



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-2251/2

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stays

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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*

This

Analysis is from <sup>the</sup> 1/1 version. ~~Will~~ <sup>It will</sup> be revised in later version.

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.

**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:*

**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).

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

(b) "Cigarette distributor" means any person who acquires unstamped cigarettes from a cigarette manufacturer, affixes stamps to the packages or other

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BILL

*wholesalers or retailers*

1 containers, stores them, and then sells or furnishes them to cigarette ~~wholesalers~~ or

2 cigarette ~~wholesalers~~ ~~retailers~~

3 (c) "Cigarette manufacturer" means any person who manufactures cigarettes

4 or any person who receives cigarettes from another before the cigarettes are stamped

5 by a cigarette distributor.

6 (d) "Cigarette retailer" means any person, other than a cigarette manufacturer,

7 cigarette distributor, or cigarette wholesaler, ~~who~~ sells or furnishes or offers to sell

8 or furnish cigarettes to the consumer.

9 (e) "Cigarette vending machine" means any mechanical device that

10 automatically dispenses cigarettes when money or tokens are deposited into the

11 device in payment for the cigarettes.

12 (f) "Cigarette vending machine operator" means a person who acquires

13 cigarettes and sells them through the use of cigarette vending machines that the

14 person owns, operates, or services and that are located on premises that are owned

15 or under the control of other persons.

16 (g) "Cigarette wholesaler" means a person, other than a cigarette

17 manufacturer, ~~or cigarette distributor~~ who has a permit authorizing the person to sell or furnish cigarettes

18 at wholesale in this state to any of the following:

- 19 1. A cigarette retailer.
- 20 2. A cigarette vending machine operator.
- 21 3. Another cigarette wholesaler.

22 (h) "Department" means the department of commerce.

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

24 (j) "Repeatability" means the range of values within which the repeat results

25 of cigarette test trials from a single laboratory will fall 95 percent of the time.

*move to p. 3 after line 23*

*move to page 4 after line 1*

*material from page 2, line 20 to page 3, line 2 material from page 2 lines 3-4*

*From P. 2, lines 20-21, and P. 3, lines 1-2.*

*From 3-3 to 3-5*

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(k) "Sell" means to transfer, exchange, or barter for consideration.

(2) CERTIFICATION FILED BY CIGARETTE MANUFACTURERS. (a) Each cigarette manufacturer that offers cigarettes for sale in this state shall file a written certification with the department, certifying that each type of cigarettes listed in the certification has been tested in accordance with sub. (3) (a) and meets the applicable fire safety performance standard under sub. (3).

(b) For each type or brand of cigarette listed in the certification, all of the following information shall be included in the certification:

1. The brand or trade name that appears on the package.
2. The style of the cigarette, such as light or ultra-light.
3. The length in millimeters.
4. The circumference in millimeters.
5. Any flavor description for the cigarette.
6. Whether the cigarette is filter or nonfilter.
7. The type of individual container in which the cigarette is packaged, such as a soft pack or a box.
8. A description of the marking required under sub. (4).
9. The name, address, and telephone number of the laboratory conducting the testing of the cigarette as required under sub. (3), if the laboratory is not owned and operated by the cigarette manufacturer of the cigarette.

10. The date on which the testing required under sub. (3) occurred. [Note as

(c) Upon filing a certification under this subsection, a cigarette manufacturer shall provide a copy of the certification to each cigarette distributor or cigarette wholesaler that purchases from the manufacturer cigarettes that are the subject of

From 3-16 to 3-21

or offers

material from p. 4, lines 16 to 21

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20

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**BILL**

1 the certification. Each cigarette manufacturer shall also provide to each cigarette  
 2 distributor and cigarette wholesaler sufficient copies of an illustration of the package  
 3 marking required under sub. (4) to be given to each cigarette retailer to whom the  
 4 cigarette distributor or cigarette wholesaler sells or furnishes cigarettes.

5 (d) Each cigarette manufacturer shall file <sup>the</sup> a written certification <sup>under par. (a)</sup> with the  
 6 department under this subsection every 3 years.

7 (e) The department shall promptly forward a copy of each certification it  
 8 receives under par. (a) to the attorney general.

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

INSERT ~~AAA~~ 5-10

11 (3) TESTING METHODS; PERFORMANCE STANDARDS. (a) *Method of testing.* For  
 12 purposes of this section, testing of cigarettes conducted by a cigarette manufacturer  
 13 or conducted or sponsored by the state shall meet all of the following requirements:

14 1. The testing shall be conducted in accordance with the standard test method  
 15 for measuring the ignition strength of cigarettes established by the American Society  
 16 of Testing and Materials. The department may adopt a standard test method that  
 17 is established subsequent to the effective date of this subdivision .... [revisor inserts  
 18 date], if the department finds that this method does not result in a change in the  
 19 percentage of full-length burns exhibited by any tested cigarette when compared to  
 20 the percentage of full-length burns the same cigarette exhibits when tested in  
 21 accordance with the standard test method that is in effect on the effective date of this  
 22 subdivision .... [revisor inserts date].

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

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

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

9           (b) *Quality control and assurance program.* For purposes of par. (a) 3. a quality  
10 control and assurance program shall include a laboratory procedure that ensures  
11 that operator bias, systematic and nonsystematic methodological errors, and  
12 equipment-related problems do not affect the results of the testing.

13           (c) *Fire safety performance standard.* 1. A testing of cigarettes does not meet  
14 the applicable fire and safety performance standard unless no more than 25 percent  
15 of the cigarettes tested in a complete test trial under par. (a) exhibit full-length  
16 burns.

17           2. Each type or brand of cigarette tested under this subsection that uses  
18 lowered permeability bands in the cigarette paper in order to meet the fire safety  
19 performance standard under subd. 1. shall meet one of the following requirements:

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

24           b. For a cigarette that has bands positioned by design, the cigarette shall have  
25 at least 4 nominally identical complete bands on the paper surrounding the tobacco

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1 column. At least one of these bands shall be located at least 15 millimeters from the  
2 lighting end of the tobacco column and at least 2 of the bands shall be located at least  
3 10 millimeters from the filter end of the tobacco column, or at least 10 millimeters  
4 from the labeled end of the tobacco column for a nonfiltered cigarette.

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 testing methods under par. (a), the ~~cigarette~~ manufacturer of the  
8 type or brand shall propose an alternative testing method and alternative fire safety  
9 performance standard for approval by the department.

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

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

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

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

9 (b) For the purposes of par. (a), 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 4. The letters "FSC."

