney general. The department shall establish a procedure by which persons who sell cigarettes at retail in this state and cigarette vending machine operators in this state may obtain notification of which cigarettes are the subject of a certification filed under par. (a).

No (e) For each cigarette listed in a certification, a cigarette manufacturer shall pay to the department a \$250 fee for processing certifications filed under par. (a). The department 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 section.

(g) If a cigarette manufacturer has certified a cigarette pursuant to this subsection, and thereafter makes any change to such cigarette that is likely to alter its compliance with the fire safety standards required by this section, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests such cigarette in accordance with the testing standards set forth in sub. (3) and maintains records of such retesting as required by sub. (3). Any such altered cigarette which does not meet the performance standard set forth in sub. (3) may not be sold in this state.

(3) TESTING METHODS; PERFORMANCE STANDARDS. (a) Method of testing. For purposes of this section, testing of cigarettes shall meet all of the following requirements:

1. The testing shall be conducted in accordance with the standard E2187-04, "Standard test method for measuring the ignition strength of cigarettes" established by the American Society of Testing and Materials (ASTM).

2. The testing shall be conducted on 10 layers of filter paper. Forty and shall consist of 40 replicate tests shall comprise a complete test trial for each cigarette tested. The performance standard required by par. (c) shall only be applied to a complete test trial.

3. Each laboratory conducting the testing shall implement a quality control and assurance program that meets the requirements under par. (b) and that includes a procedure that will determine the repeatability of the results from the testing. The repeatability value may not be greater than 0.19.

4. 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 department.

Comment [#5]: This addition would make the bill consistent with other states' RCIP laws by calling for periodic recertification of cigarettes.

Comment [#6]: See comment #4, above. The addition made above makes it unnecessary for the department to establish a separate procedure for providing notice of markings to persons who sell cigarettes.

Comment [#7]: This proposed addition would make the bill consistent with the NFPA Model RCIP law and other state RCIP laws that call for a certification fee and its periodic adjustment.

Comment [#8]: This proposed addition would make the bill consistent with the NY RCIP law, the NFPA Model law and other states' RCIP laws by identifying the specific ASTM test method for use when testing cigarettes for compliance with the RCIP performance standard.

Comment [#9]: These edits make the bill consistent with the NY RCIP law, the NFPA Model law and other states' RCIP laws by identifying the specific ASTM test method for use when testing cigarettes for compliance with the RCIP performance standard.

Comment [#10]: As drafted, this provision of the bill could be interpreted to modify the standard for performing test trials on cigarettes to determine compliance with the RCIP performance standard. The proposed additions would make the bill consistent with the NY RCIP law, the NFPA Model and other states' RCIP laws and make clear that the performance standard specified in par. (c) (i.e. no more than 25 percent of the cigarettes tested shall exhibit full-length burns) applies only to a completed test trial which consists of 40 replicate tests.

Comment [#11]: This proposed addition would make the bill consistent with the NY RCIP law, the NFPA Model law and other states' RCIP laws and ensure that all parties should be required to conduct testing of commercial products in labs that are fully accredited.

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Do not
my notes*

*up to Wisconsin
up to NY*

make it no problemo

unconformable with open ended fee

*compliance
good idea
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all state

OK

*A
seeps*

(b) Quality control and assurance program. For purposes of par. (a) 3. a quality control and assurance program shall include a laboratory procedure that ensures that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing ~~conducted in accordance with the procedure.~~ Such a program ensures that the testing repeatability remains within the required repeatability values stated in par. (a) 3. for all test trials used to certify cigarettes in accordance with this section.

consistent

Comment [#12]: This proposed addition would make the bill consistent with other states' RCIP laws by clarifying the standard that must be met by the laboratory quality assurance program required.

(c) Fire safety performance standard. 1. A testing of cigarettes does not meet the applicable fire and safety performance standard unless ~~n~~ No more than 25 percent of the cigarettes tested as required under in accordance with par. (a) shall exhibit full-length burns.

