

2007 BILL

AN ACT *to amend* 20.143 (3) (j); and *to create* 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 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.

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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:

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. 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 3. 167.35 of the statutes is created to read:

167.35 Fire safety performance 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) "Department" means the department of commerce unless the context requires otherwise.

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

(d) "Distributor" has the meaning given in s. 139.30 (3).

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

(f) "Manufacturer" means:

Deleted: has the meaning given in s. 139.30 (7).

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.

Comment [#1]: The proposed edits to the definition of "manufacturer" would conform the proposed Wisconsin RCIP bill to other states' RCIP laws by clarifying that the term includes not only an entity (and its legal successors) engaged in the traditional production of cigarettes, but also any entity that sells cigarettes in Wisconsin if the entity acquires cigarettes that are produced outside of the U.S. when the original manufacturer did not intend for the cigarettes to be sold in the U.S.

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

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

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(2) CERTIFICATION FILED BY CIGARETTE MANUFACTURERS. (a) Each

manufacturer that offers to sell cigarettes in this state shall file a written certification with the department certifying that each type of cigarette listed in the certification has been tested in accordance with sub. (3) (a) (1) and meets the applicable fire safety performance standard under sub. (3).

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Comment [#2]: The term "brand" is not used in this context in other states' RCIP laws. We propose deleting it here and elsewhere in the bill to avoid confusion—"brand" is used in Sec. (2)(b)(1) below as one of the attributes to describe the types of cigarettes listed in certifications.

(b) For each type of cigarette listed in the certification, all of the following

information shall be included in the certification:

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

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

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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 manufacturer of the cigarette.
 10. The date on which the testing required under sub. (3) occurred.
- (c) Upon filing a certification under par. (a), a manufacturer shall provide a copy of the certification to each distributor, jobber, or direct marketer that purchases from the manufacturer cigarettes that are the subject of the certification. Each manufacturer shall also provide to each distributor, jobber, and direct marketer sufficient copies of an illustration of the package marking required under sub. (4) to be given to each retailer to whom the distributor, jobber, or direct marketer sells cigarettes.
- (d) Each manufacturer shall file the certification under par. (a) with the department under this subsection every 3 years.
- (e) The department shall promptly forward a copy of each certification it receives under par. (a) to the attorney general.
- (f) Each manufacturer shall pay to the department a fee of \$250 for each type of cigarette listed in each certification filed with the department under par. (a).

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(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 performance standard 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 methods set forth in sub. (3) of this act and maintains records of that retesting as required by sub. (3) of this act. Any altered cigarette which does not meet the performance standard set forth in sub. (3) of this act may not be sold in this state.~~

Comment [#3]: This proposed addition would make the bill consistent with the NY RCIP law, the NFPA Model law and other states' RCIP laws which specify that a cigarette must be retested before the cigarette may be sold if changes have been made which are likely to alter its compliance with the RCIP performance standard. The edit also is necessary because a cigarette manufacturer might make changes to a cigarette which do not affect the cigarette's compliance with the RCIP performance standard and for which additional testing, therefore, is not necessary.

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

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 (ASTM) standard E2187-04. "Standard Test Method for Measuring the Ignition Strength of Cigarettes". The department may adopt a subsequent ASTM standard test method that is established subsequent to ASTM standard E2187-04 if the department finds 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.

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2. The testing shall be conducted on 10 layers of filter paper.

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Comment [#4]: The proposed edits would conform the proposed Wisconsin RCIP bill to other states' RCIP laws by clarifying both the specific ASTM test method to be used and the standard that must be met in order for a subsequent ASTM method to be adopted.

3. The performance standard required by this section shall only be applied to a complete test trial. A complete test trial shall consist of 40 replicate tests for each cigarette tested.

Deleted: the standard test method that is in effect on the effective date of this subdivision [revisor inserts date].

Comment [#5]: This proposed addition would conform the proposed Wisconsin RCIP bill to other states' RCIP laws by clarifying that the performance standard is appropriate for use in evaluating a cigarette only when applied to a completed test trial.

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4. Each laboratory conducting the testing shall implement a quality control and quality 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.

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Comment [#6]: This proposed edit harmonizes the provision with the term as used in par. (b) below.

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

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(b) *Quality control and quality assurance program.* For purposes of par.

(a)4., a quality control and quality 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. Such a program ensures that the testing repeatability remains within the required repeatability values stated in par. (a)(4) for all test trials used to certify cigarettes in accordance with this act.