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

23 (d) Prior to the certification of a type or brand of cigarette, a ~~cigarette~~  
24 manufacturer shall present its proposed marking to the department for approval.  
25 Upon receipt of the proposed marking, the department shall approve or disapprove



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1 the marking presented subject to par. (e). If the department fails to act within 10  
2 business days after receiving the proposed marking, the marking shall be considered  
3 to have been approved by the department.

4 (e) The department shall approve a proposed marking under par. (d) <sup>it</sup> if ~~is~~ a  
5 marking that, at the time the proposed marking is presented, is in use in, and is  
6 approved by, the state of New York pursuant to that state's law relating to fire safety  
7 standards for cigarettes or if the proposed marking meets the size and location  
8 requirements under par. (a) and the text of the visible mark consists of the letters  
9 "FSC."

10 (f) A ~~cigarette~~ manufacturer may not modify a marking approved under par.  
11 (d) unless the modification has been approved by the department in accordance with  
12 the subsection.

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

16 (b) A cigarette wholesaler ~~or cigarette retailer may sell~~ <sup>or furnish</sup> cigarettes in this state  
17 that are not the subject of a certification under sub. (2) (a) and not marked in  
18 compliance with sub. (4) if all of the following apply:

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

21 (f) <sup>The stamps</sup> stamps acquired under s. 139.32 were affixed to the cigarette packages prior  
22 to the effective date of this <sup>subdivision</sup> paragraph .... [revisor inserts date], and if the quantity  
23 of such cigarettes in the person's possession prior to the effective date of this  
24 <sup>subdivision</sup> paragraph .... [revisor inserts date], is comparable to the quantity of cigarettes in the  
25 ~~person's~~ <sup>wholesaler's or cigarette retailer's</sup> possession during the same period of the previous year.

**BILL**

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 involves only the number of cigarettes that is reasonably  
 6 necessary for the testing.

7 3. The testing is in a controlled setting where the cigarettes are either smoked  
 8 onsite or are returned to the person administering the test at the conclusion of the  
 9 testing.

10 (6) PENALTIES. (a) Any person who knowingly sells <sup>or furnishes</sup> or offers to sell <sup>or furnish</sup> cigarettes  
 11 at wholesale in violation of sub. (5) (a) shall forfeit not more than \$10,000 for each  
 12 <sup>violation</sup> ~~sale~~ subject to par. (d).

13 (b) Any person who knowingly sells <sup>or furnishes</sup> or offers to sell <sup>or furnish</sup> cigarettes at retail in  
 14 violation of sub. (5) (a) shall forfeit: <sup>violation that involves</sup>

15 1. Not more than \$500 for each <sup>sale</sup> of not more than 1,000 cigarettes.

16 2. Not more than \$1,000 for each <sup>sale</sup> of <sup>or more</sup> more than 1,000 cigarettes, subject to  
 17 par. (e).

18 (c) Any ~~cigarette~~ manufacturer that knowingly files a false certification under  
 19 sub. (2) (a) shall to forfeit not more than \$10,000. Each false certification constitutes  
 20 a separate offense.

21 (d) The total amount of forfeitures imposed under par. (a) against a single  
 22 violator may not exceed more than \$100,000 during any 30-day period. The total  
 23 amount of forfeitures imposed under par. (b) 2. against a single violator may not  
 24 exceed more than \$25,000 during any 30-day period.

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1 (e) The department or attorney general may file an action in civil court for a  
2 violation of this section. The relief sought in the action may include injunctive relief,  
3 damages incurred by the state because of a violation of this section, including  
4 enforcement costs and attorney fees. Each violation of this section constitutes a  
5 separate civil violation for which the department or attorney general may seek relief.

6 **SECTION 5. Effective date.**

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

9 (END)

- 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 **Noff** 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 <sup>3</sup> ~~three~~ years.

**Insert 4-3, 5-10**

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

**Insert 4-10**

23 **Noff** 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 <sup>result</sup> ~~resulting~~ in a change in the percentage



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-2251/2

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2007 BILL

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

**Analysis by the Legislative Reference Bureau**

~~This analysis is from the 11 version. It will be revised in later version.~~

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 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.

person

other than a retailer

**BILL**

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

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

10       165.25 (4) (ag) The department of justice shall furnish legal services upon  
11 request of the department of commerce under s. 167.35 (7).

12       **SECTION 3.** 167.35 of the statutes is created to read:

13       **167.35 Fire safety <sup>performance</sup> standards for cigarettes.** (1) DEFINITIONS. In this  
14 section:

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

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

20       ~~(f) "Cigarette vending machine operator" means a person who acquires~~  
21 ~~cigarettes and sells them through the use of cigarette vending machines that the~~

**BILL**

(c) Direct marketer has the meaning given in s. 139.30(2n)

1 person owns, operates, or services and that are located on premises that are owned  
2 or under the control of other persons.

unless  
unless the context  
requires otherwise

3 (f) (h) "Department" means the department of commerce.

4 (ol) (hm) "Distributor" means any person who acquires unstamped cigarettes from  
5 a manufacturer, affixes stamps to the packages or other containers, stores them, and  
6 then sells or furnishes them to wholesalers or retailers.

has the meaning given in  
s. 139.30(3)

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

8 (f) (im) "Manufacturer" means any person who manufactures cigarettes or any  
9 person who receives cigarettes from another before the cigarettes are stamped by a  
10 distributor.

has the meaning given in s. 139.30(7)

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

13 (h) (jm) "Retailer" means any person, other than a manufacturer, distributor, or  
14 wholesaler, that sells or furnishes or offers to sell or furnish cigarettes to the  
15 consumer.

has the meaning given in s. 139.66(1)(g)

has the meaning given in s. 139.30(12)

16 (i) (k) "Sell" means to transfer, exchange, or barter for consideration.

17 (k) (l) "Wholesaler" means a person, other than a manufacturer or distributor,  
18 who has a permit authorizing the person to sell or furnish cigarettes at wholesale in  
19 this state to any of the following:

- 20 1. A retailer.
- 21 2. A cigarette vending machine operator.
- 22 3. Another wholesaler.

23 (2) CERTIFICATION FILED BY CIGARETTE MANUFACTURERS. (a) Each manufacturer  
24 that plans or offers to sell or furnish cigarettes in this state shall file a written  
25 certification with the department, certifying that each type or brand of cigarettes

(e) jobber has the meaning given in s. 139.30(6)

**BILL**

1 listed in the certification has been tested in accordance with sub. (3) (a) and meets  
2 the applicable fire safety performance standard under sub. (3).

3 (b) For each type or brand of cigarette listed in the certification, all of the  
4 following information shall be included in the certification:

5 1. The brand or trade name that appears on the package.