2. For purposes of testing under this subsection, ~~e~~ Each type of cigarette listed in a certification pursuant to sub. (2) tested that uses lowered permeability bands in the cigarette paper in order to meet the fire safety performance standard under subd. 1. shall meet one of the following requirements 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.

all states

Comment [#13]: As drafted, the bill would double the number of bands that must be used on cigarettes that rely on banded paper to meet the RCIP performance standard that is in effect in New York and in other states that have enacted RCIP laws and would require manufacturers to produce cigarettes differently and specifically for sale in Wisconsin. These proposed edits would make the provisions in the bill consistent with language appearing in the NFPA Model RCIP law and other states' RCIP laws concerning the use of "banded paper" to achieve RCIP compliance.

Should be 2

a. For a cigarette that has bands positioned by design, the cigarette shall have ~~at least 4~~ at least 2 nominally identical complete bands on the paper surrounding the tobacco column. At least one of these bands shall be located at least 15 millimeters from the lighting end of the tobacco column and at least 2 of the bands shall be located at least 10 millimeters from the filter end of the tobacco column, or at least 10 millimeters from the labeled end of the tobacco column for a nonfiltered cigarette.

b. For a cigarette that does not have bands positioned by design, the cigarette shall have at least 2 nominally identical complete bands on the paper surrounding the tobacco column. At least one of these band shall be located a least 15 millimeters from the lighting end of the tobacco column.

all states

(d) Alternative testing method and performance standards. 1. If the department determines that a type or brand of cigarette cannot be tested in accordance with the test method requirements under par. (a), the manufacturer of the type or brands such cigarette shall propose an alternative testing method and alternative fire safety performance standard for approval by the department.

2. If the department determines that the alternative fire safety performance standard proposed under subd. 1. is equivalent to the applicable fire safety performance standard under par. (c) and determines that the alternative testing method is effective for testing for the alternative performance standard, the department shall approve the alternative testing method and the alternative performance standard for use by the manufacturer.

for consistency no bigger

(e) Use of other state's alternatives. In lieu of approving an alternative testing method and alternative fire safety performance standard under par. (d), the department

determines that may review the cigarette fire safety requirements enacted or otherwise adopted by another state include a test method and performance standard that are the same. If the department determines that the safety requirements are comparable to the safety requirements as those under this section, that the other state's safety requirements specify the same testing method and the same performance standard that are specified in pars. (a) and (c), and that the other state has approved an the proposed alternative testing method and alternative performance standard as meeting the requirements under that state's cigarette fire safety requirements, the department shall allow a cigarette manufacturer to use the results of employ the other state's alternative testing method and alternative performance standard for the purpose of certification under sub. (2) (a), unless the department demonstrates a reasonable basis determines that it is not reasonable why the alternative test should not be for the results to be used for this purpose. All other applicable requirements of this section shall apply to the cigarette manufacturer.

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

(g) Testing performed or sponsored by the department to determine a cigarette's compliance with the performance standard required by this subsection shall be conducted in accordance with this subsection.

(h) The department may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding 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 ASTM Standard E2187-04 and the performance standard under par. (c).

(i) Each cigarette 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 such reports available to the department and the attorney general upon written request. Any cigarette 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 the manufacturer does not make such copies available.

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

(4) MARKING OF CIGARETTES. (a) Each manufacturer of cigarettes that are the subject of a certification filed under sub. (2) (a) shall mark the cigarettes to show that the cigarettes meet the applicable fire safety performance standard under sub. (3). The marking shall be in 8-point type or larger and shall be a modification of the universal product code that results in a visible mark being printed at or around the area of the universal product code. The visible mark shall consist of one of the following:

- 1. Alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the universal product code.

Comment [#14]: These proposed edits would make the provisions in the bill consistent with the language appearing in the NY RCIP law, the NFPA Model law and other states' RCIP laws concerning when a manufacturer of a non-traditional product would be permitted to use alternative testing and a performance standard that already has been authorized for use in a state that has the same substantive RCIP requirements.

Comment [#15]: This proposed addition would make the bill consistent with the NFPA Model law and other state RCIP laws and ensures that a manufacturer does not have to perform duplicative testing from state to state when a cigarette already has been tested in accordance with the same test method and meets the same performance standard specified in the Wisconsin RCIP law.

Comment [#16]: This proposed addition would make the bill consistent with the NY RCIP law, the NFPA Model law and other state RCIP laws. The provision helps to ensure uniformity and consistent application of the RCIP standard by requiring that all parties conduct testing of commercial cigarettes in accordance with the same requirements.