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Comment [#7]: This proposed addition would make the bill consistent with other states' RCIP laws by ensuring that the same standard for repeatability of test results is achieved by the quality assurance program in each laboratory performing testing.

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

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2. Each type of cigarette listed in a certification pursuant to sub. (2) 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:

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

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column. At least one complete band shall be located at least 15 millimeters from the lighting end of the tobacco column.

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b. For a cigarette that has bands positioned by design, the cigarette shall have at least 2 nominally identical bands on the paper surrounding the tobacco column fully located at least 15 millimeters from the lighting end of the tobacco column and 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.

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

Comment [#8]: As drafted, the bill would increase from two to four 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 all other states that have enacted RCIP laws. If the proposed edits are not made, manufacturers that position bands on the paper by design would be required to produce RCIP cigarettes differently and uniquely for sale in Wisconsin.

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

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(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 may review the cigarette fire safety requirements enacted or otherwise adopted by another state. If the department determines that the safety requirements are comparable to the safety requirements 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 alternative testing

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

(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 section shall be conducted in accordance with this section. (h) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of 3 years, and shall make copies of such reports available to the department and the attorney general upon request. Any manufacturer that fails to make copies of such reports available within 60 days of receiving such a written request shall be subject to a civil penalty not to exceed \$10,000 for each day after the sixtieth day that the manufacturer does not make such copies available.

(i) 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 or larger type and shall be a modification of the universal

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Comment [#9]: This proposed addition would make the bill consistent with the NFPA Model law and other states' RCIP laws and ensure 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 [#10]: This proposed addition would make the bill consistent with the NY RCIP law, the NFPA Model law and other states' RCIP laws. The provision helps 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.

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Comment [#11]: This proposed addition would make the bill consistent with the NY RCIP law, the NFPA Model law and other states' RCIP laws. The provision will help state officials in Wisconsin ensure that manufacturers create and maintain documents that demonstrate their compliance with the RCIP law's requirements.

Comment [#12]: It is critical to cigarette manufacturers that the performance standard and test method in each state's RCIP laws are implemented consistently from state to state. Similar provisions to this language appear in other state RCIP laws and within laws which have been enacted in Wisconsin. We have provided separate talking points addressing the importance of this provision.

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

(b) For the purposes of par. (a), 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.

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 ~~meets~~ the applicable fire safety performance standard under sub. (3).

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

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(d) Prior to the certification of a type of 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:~~

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1. ~~Any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes or~~

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2. ~~The letters "FSC," which signifies Fire Standards Compliant.~~

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~~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.~~

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

(5) **PROHIBITION.** (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 the cigarettes are marked in compliance with sub. (4).

(b) Paragraph (a) does not apply to the selling of cigarettes by a manufacturer, distributor, direct marketer, jobber, or retailer 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 manufacturer's, distributor's, direct marketer's, jobber's, or retailer's possession prior to the effective date of this paragraph [revisor inserts date], is comparable to the quantity of cigarettes in the manufacturer's, distributor's, direct marketer's, jobber's, or retailer's possession during the same period of the previous year.

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

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

Comment [#13]: The proposed edits to the marking provisions would make the bill consistent with similar language in the RCIP laws of numerous other states and reduce the possibility that a manufacturer will be required to use different package markings in different states for the same RCIP cigarettes. We have provided separate talking points addressing the importance of this provision.

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

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Comment [#14]: This proposed edit clarifies that cigarettes which have not been tested and shown to meet the RCIP standard may not be sold or offered for sale in the state. It would make the provision consistent with terms used in the penalties provision in sec. 6 and makes the bill consistent with the NFPA Model RCIP law and other states' RCIP laws.

Comment [#15]: This proposed amendment clarifies the limited nature of the testing program which would be exempt.

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

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

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

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

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

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

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

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

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constitutes a separate civil violation for which the department or attorney general may seek relief.

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

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

Comment [#16]: See comment 15. above.

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

(9) 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

in this State

reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state.

SECTION 4. Preemption and local regulation. (1) This act shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this act is adopted and becomes effective. *w/o federal statement*

(2) 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.

SECTION 5. Effective date.

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

(END)

Comment [#17]: This proposed addition is important both to manufacturers and to other entities that ship cigarettes within Wisconsin, because it clarifies that the Wisconsin RCIP law neither prohibits a manufacturer from preparing cigarettes within the state for distribution outside of Wisconsin, nor prohibits an entity from making shipments within the state or through the state, when the cigarettes shipped are intended solely for sale outside of Wisconsin. The paragraph conforms the bill with the NFPA Model bill and other states' RCIP laws.