6 2. The style of the cigarette, such as light or ultra-light.

7 3. The length in millimeters.

8 4. The circumference in millimeters.

9 5. Any flavor description for the cigarette.

10 6. Whether the cigarette is filter or nonfilter.

11 7. The type of individual container in which the cigarette is packaged, such as  
12 a soft pack or a box.

13 8. A description of the marking required under sub. (4).

14 9. The name, address, and telephone number of the laboratory conducting the  
15 testing of the cigarette as required under sub. (3), if the laboratory is not owned and  
16 operated by the manufacturer of the cigarette.

17 10. The date on which the testing required under sub. (3) occurred.

18 (c) Upon filing a certification under par. (a), a manufacturer shall provide a  
19 copy of the certification to each distributor or ~~wholesaler~~ that purchases from the  
20 manufacturer cigarettes that are the subject of the certification. Each manufacturer  
21 shall also provide to each distributor and ~~wholesaler~~ sufficient copies of an  
22 illustration of the package marking required under sub. (4) to be given to each  
23 retailer to whom the distributor or ~~wholesaler~~ sells or furnishes cigarettes.

24 (d) Each manufacturer shall file the certification under par. (a) with the  
25 department under this subsection every 3 years.

54 jobber, ^

19

21

23

54 jobber, ^

direct marketer



**BILL**

1 (e) The department shall promptly forward a copy of each certification it  
2 receives under par. (a) to the attorney general.

3 (f) Each manufacturer shall pay to the department a fee of \$250 for each type  
4 or brand of cigarette listed in each certification filed with the department under par.  
5 (a).

6 **(3) TESTING METHODS; PERFORMANCE STANDARDS.** (a) *Method of testing.* For  
7 purposes of this section, testing of cigarettes conducted by a manufacturer or  
8 conducted or sponsored by the state shall meet all of the following requirements:

9 1. The testing shall be conducted in accordance with the standard test method  
10 for measuring the ignition strength of cigarettes established by the American Society  
11 of Testing and Materials. The department may adopt a standard test method that  
12 is established subsequent to the effective date of this subdivision .... [revisor inserts  
13 date], if the department finds that this method does not result in a change in the  
14 percentage of full-length burns exhibited by any tested cigarette when compared to  
15 the percentage of full-length burns the same cigarette exhibits when tested in  
16 accordance with the standard test method that is in effect on the effective date of this  
17 subdivision .... [revisor inserts date].

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

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

24 4. Each laboratory conducting the test under this subsection shall be accredited  
25 pursuant to the standard ISO/IEC 17025 of the International Organization for

## BILL

1 Standardization or other comparable accreditation standard required by the  
2 department.

3 (b) *Quality control and assurance program.* For purposes of par. (a) 3, a quality  
4 control and assurance program shall include a laboratory procedure that ensures  
5 that operator bias, systematic and nonsystematic methodological errors, and  
6 equipment-related problems do not affect the results of the testing.

7 (c) *Fire safety performance standard.* 1. A testing of cigarettes does not meet  
8 the applicable fire safety performance standard unless no more than 25 percent of  
9 the cigarettes tested in a complete test trial under par. (a) exhibit full-length burns.

10 2. Each type or brand of cigarette tested under this subsection that uses  
11 lowered permeability bands in the cigarette paper <sup>SEE</sup> in order to meet the fire safety  
12 performance standard under subd. 1. shall meet one of the following requirements:

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

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

23 (d) *Alternative testing method and performance standards.* 1. If the  
24 department determines that a type or brand of cigarette cannot be tested in  
25 accordance with the testing methods under par. (a), the manufacturer of the type or

**BILL**

1 brand shall propose an alternative testing method and alternative fire safety  
2 performance standard for approval by the department.

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

8 (e) *Use of other state's alternatives.* In lieu of approving an alternative testing  
9 method and alternative fire safety performance standard under par. (d), the  
10 department may review the cigarette fire safety requirements enacted or otherwise  
11 adopted by another state. If the department determines that the safety  
12 requirements are comparable to the safety requirements under this section, that the  
13 other state's safety requirements specify the same testing method and the same  
14 performance standard that are specified in pars. (a) and (c), and that the other state  
15 has approved an alternative testing method and alternative performance standard  
16 as meeting the requirements under that state's cigarette fire safety requirements,  
17 the department shall allow a manufacturer to use the results of the other state's  
18 alternative testing method and alternative performance standard for the purpose of  
19 certification under sub. (2) (a), unless the department determines that it is not  
20 reasonable for the results to be used for this purpose.

21 (4) MARKING OF CIGARETTES. (a) Each manufacturer of cigarettes that are the  
22 subject of a certification filed under sub. (2) (a) shall mark the cigarettes to show that  
23 the cigarettes meet the applicable fire safety performance standard under sub. (3).  
24 The marking shall be in 8-point or larger type and shall be a modification of the

**BILL**

1 universal product code that results in a visible mark being printed at or near the  
2 universal product code.

3 (b) For the purposes of par. (a), the visible mark shall consist of one of the  
4 following:

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

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

10 3. Printed, stamped, engraved, or embossed text that indicates that the  
11 cigarettes meet the applicable <sup>fire safety</sup> performance standard under sub. (3). ✓

12 4. The letters "FSC."

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

17 (d) Prior to the certification of a type or brand of cigarette, a manufacturer shall  
18 present its proposed marking to the department for approval. Upon receipt of the  
19 proposed marking, the department shall approve or disapprove the marking  
20 presented subject to par. (e). If the department fails to act within 10 business days  
21 after receiving the proposed marking, the marking shall be considered to have been  
22 approved by the department.

23 (e) The department shall approve a proposed marking under par. (d) ~~if it is a~~  
24 marking that, at the time the proposed marking is presented, is in use in, and is  
25 approved by, the state of New York pursuant to that state's law relating to fire safety

**BILL**

*performance*  
*standards for cigarettes*

1 standards for cigarettes or if the proposed marking meets the size and location  
2 requirements under par. (a) and the text of the visible mark consists of the letters  
3 "FSC."

4 (f) A manufacturer may not modify a marking approved under par. (d) unless  
5 the modification has been approved by the department in accordance with <sup>this</sup> the  
6 subsection. *in this state*

7 (5) PROHIBITION. (a) Except as provided in par. (b), no person may sell or ~~furnish~~  
8 cigarettes unless the cigarettes are the subject of a certification filed under sub. (2)  
9 (a) and the cigarettes are marked in compliance with sub. (4).