Comment [#17]: This proposed addition would make the bill consistent with the NY RCIP law, the NFPA Model law and other state RCIP laws. The provision helps state officials ensure that manufacturers create and maintain documents that demonstrate their compliance with the RCIP law requirements.

Comment [#18]: Similar language is contained in the NFPA Model RCIP law and the RCIP laws of numerous other states and ensures that the performance standard and test method are implemented consistently from state to state.

not WI. specific

See P 4

State law

will follow

all other

Impost

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

3. Printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the applicable performance standard under sub. (3).

(b) A cigarette manufacturer shall use only one marking, shall use this marking uniformly for all types and brands of cigarettes marketed by the manufacturer, and shall apply this marking to all packs, cartons, cases, and other packages containing the cigarettes.

(c) Prior to the certification of a type or brand of cigarette, a cigarette manufacturer shall present its proposed marking to the department for approval. Upon receipt of the proposed marking, the department shall approve or disapprove the marking presented, except that the department 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 eight point type or larger and permanently printed, stamped, engraved, or embossed on the package at or near the universal product code.

If the department fails to act within 10 business days after receiving the proposed marking, the marking shall be considered to have been approved by the department.

(d) No cigarette manufacturer shall modify its approved marking unless the modification has been approved by the department in accordance with this subsection.

(5) PROHIBITION ON SALES. (a) Except as provided in par. (b), no person may sell or offer for sale cigarettes in this state, or sell or offer to sell cigarettes 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 sub. (3), are the subject of a certification filed under sub. (2) (a) and and the cigarettes are marked in compliance with sub. (4).

(b) The requirements of par. (a) shall not prohibit:

1. A person may sell cigarettes in this state that are not the subject of a certification under sub. (2) (a) and not marked in compliance with sub. (4) Wholesalers or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this paragraph [revisor inserts date] if the wholesaler or retail dealer can establish that if the stamps acquired under s. 139.32 were affixed to the cigarette packages prior to the effective date of this paragraph [revisor inserts date], and if the quantity of such cigarettes in the person's possession prior to the effective date of this paragraph [revisor inserts date], is comparable to the quantity of cigarettes in the person's possession during the same period of the previous 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

ESL

Comment [#19]: The proposed edits to the marking provisions would make the bill consistent with similar language in the RCIP laws of numerous other states and reduces the possibility that a manufacturer will be required to use different package markings in different states for the same RCIP cigarettes.

✓

Comment [#20]: This proposed amendment makes the bill consistent with the NFPA Model RCIP law and other state RCIP laws to clarify that cigarettes which have not been tested and shown to meet the RCIP standard may not be sold in the state.

necessary

Comment [#21]: This proposed amendment adds language which appears in the NFPA Model RCIP law and other state RCIP laws and would exempt cigarettes that are produced solely for consumer testing and which are not made available for general commercial distribution.

conducted by a cigarette 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.

(6) PENALTIES. (a) A cigarette manufacturer, wholesaler, agent or any other person who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of sub. (5) (a), may be required to forfeit not more than \$100 for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any such person exceed \$100,000 during any thirty-day period. Any wholesaler who knowingly sells cigarettes at wholesale in violation of sub. (5) (a) may be required to forfeit not more than \$10,000 for each sale.

(b) Any person other than a wholesaler who knowingly sells cigarettes in violation of sub. (5) (a) may be required to forfeit:

1. Not more than \$500 for each sale of not more than 1,000 cigarettes.

2. Not more than \$1,000 for each sale of more than 1,000 cigarettes, provided that in no case shall the penalty against any such person exceed \$25,000 for sales or offers to sell during any thirty-day period.

(c) Any cigarette manufacturer that knowingly files a false certification under sub. (2) (a) may be required to forfeit not more than \$10,000. Each false certification constitutes a separate offense.

(7) ENFORCEMENT. The attorney general shall take all necessary action, upon the request of the department, to enforce compliance with subs. (2) and (4).

(a) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by sub. (3) shall be subject to forfeiture. Cigarettes forfeited pursuant to this subsection 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.

(b) In addition to any other remedy provided by law, the department or attorney general may file an action in circuit court for a violation of this section, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this section, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this section or of rules or regulations adopted under this section constitutes a separate civil violation for which the department or attorney general may obtain relief.