Comment [#18]: This provision has been added to make the bill consistent with other states' RCIP laws which include similar preemption provisions. PM USA supports the enactment of federal legislation to set forth a uniform, national standard for RCIP. Thus, PM USA prefers that state RCIP laws contain clear terms such that the law will sunset upon enactment of future federal RCIP requirements without the necessity for further legislative, administrative, or judicial action.

Comment [#19]: This provision is necessary to ensure that local governmental units do not enact RCIP requirements that are inconsistent with the state standard.

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California version for NY incorporation

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State of Wisconsin
2007 - 2008 LEGISLATURE

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2007 BILL

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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.

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3 the purposes of chs. 101, 145, and 168 and ss. 167.35, 236.12 (2) (a), 236.13 (1) (d) and
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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).

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

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

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

(b) For each type 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 manufacturer of the cigarette.
10. The date on which the testing required under sub. (3) occurred.

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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 of cigarette listed in each certification filed with the department under par. (a).

14 (g) If a manufacturer has certified a type of cigarette pursuant to this
15 subsection, and makes any change after the certification to that type of cigarette that
16 is likely to alter its compliance with the applicable ^{fire safety} performance standard, no person
17 may offer to ^{for sale} sell or sell that type of cigarette in this state unless the manufacturer
18 retests the cigarette in accordance with the applicable testing method under sub. (3)
19 (a) and maintains the reports of that testing as required under sub. (3) (f).

20 (3) TEST METHODS; ~~PERFORMANCE STANDARDS~~ ^{FIRE SAFETY}. (a) *Method of testing*. For purposes
21 of this section, testing of cigarettes conducted by a manufacturer or conducted or
22 sponsored by the state shall meet all of the following requirements:

23 1. The testing shall be conducted in accordance with the standard test method
24 for measuring the ignition strength of cigarettes established by the American Society
25 ^{for} of Testing and Materials ^{International} Standard E 2187-04. The department may adopt a

BILL

1 substitute test method that is different from the standard test method, if the
2 department finds that the substitute ^{test} method does not result in a change in the
3 percentage of full-length burns exhibited by any tested cigarette when compared to
4 the percentage of full-length burns the same cigarette would exhibit when tested in
5 accordance with the standard test method.

6 2. The testing shall be conducted on 10 layers of filter paper.

7 3. ^{fire safety} The performance standard under this subsection shall be applied only to a
8 complete test trial, which shall consist of 40 replicate tests for each cigarette tested.

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

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

17 (b) *Quality control and quality assurance program.* For purposes of par. (a) 4.,
18 a quality control and quality assurance program shall include a laboratory procedure
19 that ensures all of the following:

20 1. That operator bias, systematic and nonsystematic methodological errors,
21 and equipment-related problems do not affect the results of the testing.

22 2. That the testing repeatability remains within the required repeatability
23 values stated in par. (a) 4. for all of the test trials used to certify cigarettes under sub.
24 (2).

BILL

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

4 2. Each type of cigarette listed in a certification under sub. (2) that uses lowered
5 permeability bands in the cigarette paper in order to meet the fire safety
6 performance standard under subd. 1. shall meet one of the following requirements:

7 a. For a cigarette that does not have bands positioned by design, the cigarette
8 shall have at least 2 nominally identical bands on the paper surrounding the tobacco
9 column, at least one of them being a complete band located at least 15 millimeters
10 from the lighting end of the tobacco column.

11 b. For a cigarette that has bands positioned by design, the cigarette shall have
12 at least 2 nominally identical bands on the paper surrounding the tobacco column.

13 *At least* One of these bands shall fully be located at least 15 millimeters from the lighting end
14 of the tobacco column. *at least one of these remaining bands* The other band shall be fully located at least 10 millimeters
15 from the filter end of the tobacco column, or at least 10 millimeters from the labeled
16 end of the tobacco column for a nonfiltered cigarette.

17 (d) *Fire safety* *I proposed* *Alternative test methods and performance standards used by*
18 *manufacturers.* 1. If the department determines that a type of cigarette cannot be
19 tested in accordance with the test method required under par. (a), the manufacturer
20 *that & thereof* of the type shall propose an alternative test method and alternative fire safety
21 performance standard for approval by the department.