INSERT  
9-10

10 (b) Paragraph (a) does not apply to the selling or ~~furnishing~~ of cigarettes by a  
11 wholesaler or retailer if <sup>the</sup> all of the following apply:

(b) #

12 The stamps acquired under s. 139.32 were affixed to the cigarette packages  
13 prior to the effective date of this ~~subdivision~~ <sup>paragraph</sup> .... [revisor inserts date], and if the  
14 quantity of such cigarettes in the wholesaler's or retailer's possession prior to the  
15 effective date of this ~~subdivision~~ <sup>paragraph</sup> .... [revisor inserts date], is comparable to the  
16 quantity of cigarettes in the wholesaler's or retailer's possession during the same  
17 period of the previous year. *(INSERT 9-14) ✓*  
*(INSERT 9-16) ✓*

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

- 21 1. The purpose of testing is to evaluate consumer acceptance of the cigarettes.
- 22 2. The testing involves only the number of cigarettes that is reasonably
- 23 necessary for the testing.

**BILL**

1 3. The testing is in a controlled setting where the cigarettes are either smoked  
2 onsite or are returned to the person administering the test at the conclusion of the  
3 testing.

4 (6) PENALTIES. (a) Any person who knowingly sells ~~or furnishes~~ or offers to sell  
5 ~~or furnish~~ cigarettes at wholesale in violation of sub. (5) (a) shall forfeit not more than  
6 \$10,000 for each sale subject to par. (d). ✓

7 (b) Any person who knowingly sells ~~or furnishes~~ or offers to sell ~~or furnish~~  
8 cigarettes at retail in violation of sub. (5) (a) shall forfeit:

9 1. Not more than \$500 for each violation that involves not more than 1,000  
10 cigarettes.

11 2. Not more than \$1,000 for each violation that involves 1,000 or more  
12 cigarettes, subject to ~~par. (c)~~ ~~par. (d)~~ par. (d)

13 (c) Any manufacturer that knowingly files a false certification under sub. (2)

14 (a) shall ~~to~~ forfeit not more than \$10,000. Each false certification constitutes a  
15 separate offense.

16 (d) The total amount of forfeitures imposed under par. (a) against a single  
17 violator may not exceed more than \$100,000 during any 30-day period. The total  
18 amount of forfeitures imposed under par. (b) 2. against a single violator may not  
19 exceed more than \$25,000 during any 30-day period. (7) ADMINISTRATION AND ENFORCEMENT

20 (e) The department or attorney general may file an action in civil court for a  
21 violation of this section. The relief sought in the action may include injunctive relief,  
22 damages incurred by the state because of <sup>the</sup> a violation of this section, including  
23 enforcement costs and attorney fees. Each violation of this section constitutes a  
24 separate civil violation for which the department or attorney general may seek relief.

**SECTION 4. Effective date.**

25 INSERT 10-24 ✓



Insert 9 - 10

1 (No ff) manufacturer, distributor, direct marketer, jobber,

Insert 9 - 14

2 (No ff) manufacturer's, distributor's, direct marketer's, jobber's,

Insert 9 - 16

3 (No ff) manufacturer's, distributor's, direct marketer's, jobber's,

Insert 10 - 24

4 (b) The department of revenue, in the course of conducting any inspection or  
5 examination authorized under s. 139.39, may inspect cigarettes to determine if the  
6 cigarettes are marked as provided under sub. (4) and the department of revenue shall  
7 notify the department of commerce of any unmarked cigarettes.

8 (c) Authorized personnel of the department of justice, the department of  
9 commerce, and the department of revenue, and any sheriff, police officer, or other law  
10 enforcement personnel, within their respective jurisdictions, may enter and inspect  
11 any premises where cigarettes are made, sold, or stored to determine if the cigarettes  
12 comply with this section. An inspection under this paragraph includes examining  
13 the books, papers, invoices, and other records of any person who is subject to this  
14 section and in control, possession, or occupancy of the premises.

15 (8) Seizure, (No B) + (CS) All cigarettes acquired, owned, imported, possessed, kept, stored,  
16 made, sold, distributed, or transported in violation of this section are subject to  
17 seizure by the department of justice, the department of commerce, the department  
18 of revenue, or any law enforcement personnel. All cigarettes seized for violating this  
19 section shall be destroyed after the person who holds the trademark rights in the  
20 cigarette brand has been given a reasonable opportunity to inspect the cigarettes.



LEGISLATIVE REFERENCE BUREAU

④ <sup>As to</sup> We did not include the language found in the last ③ statutory sections of the draft instructions dealing with out-of-state sales, <sup>preemption</sup> and local regulation. Because these provisions are not necessary, the bill does not prohibit out-of-state sales in the first place. <sup>preemption</sup> As to <sup>preemption</sup> if federal law preempts this legislation, it will simply not be enforceable. Local regulation, conflicting local ordinances are invalid. MB

Senator Robson:

In order to facilitate the operation of this proposal, the draft has been modified to incorporate the relevant definitions for all those who manufacture or sell cigarettes in this state as provided in subchapter II of chapter 139 of the statutes (the cigarette tax). Please examine the definitions carefully and let me know if you have any questions. In addition, the provisions in the draft related to enforcement and the seizure of cigarettes are similar, generally, to the enforcement and seizure provisions related to the cigarette tax.

Joseph T. Kreye  
 Legislative Attorney  
 Phone: (608) 266-2263  
 E-mail: joseph.kreye@legis.wisconsin.gov

④ I did not draft the language concerning changes proposed in the manufacturing of a cigarette found in § 50.167035(2) (g) because it is covered by the overall ban under § 50.167035(5). We did not incorporate the

④ ~~The Wisconsin legislature~~ The language requiring this law to be in accordance with New York presents a delegation problem. referring to New York law. This if included it → Using such language would probably be viewed by the court as an unconstitutional delegation of law-making authority.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2251/2dn  
JK&MGG:wlj:rs

September 13, 2007

Senator Robson:

To facilitate the operation of this proposal, the draft has been modified to incorporate the relevant definitions for all those who manufacture or sell cigarettes in this state, as provided in subchapter II of chapter 139 of the statutes (the cigarette tax). Please examine the definitions carefully and let me know if you have any questions. In addition, the provisions in the draft related to enforcement and the seizure of cigarettes are similar, generally, to the enforcement and seizure provisions related to the cigarette tax.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: [joseph.kreye@legis.wisconsin.gov](mailto:joseph.kreye@legis.wisconsin.gov)

1. I did not draft the language concerning changes in the manufacturing of a cigarette, found in proposed s. 167.35 (2) (g) because it is covered by the overall ban under s. 167.35 (5).
2. We did not incorporate the language referring to New York law. Using such language would probably be viewed by the court as an unconstitutional delegation of law-making authority.
3. We did not include the language found in the last three statutory sections of the redraft instructions dealing with out-of-state sales, preemption, and local regulation because these provisions are not necessary. The bill does not prohibit out-of-state sales in the first place. As to preemption, if federal law preempts this legislation, it will simply not be enforceable. As to local regulation, conflicting local ordinances are invalid.