(c) Whenever any law enforcement personnel or duly authorized representative of the department shall discover any cigarettes that have not been marked in the manner required by sub. (4) 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 revenue, and shall be forfeited to the state. Cigarettes seized pursuant to this subsection shall be destroyed; provided,

Comment [#22]: Proposed edits to this section conform the penalty provisions with recent changes to the New York RCIP law, the NFPA Model RCIP law and other state RCIP laws.

*le Kops
check intent*

Comment [#23]: Proposed edits to this section conform the enforcement provisions with the NFPA Model RCIP law and other state RCIP laws and provide for remedies available to the state, including seizure of unmarked cigarettes and forfeiture of cigarettes that are shown not to comply with the RCIP performance standard.

*Beefed up in
NY.
seize/destroy*

JK

RPN

JK

commerce

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.

(d) The department of revenue in the regular course of conducting inspections, as authorized under s. 139.39, may inspect such cigarettes to determine if the cigarettes are marked as required by sub. (4). If the cigarettes are not marked as required, the department of revenue shall notify the department.

(e) To enforce the provisions of this section, the attorney general, the department of revenue, and the department, 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 department of revenue, and the department, their duly authorized representatives, and other law enforcement personnel the means, facilities, and opportunity for the examinations authorized by this subsection.

(8) SALE OUTSIDE OF WISCONSIN. Nothing in this section shall be construed to prohibit any person from manufacturing or selling cigarettes that do not meet the requirements of this section 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 such cigarettes will not be sold or offered for sale to persons located in this state.

SECTION 5. Preemption and local regulation.

(a) This act shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this act is adopted and becomes effective.

(b) Notwithstanding any other provision of law, the local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this act or with any policy of this state expressed by this act, whether that policy be expressed by inclusion of a provision in the act or by exclusion of that subject from the act.

SECTION 56. Effective date.

(1) This act takes effect on the first day of the 18th month beginning after publication.

(END)

tax stamp & marks

JK

JK

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*Sunset
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law*

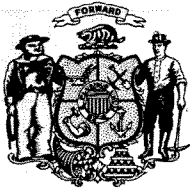
check?

Comment [#24]: This proposed addition conforms the bill with the NFPA Model bill and other state RCIP laws to clarify that the Wisconsin RCIP law does not prohibit a manufacturer from preparing cigarettes for distribution outside of the state.

Comment [#25]: This provision has been added to make the bill consistent with other state RCIP laws and to require that the law will sunset upon enactment of future federal RCIP requirements. PM USA supports the enactment of federal legislation to set forth a uniform, national standard for RCIP.

Comment [#26]: This provision is necessary to ensure that local governmental units do not enact RCIP requirements that are inconsistent with the state standard.

is this necessary?



State of Wisconsin
2007 - 2008 LEGISLATURE

RMR

LRB-2251/12

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stays

2007 BILL

Regen

1 AN ACT *to amend* 20.143 (3) (j); and *to create* 101.19 (1) (L), 165.25 (4) (ag) and
2 167.35 of the statutes; **relating to:** fire safety performance standards for
3 cigarettes, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law does not require cigarettes to meet any standards with regard to fire safety. Under this bill, cigarettes sold in Wisconsin must meet the fire safety performance standard specified in the bill. The performance standard requires that not more than 25 percent of the cigarettes tested may exhibit full-length burns. The bill establishes requirements for the testing procedures and allows a cigarette manufacturer to submit to the Department of Commerce (Commerce) an alternative testing method and alternative performance standards if Commerce determines that a type or brand of cigarette made by the manufacturer cannot be tested using the method specified in the bill.

The bill requires the manufacturer to file a written certification with Commerce stating the cigarettes it seeks to sell in Wisconsin meet the fire safety performance standard. The manufacturer must also provide a copy of this certification to each wholesaler that is authorized to sell cigarettes in this state. The bill also requires the manufacturer to mark cigarette packaging to show that the cigarettes being sold are covered by a certification.