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

BILL

STET all
where eraser marks remain

The department may not require

(e) *Provisions from other states.* In lieu of approving an alternative test method and alternative fire safety performance standard under par. (d), the department may review the cigarette fire safety requirements enacted or otherwise adopted by another state. If the department determines that the safety requirements are comparable to the safety requirements under this section, that the other state's safety requirements specify the same test method and the same performance standard that are specified in pars. (a) and (c), and that the other state has approved an alternative test method and alternative performance standard as meeting the requirements under that state's cigarette fire safety requirements, the department shall allow a manufacturer to use the results of the other state's alternative test method and alternative performance standard for the purpose of certification under sub. (2) (a) without requiring additional testing, unless the department determines that it is not reasonable for the results to be used for this purpose.

No 1
move

under this paragraph

(f) *Reporting requirement.* 1. Each manufacturer shall keep reports on all test results on all cigarettes that are offered for sale and that are conducted to determine compliance with this section and shall keep copies of these reports for 3 years.

2. Upon written request from the department or the attorney general, a manufacturer shall make copies of the reports under subd. 1. available to the department or the attorney general within 60 days after receiving the request.

(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 or larger type and shall be a modification of the universal product code that results in a visible mark being printed at or near the universal product code.

BILL

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

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

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

8 3. Printed, stamped, engraved, or embossed text that indicates that the
9 cigarettes must meet the applicable fire safety performance standard under sub. (3). ✓

10 4. The letters "FSC."

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

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

21 (e) The department shall approve a proposed marking under par. (d) if the
22 proposed marking meets the size and location requirements under par. (a) and the
23 if either of the following applies:

24 1. The marking is in use and has been approved for cigarettes that are sold in
25 New York.

BILL

1 2. The marking consists of the letters "FSC."

2 (f) A manufacturer may not modify a marking approved under par. (d). ✓

3 **(5) PROHIBITION.** (a) Except as provided in pars. (b) and (c), no person may sell
4 or offer to sell cigarettes to a person located in this state unless all of the following
5 apply:

6 1. The cigarettes are ^{of} a type that has been tested in accordance with this section.

7 2. The cigarettes meet the applicable ^{fire safety} performance standard required under
8 this section.

9 3. The cigarettes are ^{of} a type ^{that are covered by} the subject of a certification filed under sub. (2) (a). ✓

10 4. The cigarettes are marked in compliance with sub. (4). ✓

11 (b) Paragraph (a) does not apply to the selling ^{or the offering for sale of} of cigarettes by a manufacturer,
12 distributor, direct marketer, jobber, or retailer if the stamps acquired under s. 139.32

13 were affixed to the cigarette packages prior to the effective date of this paragraph

14 [revisor inserts date], and if the quantity of such cigarettes in the manufacturer's,

15 distributor's, direct marketer's, jobber's, or retailer's possession prior to the effective

16 date of this paragraph [revisor inserts date], is comparable to the quantity of

17 cigarettes in the manufacturer's, distributor's, direct marketer's, jobber's, or

18 retailer's possession during the same period of the previous year.

19 (c) Paragraph (a) does not apply to the selling ^{or the offering for sale of} of cigarettes solely for the purpose

20 of consumer testing that is conducted by a manufacturer or under the control and

21 direction of a manufacturer if all of the following apply:

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

23 2. The testing involves only the number of cigarettes that is reasonably

24 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 offers to sell cigarettes
5 at wholesale in violation of sub. (5) (a) shall forfeit not more than \$10,000 for each
6 sale subject to par. (e).[✓]

7 (b) Any person who knowingly sells or offers to sell cigarettes at retail in
8 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. (e).

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

16 (d) Any manufacturer who fails to comply with sub. (3) (f) 2. shall forfeit not
17 more than \$10,000. Each day of violation constitutes a separate offense.

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

22 **(7) ADMINISTRATION AND ENFORCEMENT.** (a) The department or attorney general
23 may file an action in civil court for a violation of this section. The relief sought in the
24 action may include injunctive relief, damages incurred by the state because of the
25 violation, enforcement costs, court costs, and attorney fees. Each violation of this

BILL

1 section constitutes a separate civil violation for which the department or attorney
2 general may seek relief.

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

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

14 (8) SEIZURE. All cigarettes acquired, owned, imported, possessed, kept, stored,
15 made, sold, distributed, or transported in violation of this section are subject to
16 seizure by ^{anyone authorized to inspect premises under subo (7)} ~~the department of justice, the department of commerce, the department~~ (c)
17 ~~of revenue, or any law enforcement personnel.~~ All cigarettes seized for violating this
18 section shall be destroyed after the person who holds the trademark rights in the
19 cigarette brand has been given a reasonable opportunity to inspect the cigarettes.