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

**2007 BILL**

1     **AN ACT** *to amend* 20.143 (3) (j); and *to create* 165.25 (4) (ag) and 167.35 of the  
2     statutes; **relating to:** fire safety performance standards for cigarettes, making  
3     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 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 person authorized to sell cigarettes in this state, other than a retailer. The bill also requires the manufacturer to mark cigarette packaging to show that the cigarettes being sold are covered by a certification.

**BILL**

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

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

10           165.25 (4) (ag) The department of justice shall furnish legal services upon  
11 request of the department of commerce under s. 167.35 (7).

12           **SECTION 3.** 167.35 of the statutes is created to read:

13           **167.35 Fire safety performance standards for cigarettes. (1)**

14           DEFINITIONS. In this section:

15           (a) “Cigarette” means any roll of tobacco wrapped in paper or in any substance  
16 other than tobacco.

17           (b) “Department” means the department of commerce unless the context  
18 requires otherwise.

19           (c) “Direct marketer” has the meaning given in s. 139.30 (2n).

20           (d) “Distributor” has the meaning given in s. 139.30 (3).

21           (e) “Jobber” has the meaning given in s. 139.30 (6).

**BILL**

1 (f) "Manufacturer" has the meaning given in s. 139.30 (7). JK

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

4 (h) "Retailer" has the meaning given in s. 134.66 (1) (g).

5 (i) "Sell" has the meaning given in s. 139.30 (12).

6 **(2) CERTIFICATION FILED BY CIGARETTE MANUFACTURERS.** (a) Each manufacturer  
7 that ~~plans to~~ offers to sell cigarettes in this state shall file a written certification  
8 with the department, certifying that each type ~~or brand~~ of cigarettes listed in the  
9 certification has been tested in accordance with sub. (3) (a) and meets the applicable  
10 fire safety performance standard under sub. (3). *BA*

11 (b) For each type ~~or brand~~ of cigarette listed in the certification, all of the  
12 following information shall be included in the certification:

- 13 1. The brand or trade name that appears on the package.
- 14 2. The style of the cigarette, such as light or ultra-light.
- 15 3. The length in millimeters.
- 16 4. The circumference in millimeters.
- 17 5. Any flavor description for the cigarette.
- 18 6. Whether the cigarette is filter or nonfilter.
- 19 7. The type of individual container in which the cigarette is packaged, such as  
20 a soft pack or a box.
- 21 8. A description of the marking required under sub. (4).
- 22 9. The name, address, and telephone number of the laboratory conducting the  
23 testing of the cigarette as required under sub. (3), if the laboratory is not owned and  
24 operated by the manufacturer of the cigarette.
- 25 10. The date on which the testing required under sub. (3) occurred.

**BILL**

**SECTION 3**

1 (c) Upon filing a certification under par. (a), a manufacturer shall provide a  
 2 copy of the certification to each distributor, jobber, or direct marketer that purchases  
 3 from the manufacturer cigarettes that are the subject of the certification. Each  
 4 manufacturer shall also provide to each distributor, jobber, and direct marketer  
 5 sufficient copies of an illustration of the package marking required under sub. (4) to  
 6 be given to each retailer to whom the distributor, jobber, or direct marketer sells  
 7 cigarettes.

8 (d) Each manufacturer shall file the certification under par. (a) with the  
 9 department under this subsection every 3 years.

10 (e) The department shall promptly forward a copy of each certification it  
 11 receives under par. (a) to the attorney general.

12 (f) Each manufacturer shall pay to the department a fee of \$250 for each type  
 13 or brand of cigarette listed in each certification filed with the department under par.

14 (a).

ASTM...  
and if changes

(g)

15 (3) TESTING METHODS; PERFORMANCE STANDARDS. (a) *Method of testing.* For  
 16 purposes of this section, testing of cigarettes conducted by a manufacturer or  
 17 conducted or sponsored by the state shall meet all of the following requirements:

18 1. The testing shall be conducted in accordance with the standard test method  
 19 for measuring the ignition strength of cigarettes established by the American Society  
 20 of Testing and Materials. The department may adopt a <sup>subsequent ASTM</sup> standard test method that  
 21 is established subsequent to the effective date of this subdivision .... [revisor inserts  
 22 date], if the department finds that <sup>the subsequent</sup> ~~this~~ method does not result in a change in the  
 23 percentage of full-length burns exhibited by any tested cigarette when compared to  
 24 the percentage of full-length burns the same cigarette exhibits when tested in

subsequent to

**BILL**

1 accordance with the standard test method that is in effect on the effective date of this  
2 subdivision .... [revisor inserts date].

3 The perf stand  
shall only be applied to  
complete  
trial

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

5 4 3. Each laboratory conducting the testing shall implement a quality control  
6 program that meets the requirements under par. (b) and that includes a procedure  
7 that will determine the repeatability of the results from the testing. The  
8 repeatability value may not be greater than 0.19.

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

13 (b) Quality control and assurance program. For purposes of par. (a) 3., a quality  
14 control and assurance program shall include a laboratory procedure that ensures  
15 that operator bias, systematic and nonsystematic methodological errors, and  
16 equipment-related problems do not affect the results of the testing.

quality  
do the following

17 (c) Fire safety performance standard. 1. A testing of cigarettes does not meet  
18 the applicable fire safety performance standard unless no more than 25 percent of  
19 the cigarettes tested in a complete test trial under par. (a) exhibit full-length burns.

20 2. Each type or brand of cigarette tested under this subsection that uses  
21 lowered permeability bands in the cigarette paper in order to meet the fire safety  
22 performance standard under subd. 1. shall meet one of the following requirements:

listed in a cert under sub. (2)

23 a. For a cigarette that does not have bands positioned by design, the cigarette  
24 shall have at least 2 nominally identical complete bands on the paper surrounding

**BILL**

1 the tobacco column. At least one of these bands shall be located at least 15  
2 millimeters from the lighting end of the tobacco column.