This analysis is from 1/1 version ~~bill~~ ^{it will} be revised in later version

BILL

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.143 (3) (j) of the statutes is amended to read:

2 20.143 (3) (j) *Safety and building operations.* The amounts in the schedule for
3 the purposes of chs. 101, 145, and 168 and ss. 167.35, 236.12 (2) (a), 236.13 (1) (d) and
4 (2m), and 236.335. All moneys received under ch. 145, ss. 101.177 (4) (a) 4., 101.178,
5 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.955 (2), 101.973 (7), and
6 236.12 (7), except moneys received under s. 101.9208 (2m), and all moneys
7 transferred under 2005 Wisconsin Act 45, section 76 (6), shall be credited to this
8 appropriation.

9 **SECTION 2.** 101.19 (1) (L) of the statutes is created to read:

10 101.19 (1) (L) Processing certifications filed by cigarette manufacturers under
11 s. 167.35 (2) (a).

12 **SECTION 3.** 165.25 (4) (ag) of the statutes is created to read:

13 165.25 (4) (ag) The department of justice shall furnish legal services upon
14 request of the department of commerce under s. 167.35 (7).

15 **SECTION 4.** 167.35 of the statutes is created to read:

16 **167.35 Fire safety standards for cigarettes.** (1) DEFINITIONS. In this
17 section:

18 (a) "Cigarette" means any roll of tobacco wrapped in paper or in any substance
19 other than tobacco.

INS 2-19

BILL

INSERT 3-7

1 (2) ~~(b)~~ "Cigarette vending machine" means any mechanical device that
2 automatically dispenses cigarettes when money or tokens are deposited into the
3 device in payment for the cigarettes.

4 (f) ~~(e)~~ "Cigarette vending machine operator" means a person who acquires
5 cigarettes and sells them through the use of cigarette vending machines that the
6 person owns, operates, or services and that are located on premises that are owned
7 or under the control of other persons.

8 (h) ~~(d)~~ "Department" means the department of commerce.

9 (j) ~~(e)~~ "Repeatability" means the range of values within which the repeat results
10 of cigarette test trials from a single laboratory will fall 95 percent of the time.

11 (k) ~~(f)~~ "Wholesaler" means a person who has a permit authorizing the person to sell
12 cigarettes at wholesale in this state to any of the following:

- 13 1. A person who sells cigarettes at retail.
- 14 2. A cigarette vending machine operator.
- 15 3. Another person who sells cigarettes at wholesale.

16 (2) CERTIFICATION FILED BY CIGARETTE MANUFACTURERS. (a) Each cigarette
17 manufacturer that seeks to permit cigarettes it manufactures to be sold or offered
18 for sale in this state shall file a written certification with the department, certifying
19 that the cigarettes meet the applicable fire safety performance standard under sub.

20 (3). Upon filing a certification under this subsection, a cigarette manufacturer shall
21 provide a copy of the certification to every wholesaler that purchases from the
22 manufacturer cigarettes that are the subject of the certification.

23 (4) ~~(b)~~ The department shall promptly forward a copy of each certification it
24 receives under par. (a) to the attorney general. The department shall establish a
25 procedure by which persons who sell cigarettes at retail in this state and cigarette

cigarette retailer

other than a cigarette manufacturer,

INS. 3-8

or furnish

listed in the certification

with sub. (3)(a) and meets

that offers cigarettes

each type of tobacco product has been tested in accordance

or agent

each cigarette distributor or agent

INSERT 3-22

INS 3-20

3-22 B cigarette

INSERT 3-15

BILL

conducted
or sponsored
by the state

INS 4-3
fee

vending machine operators in this state may obtain notification of which cigarettes are the subject of a certification filed under par. (a).

(c) The department shall establish a fee under s. 101.19 (1) (L) for processing certifications filed under par. (a).

(3) TESTING METHODS; PERFORMANCE STANDARDS. (a) Method of testing. For purposes of this section, testing of cigarettes shall meet all of the following requirements: conducted by a cigarette manufacturer or ~~agent~~ ^{who}

1. The testing shall be conducted in accordance with the standard test method for measuring the ignition strength of cigarettes established by the American Society of Testing and Materials. ^{INS 4-10 ✓} shall

2. The testing shall be conducted on 10 layers of filter paper and shall consist of 40 replicate tests for each cigarette tested. ^{A complete test trial}

3. Each laboratory conducting the testing shall implement a quality control program that meets the requirements under par. (b) and that includes a procedure that will determine the repeatability of the results from the testing. The repeatability value may not be greater than 0.19. ^{shall include all of the following!} INS 4-16