20 (9) SELLING CIGARETTES OUTSIDE OF STATE. ^{(S) THIS} This ~~sub~~ subsection does not apply to any
21 ^{manuf. retailer or any} person who sells or offers to sell cigarettes that are prohibited from being sold under
22 sub. (5) (a) if either of the following ^{applies} apply:

23 (a) The cigarettes will be stamped for sale in a state other than this state.

BILL

1 *manufacturers*
 (b) The cigarettes are packaged to be sold outside the United States and the
 2 ~~manufacturer~~ or seller has taken reasonable steps to ensure that the cigarettes will
 3 not be sold or offered to be sold to any person in this state.

4 (10) NEW YORK, FEDERAL, AND LOCAL LAWS. (a) This section shall be implemented
 5 in accordance with the implementation and substance of the New York Fire Safety
 6 Standards for Cigarettes that are in effect on the effective date of this paragraph ...
 7 [revisor inserts date]. If, after the effective date of this paragraph ... [revisor inserts
 8 date], the New York safety standards are changed, the department shall suggest
 9 proposed legislation to the chairpersons of the appropriate standing committees of
 10 the legislature, as designated by the presiding officer of each house. The proposed
 11 legislation shall contain the provisions necessary to bring this section into
 12 ~~compliance~~ *in accordance* with the New York safety standards.

13 (b) If the department determines that the federal government has enacted
 14 legislation that establishes a *fire safety* performance standard that conflicts with or that
 15 preempts the provisions of this section that establish *fire safety* performance standards, this
 16 section does not apply after the date on which the federal legislation takes effect. *or adopt and enforce a resolution*

17 (c) A city, village, town, or county may enact and enforce an ordinance
 18 regulating the fire safety performance of cigarettes that are sold or that are offered
 19 to be sold in this state only if the ordinance is in strict conformity with this ~~statute~~ *section*.

SECTION 4. Effective date.

20 *Please fix comp.* *No F* *This act takes effect on*
 21 ~~(1)~~ This act takes effect on the first day of the 18th month beginning after
 22 publication, *except as follows:*

(END)

23 *EFF DATE*
 (1) The treatment of *section* 5.167.35 (10)(c) *of the statutes* takes effect on the day after publication.

Insert 3 - 1 JK

1 (Not) means any of the following:

2 1. Any person who manufactures or otherwise produces cigarettes anywhere
3 or causes cigarettes to be manufactured or produced anywhere, if the person intends
4 that the cigarettes are to be sold in this state, including cigarettes that are sold in
5 the U.S. through an importer.

6 2. The first purchaser anywhere that intends to resell in the U.S. cigarettes
7 that are manufactured anywhere, if the original manufacturer or producer did not
8 intend that the cigarettes be sold in the U.S.

9 3. Any entity that becomes a successor to a person described in subd. 1. or
10 purchaser described in subd. 2.

11

United States

United States

or

D-NOTE

④ I have made every effort to address your concerns regarding consistency with other

state laws. However, I did not draft sub. in your materials

(3)(f) concerning additional testing because

⑤ it appears to conflict with so 167.30⁵(2)

(g) and the last sentence of so 167.30⁵(3)(e) situation it is

and I did not understand what it is trying

to address. If you still want this language,

please call me at the number below to discuss

it further.

⑥ The second sentence in s. 167.30⁵(10)(a) is

necessary to address the situation where New

York law is amended. Wisconsin law cannot

automatically amend itself whenever New York

law changes.

MOB

~~Act~~ Wed 10AM

↑
stays

2007 BILL

or a substitute test method adopted by the Department of Commerce

Regen

- 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.

test

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.

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).

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).

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

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

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 ^{Standard E 2187-04 as a substitute} a ^{plain} standard test method that
21 is established subsequent to the effective date of this subdivision [revisor inserts
22 date], if the department finds that ^{the substitute} 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 ^{would exhibit} exhibits when tested in

that is different from the standard test method

INSERT
4-14

BILL

this subsection
Subj (3)
4) 30 The performance standard agreed under this subsection shall be applied only to a complete test trial

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

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

5 *40 3* Each laboratory conducting the testing shall implement a quality control
6 *and quality assurance* 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 *50 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 *I quality* (b) *quality* *40 3* 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. *all of the*

17 (c) *following* 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 *listed in a certification under subd (2)* 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:

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

INS 5-17
INS 5-17

BILL

SECTION 3

at least one of them being a complete band

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 ~~4~~ ² nominally identical ~~complete~~ ^{one} 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. ^{band} ~~At least one of these bands shall be located at least 15 millimeters from the~~ ^{will be}

band will be fully located

9 (d) ^{test} Alternative testing method ^s and performance standards. ^{used by manufacturer} 1. If the
10 department determines that a type or brand of cigarette cannot be tested in
11 accordance with the testing methods ^{required} 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.