3 b. For a cigarette that has bands positioned by design, the cigarette shall have  
4 at least ~~two~~ <sup>(2)</sup> nominally identical ~~bands~~ <sup>complete</sup> bands on the paper surrounding the tobacco  
5 column. ~~At least one of these bands shall be located at least 15 millimeters from the~~ <sup>that are</sup>  
6 lighting end of the tobacco column ~~and at least 2 of the bands shall be located at least~~ <sup>fully</sup> ~~and~~  
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 (d) *Alternative testing method and performance standards.* 1. If the  
10 department determines that a type or brand of cigarette cannot be tested in  
11 accordance with the testing methods under par. (a), the manufacturer of the type or  
12 brand shall propose an alternative testing method and alternative fire safety  
13 performance standard for approval by the department. <sup>sub. 1 no!</sup>

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

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

(?)

?  
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that are  
fully

and

brand

sub. 1 no!

subd.



**BILL**

1 has approved an alternative testing method and alternative performance standard  
 2 as meeting the requirements under that state's cigarette fire safety requirements,  
 3 the department shall allow a manufacturer to use the results of the other state's  
 4 alternative testing method and alternative performance standard for the purpose of  
 5 certification under sub. (2) (a), unless the department determines that it is not  
 6 reasonable for the results to be used for this purpose.

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

13 (b) For the purposes of par. (a), the visible mark shall consist of one of the  
 14 following:

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

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

20 3. Printed, stamped, engraved, or embossed text that indicates that the  
 21 cigarettes <sup>meet</sup> must meet the applicable fire safety performance standard under sub. (3).

22 4. ~~The letters "FSC."~~

23 (c) A manufacturer shall use only one marking, shall use this marking  
 24 uniformly for all types and brands of cigarettes marketed by the manufacturer, and

**BILL**

**SECTION 3**

1 shall apply this marking to all packs, cartons, cases, and other packages containing  
2 the cigarettes.

3 (d) Prior to the certification of a type or brand of cigarette, a manufacturer shall  
4 present its proposed marking to the department for approval. Upon receipt of the  
5 proposed marking, the department shall approve or disapprove the marking  
6 presented subject to par. (e). If the department fails to act within 10 business days  
7 after receiving the proposed marking, the marking shall be considered to have been  
8 approved by the department.

9 (e) The department shall approve a proposed marking under par. (d) if the  
10 proposed marking meets the size and location requirements under par. (a) and the  
11 text of the visible mark consists of the letters "FSC."

12 (f) A manufacturer may not modify a marking approved under par. (d) unless  
13 the modification has been approved by the department in accordance with this  
14 subsection.

15 (5) PROHIBITION. (a) Except as provided in par. (b), no person may sell cigarettes  
16 in this state unless the cigarettes are the subject of a certification filed under sub.

*to person located in MN*  
*or offer to sell*  
*all 3*

17 (2) (a) and the cigarettes are marked in compliance with sub. (4).

18 (b) Paragraph (a) does not apply to the selling of cigarettes by a manufacturer,  
19 distributor, direct marketer, jobber, or retailer if the stamps acquired under s. 139.32  
20 were affixed to the cigarette packages prior to the effective date of this paragraph ....  
21 [revisor inserts date], and if the quantity of such cigarettes in the manufacturer's,  
22 distributor's, direct marketer's, jobber's, or retailer's possession prior to the effective  
23 date of this paragraph .... [revisor inserts date], is comparable to the quantity of  
24 cigarettes in the manufacturer's, distributor's, direct marketer's, jobber's, or  
25 retailer's possession during the same period of the previous year.

**BILL**

1 (c) Paragraph (a) does not apply to the selling of cigarettes solely for the purpose  
2 of <sup>CONSUMER</sup> testing that is conducted by a manufacturer or under the control and direction of  
3 a 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 involves only the number of cigarettes that is reasonably  
6 necessary for the testing.

7 3. The testing is in a controlled setting where the cigarettes are either smoked  
8 onsite or are returned to the person administering the test at the conclusion of the  
9 testing.

10 **(6) PENALTIES.** (a) Any person who knowingly sells or offers to sell cigarettes  
11 at wholesale in violation of sub. (5) (a) shall forfeit not more than \$10,000 for each  
12 sale subject to par. (d).

13 (b) Any person who knowingly sells or offers to sell cigarettes at retail in  
14 violation of sub. (5) (a) shall forfeit:

15 1. Not more than \$500 for each violation that involves not more than 1,000  
16 cigarettes.

17 2. Not more than \$1,000 for each violation that involves 1,000 or more  
18 cigarettes, subject to par. (d).

19 (c) Any manufacturer that knowingly files a false certification under sub. (2)  
20 (a) shall forfeit not more than \$10,000. Each false certification constitutes a separate  
21 offense.

22 (d) The total amount of forfeitures imposed under par. (a) against a single  
23 violator may not exceed more than \$100,000 during any 30-day period. The total  
24 amount of forfeitures imposed under par. (b) 2. against a single violator may not  
25 exceed more than \$25,000 during any 30-day period.

**BILL****SECTION 3**

1           (7) ADMINISTRATION AND ENFORCEMENT. (a) The department or attorney general  
2 may file an action in civil court for a violation of this section. The relief sought in the  
3 action may include injunctive relief, damages incurred by the state because of the  
4 violation, enforcement costs, court costs, and attorney fees. Each violation of this  
5 section constitutes a separate civil violation for which the department or attorney  
6 general may seek relief.

7           (b) The department of revenue, in the course of conducting any inspection or  
8 examination authorized under s. 139.39, may inspect cigarettes to determine if the  
9 cigarettes are marked as provided under sub. (4), and the department of revenue  
10 shall notify the department of commerce of any unmarked cigarettes.

11           (c) Authorized personnel of the department of justice, the department of  
12 commerce, and the department of revenue, and any sheriff, police officer, or other law  
13 enforcement personnel, within their respective jurisdictions, may enter and inspect  
14 any premises where cigarettes are made, <sup>offered to be sold,</sup> sold, or stored to determine if the cigarettes  
15 comply with this section. An inspection under this paragraph includes examining  
16 the books, papers, invoices, and other records of any person who is subject to this  
17 section and in control, possession, or occupancy of the premises.

18           (8) SEIZURE. All cigarettes acquired, owned, imported, possessed, kept, stored,  
19 made, sold, distributed, or transported in violation of this section are subject to  
20 seizure by the department of justice, the department of commerce, the department  
21 of revenue, or any law enforcement personnel. All cigarettes seized for violating this  
22 section shall be destroyed after the person who holds the trademark rights in the  
23 cigarette brand has been given a reasonable opportunity to inspect the cigarettes.