(b) Quality control and assurance program. For purposes of par. (a) 3. a quality control program shall include a laboratory procedure that ensures that operator bias, systematic and nonsystematic ^{systemic and nonsystemic} methodological errors, and equipment-related problems do not affect the results of the testing conducted in accordance with the procedure. ^{under this}

(c) Fire safety performance standard. 1. A testing of cigarettes does not meet the applicable fire and safety performance standard unless no more than 25 percent of the cigarettes tested as required ^{in a complete test trial} under par. (a) exhibit full-length burns. ^{under this subsection}

2. For purposes of testing under this subsection, each type of cigarette tested that uses lowered permeability bands in the cigarette paper in order to meet the fire ^{or brand}

BILL

1 safety performance standard under subd. 1. shall meet one of the following
2 requirements:

3 ~~b.~~ ^{a.} For a cigarette that has bands positioned by design, the cigarette shall have
4 at least 4 nominally identical complete bands on the paper surrounding the tobacco
5 column. At least one of these bands shall be located at least 15 millimeters from the
6 lighting end of the tobacco column and at least 2 of the bands shall be located at least
7 10 millimeters from the filter end of the tobacco column, or at least 10 millimeters
8 from the labeled end of the tobacco column for a nonfiltered cigarette.

9 ~~a.~~ ^{b.} For a cigarette that does not have bands positioned by design, the cigarette
10 shall have at least 2 nominally identical complete bands on the paper surrounding
11 the tobacco column. At least one of these ^{bands} ~~band~~ shall be located ^{at} ~~a~~ least 15 millimeters
12 from the lighting end of the tobacco column.

13 (d) *Alternative testing method and performance standards.* 1. If the
14 department determines that a type or ~~brand~~ ^{brand} of cigarette cannot be tested in
15 accordance with the ^{testing method} ~~requirements~~ under par. (a), the ^{cigarette} ~~manufacturer~~ of the type or
16 ~~brand~~ shall propose an alternative testing method and alternative fire safety
17 performance standard for approval by the department.

18 2. If the department determines that the alternative fire safety performance
19 standard proposed under subd. 1. is equivalent to the applicable fire safety
20 performance standard under par. (c) ~~and determines that the alternative testing~~
21 ~~method is effective for testing for the alternative performance standard~~, the
22 department shall approve the alternative testing method and the alternative
23 performance standard for use by the ^{cigarette} ~~manufacturer~~.

24 (e) *Use of other state's alternatives.* In lieu of approving an alternative testing
25 method and alternative fire safety performance standard under par. (d), the

BILL

1 department may review the cigarette fire safety requirements enacted or otherwise
 2 adopted by another state. If the department determines that the safety
 3 requirements are comparable to the safety requirements under this section, that the
 4 other state's safety requirements specify the same testing method and the same
 5 performance standard that are specified in pars. (a) and (c), and that the other state
 6 has approved an alternative testing method and alternative performance standard
 7 as meeting the requirements under that state's cigarette fire safety requirements,
 8 the department shall allow a cigarette manufacturer to use the results of the other
 9 state's alternative testing method and alternative performance standard for the
 10 purpose of certification under sub. (2) (a), unless the department determines that it
 11 is not reasonable for the results to be used for this purpose.

12 (4) MARKING OF CIGARETTES. (a) Each ^{cigarette} manufacturer of cigarettes that are the
 13 subject of a certification filed under sub. (2) (a) shall mark the cigarettes to show that
 14 the cigarettes meet the applicable fire safety performance standard under sub. (3).
 15 The marking shall be in 8-point type or larger and shall be a modification of the
 16 universal product code that results in a visible mark being printed at or ~~around the~~
 17 ^{near} ~~area of~~ the universal product code. ^{(b) For the purposes of para (a)} The visible mark shall consist of one of the
 18 following:

19 1. Alphanumeric or symbolic characters permanently stamped, engraved,
 20 embossed, or printed in conjunction with the universal product code.

21 2. A visible combination of alphanumeric or symbolic characters permanently
 22 stamped, engraved, embossed, or printed upon the cigarette package or cellophane
 23 wrap.