**SECTION 4. Effective date.** (9)



## Gibson-Glass, Mary

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**From:** Gratz, Nadine  
**Sent:** Monday, October 15, 2007 12:08 PM  
**To:** Gibson-Glass, Mary  
**Subject:** Comments on fire-safe cigarettes draft

**Attachments:** PM RCIP\_2007 Wisconsin Bill w\_comments 10-12\_(DC\_1965243\_13).DOC; Talking Points Wisc RCIP\_(DC\_1979845\_1).DOC

Mary:

Attached are the latest comments and arguments from Altria on the draft. Hope you will have a chance to review it before our meeting tomorrow so we can compare notes. If you have time before the meeting, I'll be interested in hearing your reactions/thoughts. I really hope we are not totally back to ground zero on this project.

Thanks for your help.

Nadine



PM RCIP\_2007 Talking Points Wisc  
Wisconsin Bill w... RCIP\_(DC\_1...

Laurie

October 2007

**WISCONSIN REDUCED CIGARETTE IGNITION  
PROPENSITY BILL, THE NON-DELEGATION DOCTRINE,  
AND FEDERAL AND LOCAL PREEMPTION**

The National Fire Protection Association (NFPA) model reduced cigarette ignition propensity (RCIP) bill contains provisions that: (1) delegate limited legislative authority by making reference to New York law; (2) repeal the bill should an inconsistent federal RCIP bill be enacted; and (3) disallow local governmental units from enacting laws that conflict with or are preempted by the bill. These provisions are important to cigarette manufacturers to ensure consistent packaging requirements and implementation. We believe that these sections of the NFPA Model RCIP bill are lawful and should be incorporated in the Wisconsin RCIP bill for the reasons discussed below.

**I. Reference to New York Law and the Non-Delegation Doctrine**

The NFPA model RCIP bill contains certain language -- the "harmonization" and "marking" provisions -- that make reference to New York law. The provisions (as amended) represent a lawful, limited delegation of legislative power for the reasons set forth below.

**A. The "Non-Delegation" Doctrine Does Not Prohibit Reference to New York Law**

In Wisconsin, "[a] delegation of legislative power to a subordinate agency will be upheld if the purpose of the delegating statute is ascertainable and there are procedural safeguards to insure that the board or agency acts within that legislative purpose." *Watchmaking Examining Bd. v. Husar*, 182 N.W.2d 257, 262 (Wis. 1971). In the two pertinent provisions (Sections 167.35(3)(i) and 167.35(4)(d)), the amended language sets forth a clear framework under which the Department of Commerce decides whether to accept a proposed marking, and clear guidance about how the department should exercise its responsibility for enforcing and implementing the law. Through these proposed statutory provisions, the legislature is instructing the department to rely on the implementation decisions made by the state of New York, which reflects the legislature's declaration of policy and is consistent with the legislature's prerogative.

"Harmonization" language -- § 167.35(3)(i)

NFPA model language: *This section shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.*

Explanation: The purpose of a "harmonization" provision (found in other states' RCIP laws and NFPA's model bill) is to ensure that the New York RCIP standard and test method are implemented consistently from state to state. In particular, the



“harmonization” language ensures that any Wisconsin enforcement action will be undertaken in a manner consistent with New York’s implementation and enforcement of its law with respect to the determination of compliance with the RCIP standards. Indeed, cigarettes that are compliant in New York should not, when judged against an identical standard in Wisconsin, be considered non-compliant in Wisconsin. The NFPA/PMUSA language does not require Wisconsin officials to take any particular enforcement action based on New York law. The provision is a proper legislative declaration of policy that the department should look to the implementation and enforcement experience of New York officials, who first articulated the standard and regulations and who have had the responsibility for enforcing the law for several years.

“Packaging Marking” Language -- § 167.35(4)(d)

NFPA model language: Prior to the certification of a cigarette, a 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 8-point type or larger and permanently printed, stamped, engraved, or embossed on the package at or near the universal product code.*

Explanation: RCIP laws enacted in other states (and NFPA’s Model bill) require the approval of the same packaging marking in use and approved for sale in New York. Such a provision reduces the risk that a manufacturer will need to use different packaging markings -- and consequently produce different packaging -- in different states for the same reduced ignition propensity cigarettes. PM USA thus believes that the revised provision does not present an unlawful delegation of legislative power to New York officials.

**B. The Reference to Another States’ Law Would Be Consistent With Existing Wisconsin Statutes**

The language proposed in sections 167.35(3)(i) and 167.35(4)(d) also would be consistent with a wide range of Wisconsin statutes that have expressly required reliance upon the construction of laws of other jurisdictions. For instance:

- W.S.A. 51.45(14) (State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act ) “This section shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this section insofar as possible among states which enact similar laws.”





- W.S.A. 115.758 (Children with Disabilities) “To the extent possible, this subchapter shall be construed in a manner that is consistent with 20 USC 1400 to 1482 and is consistent with the purposes specified in 20 USC 1400(d).”
- W.S.A. 806.04 (Uniform Declaratory Judgments Act) “This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.”

Given that the Legislature has relied on the interpretations of the laws of other jurisdictions multiple times and in broad reaching statutes, the Legislature is well within its power to refer to the New York RCIP law in proposed sections 167.35(3)(i) and 167.35(4)(d) of the Wisconsin RCIP bill.

### **C. The Reference to New York Law Would Be Consistent With The RCIP Laws of Other States**

Reduced cigarette ignition propensity (RCIP) legislation has been signed into law in Alaska, California, Connecticut, Delaware, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, North Carolina, Oregon, Rhode Island, Texas, Utah, and Vermont. As set forth below, all of these laws and bills have provisions that directly refer to the New York RCIP law.<sup>1</sup>

#### Alaska (SB 84, signed by the Governor on July 19, 2007)

“The substance of the fire safety standards for cigarettes established by the law of the state of New York and the implementation of these standards by the state of New York shall be persuasive authority in the implementation of this chapter by the state fire marshal and the attorney general.” Section 18.74.220

#### California (Health and Safety Code §§ 14950-14960)

“This section shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes that are effective on June 28, 2004.” Section 14952(g)

“A marking in use and approved for the sale of cigarettes in the State of New York shall be deemed approved.” Section 14954(b)

<sup>1</sup> The New York requirements are codified as the “Fire Safety Standards for Cigarettes” at Title 19 NYCRR Part 429. The New York regulations took effect on June 28, 2004. The underlying statute is the “Cigarette Fire Safety Act of 2000” (codified at Executive Law 156-c, entitled “Fire Safety Standards for Cigarettes”), which was amended on August 16, 2006.



Connecticut (SB 703, signed by the Governor on July 10, 2007)

“The State Fire marshal shall implement [the law] in accordance with the New York fire safety standards, as amended, as said standards are embodied in New York Executive Law, Section 156-c, as amended and Part 429 of Title 19 New York Codes, Rules, and Regulations, as amended.” Section 9

Delaware (HB 149, signed by the Governor on July 5, 2007)

“This chapter shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 7117(h)

Illinois (425 ILCS 8/)

“This Act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” 425 ILCS 8/20(d)

“A marking in use and approved for sale of cigarettes in the State of New York shall be deemed approved.” 425 ILCS 8/40(d)

Iowa (HF 718, signed by the Governor on May 21, 2007)

“This chapter shall be implemented in accordance with the implementation and substance of the New York fire safety standards for cigarettes.” Section 101B.3(4)

Kentucky (2007 KY S 134, signed by the Governor on March 21, 2007)

“The implementation and substance of the New York Fire Safety Standards for Cigarettes shall be persuasive authority in the implementation of Sections 1 to 8 of this Act.”  
Section 2(8)

Louisiana (HB 579, signed by the Governor on July 10, 2007)

“This Section shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 1601.3(H)

Maine (HB 68, signed by the Governor on June 11, 2007)

“This section must be implemented by the State Fire Marshal in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes or a comparable of successor standard.” Section 1555-E(8)(D)



Maryland (HB785, signed by the Governor on May 17, 2007)

“This subtitle shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 16-603(l)

“The marking shall: (1) consist of: (I) any marking in use and approved for sale in New York under the New York Fire Safety Standards for Cigarettes; or (II) the letters “FSC” to signify Fire Standards Compliant.” Section 16-604(b)

Massachusetts (MGLA 64C)

“Upon receipt of the request, the secretary shall approve or disapprove the marking offered, except that the secretary shall approve any marking in use and approved for sale in New York State pursuant to the New York fire safety standards for cigarettes.”  
Section D(d)

Minnesota (HF0829, signed by the Governor on May 7, 2007)

“This section must be implemented in accordance with the implementation and substance of the New York ‘Fire Safety Standard for Cigarettes.’” Section 299F.851(8)

“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 Standard for Cigarettes.’” Section 299F.853(d)

Montana (HB0461.03, signed by the Governor on May 1, 2007)

“Because [sections 1 through 10] are based on New York law, it is the intent of the legislature that [sections 1 through 10] be implemented in accordance with the implementation and substance of the New York executive law section 156-c, fire safety standards for cigarettes.” Section 2(9)

“Upon receipt of the request, the department of revenue shall approve or disapprove the marking offered, except that the department of revenue shall approve any marking in use and approved for sale in New York pursuant to New York executive law section 156-c, the New York fire safety standards for cigarettes.” Section 4(4).

New Hampshire (RSA 339-F)

“This chapter shall be implemented in accordance with the substance of the New York Fire Safety Standards for Cigarettes, as amended.” Section 4(IV)

“A marking in use and approved for the sale of cigarettes in the state of New York shall be deemed approved.” Section 8



New Jersey (A2575, signed by the Governor on May 4, 2007)

“This act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 4(h)

“Upon receipt of the request, the director shall approve or disapprove the marking offered, except that the director shall approve any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes.” Section 6(d)

North Carolina (HB1785, signed by the Governor on August 24, 2007)

“The Commissioner shall implement this Article in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 58-92-15(h)

“Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the Commissioner for approval. Upon receipt of the request, the Commissioner shall approve or disapprove the marking offered, except that the Commissioner 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 UPC Code.”

Section 58-92-25(d)

Oregon (HB2163, signed by the Governor on April 17, 2007)

“The interpretations given to the New York Fire Safety Standards for Cigarettes (Part 429, Title 19, New York Environmental Conservation Rules and Regulations) shall be persuasive authority in the interpretation of sections 1 to 9 of this 2007 Act.” Section 12

“In determining whether to approve or disapprove a proposal for packaging marking, the State Fire Marshal: (a) Shall give preference to packaging marking that is consistent with the packaging marking in use and approved for that cigarette variety in the State of New York; and (b) Shall approve packaging marking that bears the letters ‘FSC’.” Section 8(3)

Rhode Island (S106, became the law without the Governor’s signature on July 3, 2007)

“This chapter shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 23-20.11-4(g)



Texas (HB 2935, signed by the Governor on June 18, 2007)

“This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform this chapter with the laws of those states that have enacted reduced cigarette ignition propensity laws.” Section 796.013

Utah (2007 UT SB 200, signed by the Governor on March 19, 2007)

“This part shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 53-7-403(9)

“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.” Section 53-7-405(4)

Vermont (VSA tit. 20, chapter 173)

“The commissioner ... (3) Shall assure that the implementation and substance of this section is in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 2757(f)

“Any marking approved and in use for the sale of cigarettes in the state of New York shall be approved unless the commissioner determines that the New York Fire Safety Standards for Cigarettes have changed significantly since those standards were effective on June 28, 2004.” Section 2757(d)(2)

## **II. Preemption**

The NFPA model bill contains provisions that repeal the bill should an inconsistent federal RCIP bill be enacted (the “federal preemption provision”) and, we also propose a provision to ensure that no inconsistent local regulations are enacted (the “local preemption provision”). We believe that both of these provisions are lawful and necessary to ensure consistent standards and implementation of the RCIP bill.

The NFPA model federal preemption provision (which is based on the New York language), proposed as Section 4(1) of the Wisconsin RCIP bill, is as follows:

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

The federal preemption provision makes clear that the Wisconsin RCIP law will sunset upon enactment of federal RCIP laws without the need for legislative, administrative, or judicial action. It is similar to federal preemption language elsewhere in the Wisconsin statutes:



- W.S.A. 190.005 (organization and management of railroads) “Each provision of this chapter applies only to the extent that it is not contrary to or inconsistent with federal law or the constitution of the United States.”
- W.S.A. 403.102(3) (Uniform Commercial Code - negotiable instruments) “Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.”

The local preemption provision, proposed as Section 4(2) of the Wisconsin RCIP bill, is as follows:

Notwithstanding any other provision of law, the local government 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 exclusion of that subject from the act.

The local preemption provision makes clear that state law governs and that local governments cannot regulate in this field. It is similar to the RCIP law enacted in other states and local preemption language in several Wisconsin statutes:

- W.S.A. 75.12(7) (notice of application for deed) “This section shall supersede all provisions of law, including the provisions of any city charter, which are in conflict with it.”
- W.S.A. 30.745(2)(b) (regulation of boating) “Conflicts. Any municipal ordinance enacted under this section which conflicts with the uniform navigation aids system established by the department under s. 30.74(2) or with any county ordinance is void.”