24 3. Printed, stamped, engraved, or embossed text that indicates that the
 25 cigarettes meet the applicable performance standard under sub. (3).

40 The letters FSC

BILL

1 ^c
 2 (b) A cigarette manufacturer shall use only one marking, shall use this
 3 marking uniformly for all types and brands of cigarettes marketed by the
 4 manufacturer, and shall apply this marking to all packs, cartons, cases, and other
 5 packages containing the cigarettes.

6 (c) Prior to the certification of a type or brand of cigarette, a cigarette
 7 manufacturer shall present its proposed marking to the department for approval.
 8 Upon receipt of the proposed marking, the department shall approve or disapprove
 9 the marking presented. ^{Subject to par. (4) & (5)} If the department fails to act within 10 business days after
 10 receiving the proposed marking, the marking shall be considered to have been
 11 approved by the department. INS 7-10
→

12 (5) PROHIBITION ON SALES. (a) Except as provided in par. (b), no person may sell
 13 cigarettes unless the cigarettes are the subject of a certification filed under sub. (2)
 14 (a) and the cigarettes are marked in compliance with sub. (4).

15 (b) ^{cigarette wholesaler or cigarette retailer} A person may sell cigarettes in this state that are not the subject of a ^{all of the following apply}
 16 certification under sub. (2) (a) and not marked in compliance with sub. (4) if ^{INS 77-16} the
 17 stamps acquired under s. 139.32 were affixed to the cigarette packages prior to the
 18 effective date of this paragraph [revisor inserts date], and if the quantity of such
 19 cigarettes in the person's possession prior to the effective date of this paragraph
 20 [revisor inserts date], is comparable to the quantity of cigarettes in the person's
 21 possession during the same period of the previous year. or offers to sell
INS 7-20

22 (6) PENALTIES. (a) Any ^{person} ~~wholesaler~~ who knowingly sells ^{shall} cigarettes at wholesale
 23 in violation of sub. (5) (a) ^{subject to par. (d)} may be required to forfeit not more than \$10,000 for each
 24 sale. or offers to sell

25 (b) Any person ^{other than a wholesaler} who knowingly sells cigarettes ^{shall} in
 violation of sub. (5) (a) may be required to forfeit: at retail

BILL

SECTION 4

1 1. Not more than \$500 for each sale of not more than 1,000 cigarettes.

2 2. Not more than \$1,000 for each sale of more than 1,000 cigarettes

*subject to e
3A par. (1)
A*

3 (c) Any cigarette manufacturer that knowingly files a false certification under
4 sub. (2) (a) *shall* ~~may be required~~ to forfeit not more than \$10,000. Each false certification
5 constitutes a separate offense. INS 8-5

6 ~~(7) ENFORCEMENT. The attorney general shall take all necessary action, upon~~
7 ~~the request of the department, to enforce compliance with subs. (2) and (4).~~

8 **SECTION 5. Effective date.**

9 (1) This act takes effect on the first day of the 18th month beginning after
10 publication.

11 (END)

INS 8-7

1 **Insert 2-19**

2 (b) "Cigarette distributor" means any person who acquires unstamped
3 cigarettes from a cigarette manufacturer, affixes stamps to the packages or other
4 containers, stores them, and then sells or furnishes them to cigarette wholesalers or
5 cigarette retailers.

6 **No 8** (c) "Cigarette manufacturer" means any person who manufactures cigarettes
7 or any person who receives cigarettes from another before ^{the cigarettes are} ~~they~~ being stamped by a
8 cigarette distributor.

9 (d) "Cigarette retailer" means any person, other than a cigarette manufacturer,
10 cigarette distributor, or cigarette wholesaler, who sells or furnishes or offers to sell
11 or furnish cigarettes to the consumer.

12 **Insert 3-8**

13 (i) "Furnish" means to give as a gift, price or sample.

14 **Insert 3-15**

15 **e (K)** (h) "Sell" means to transfer, exchange, or barter for consideration.

16 **Insert 3 -20**

17 (b) For each type ^{brand} ~~of~~ ^{or brand} cigarette listed in the certification, all of the following
18 information shall be included in the certification:

- 19 1. The brand or trade name that appears on the page.
20 2. The style of the cigarette, such as light or ultra-light.
21 3. The length in millimeters.
22 4. The circumference in millimeters.
23 5. Any flavor description for the cigarette.

- 1 6. Whether the cigarette is filter or non filter.
- 2 7. The type of individual container in which the cigarette is packaged, such as
- 3 a soft pack or a box.
- 4 8. A description of the marking required under sub. (4).
- 5 9. The name, address, and telephone number of the laboratory conducting the
- 6 testing of the cigarette as required under sub. (3), if the laboratory is not owned and
- 7 operated by the cigarette manufacturer of the cigarette.
- 8 10. The date on which the testing required under sub. (3) occurred. (Note as
- 9 to such as.)

Insert 3-22

12 (No) Each cigarette manufacturer shall also provide to each cigarette distributor
 13 and cigarette wholesaler sufficient copies of an illustration of the package marking
 14 required under sub. (4) to be given to each cigarette retailer to whom the cigarette
 15 distributor or cigarette wholesaler sells or furnishes cigarettes.

16 (d) Each cigarette manufacturer shall file a written certification with the
 17 department under this subsection every ³ three years.

Insert 4-3

19 (f) Each cigarette manufacturer shall pay to the department a fee of \$250 for
 20 each type ^{or brand} of cigarette listed in each written (search for written) certification filed
 21 with the department under this ^{par. (a)} subsection.

Insert 4-10

23 (No) The department may adopt a standard test method that is established
 24 subsequent to the effective date of this subdivision [....] revisor inserts date] if the
 25 department finds that this method does not ^{resulting} result in a change in the percentage ⁵

1 of full-length burns exhibited by any tested cigarette when compared to the
 2 percentage of full-^{length} ~~length~~ burns the same cigarette exhibits when tested in accordance
 3 with the standard test method that is in effect on the effective date of ^{this subdivision} ~~the paragraph~~
 4 [revisor inserts date].

Insert 4-16

6 4. Each laboratory conducting the test under this subsection shall be accredited
 7 pursuant to the standard ISO/IEC 17025 of the International Organization for
 8 Standardization or other comparable accreditation standard required by the
 9 department.

Insert 7-10

11 ^e ~~(d)~~ The department shall approve a proposed marking under par. ^d ~~(e)~~ if it ^{is}
 12 marking that, at the time the proposed marking is presented, is in use in, and is
 13 approved by, the state of New York pursuant to ^g ~~the~~ that state's law relating to fire
 14 safety standards for cigarettes or if the proposed marking meets the size and location
 15 requirements under par. (a) and the text of the visible mark consists of the letters
 16 "FSC".

17 ^f ~~(e)~~ A cigarette manufacturer may not modify a marking approved under par.
 18 ^d ~~(e)~~ unless the modification has been approved by the department in accordance with
 19 the subsection.

Insert 7-16

21 (b) Paragraph (a) does not apply to the selling or furnishing of cigarettes by a
 22 cigarette wholesaler or cigarette retailer if all of the following apply:

Insert 7-20

1 (c) Paragraph (a) does not apply to the selling or furnishing of cigarettes solely
2 for the purpose of testing that is conducted by a cigarette manufacturer or under the
3 control and direction of a cigarette manufacturer if all of the following apply:

4 1. The purpose of testing is to evaluate consumer acceptance of the cigarettes.

5 2. the testing involve^s only the number of cigarettes that is reasonably necessary
6 for the testing.

7 3. The testing is in a controlled setting where the cigarettes are either smoked
8 on site or are returned to the person ~~administering~~^{administering} the test at the conclusion of the
9 testing.

10 **Insert 8-3** ⁵

11 (d) The total amount of forfeitures imposed under par. (a) against a single
12 violator may not exceed more than \$100,000 during any 30-day period. The ~~total~~^{total}
13 amount of forfeitures imposed under par. (b) 2. against a ~~single~~^{single} violator may not
14 exceed more than \$25,000 ~~during~~^{during} any 30-day period.

15 **Insert 8-7**

16 (a) The department or attorney general may file an action in civil court for a
17 violation of this section. The relief sought in the action may include injunctive relief,
18 damages incurred by the state because of a violation of this section, including
19 enforcement costs and attorney's fees. Each violation of this section ~~constitutes~~^{constitutes}
20 separate civil violation for which the department or attorney general may seek relief