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) ^{Provisions from other states not} 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

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) *without requiring additional testing* unless the department determines that it is not
6 reasonable for the results to be used for this purpose.

INSERT
7-6

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 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

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.

if either of the following apply applies

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 "ESC"~~

STEP

STEP

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DN*

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~~

to a person located

*and (c) and
para (a) and (b)
offer to sell*

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.

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

unless all of the

following apply

INSV 8-17 ✓

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 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 (7) (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). (e)

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). (e)

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 (e) (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.

INSERT
B9-21

BILL

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, 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.

24 **SECTION 4. Effective date.**

✓
INSERT
10-23

Insert 4-14

(g) If a manufacturer has certified a type of cigarette pursuant to this subsection, and makes any change after the certification to that type of cigarette that is likely to alter its compliance with the applicable performance standard, no person may offer to sell or sell that type of cigarette in this state unless the manufacturer retests the cigarette in accordance with the applicable testing method under sub. (3) (a) and maintains the reports of that testing as required under sub. (3) (f).

Insert 5-17

1. That operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing.
2. That the testing repeatability remains within the required repeatability values stated in par. (a) (4) for all of the test trials used to certify cigarettes under sub. (2).

Insert 7-6

(f) *Reporting requirement.* 1. Each manufacturer shall keep reports on all test results on all cigarettes that are offered for sale and that are conducted to determine compliance with this section and shall keep copies of these reports for a period of 3 years.

2. Upon written request from the department or the attorney general, a manufacturer shall make copies of the reports under sub. 1. available to the department or the attorney general within 60 days after receiving the request.

Insert 8-11

1. The marking is in use and has been approved for cigarettes that are sold in New York.

✕ 2. The marking consists of the letters "FSC".

Insert 8-17

1. The cigarettes are a type that has been tested in accordance with this section.

2. The cigarettes meet the applicable performance standard required under this section.

3. The cigarettes are a type subject the subject of a certification filed under sub. (2) (a).

4. The cigarettes are marked in compliance with sub. (4). ✓

Insert 9-21

(d) Any manufacturer who fails to comply with sub. (3) (f) 2. shall forfeit not more than \$10,000. Each day of violation constitutes a separate offense.

Insert 10-23

✕ (9) SELLING CIGARETTES OUTSIDE OF STATE. This subsection does not apply to any person who sells or offers to sell cigarettes that are prohibited from being sold under sub. (5) (a) if either of the following apply:

(a) The cigarettes will be stamped for sale in a state other than this state.

(b) The cigarettes are packaged to be sold outside the United States and the manufacture or seller has taken reasonable steps to ensure that the cigarettes will not be sold or offered to be sold to any person in this state.

✕ (10) NEW YORK, FEDERAL AND LOCAL LAWS. (a) This section shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes that are in effect on the effective date of this paragraph [revisor inserts date]. If, after the effective date of this paragraph [revisor inserts

date], the New York safety standards are changed, the department shall suggest proposed legislation to the chairpersons of the appropriate standing committees of the legislature, as designated by the presiding officer of each house. The proposed legislation shall contain the provisions necessary ^{to} bring this section into compliance ⁺ with the New York safety standards.

(b) If the department determines that the federal government has enacted legislation that establishes a performance standard that conflicts with or that preempts the provisions of this section that establish performance standards, this section does not apply after the date on which the federal legislation takes effect.

⁺ (c) A city, village, town, or county may enact and enforce an ordinance regulating the fire safety performance of cigarettes that are sold or that are offered to be sold in this ^{state} only if the ordinance is in strict conformity with this statute.

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

LRB-2251/3dn
MGG:wlj:nwn

November 1, 2007

I have made every effort to address your concerns regarding consistency with other state laws. However, I did not draft sub. (3) (f) in your materials concerning additional testing because it appears to conflict with s. 167.35 (2) (g) and the last sentence of s. 167.35 (3) (e), and I did not understand what situation it is trying to address. If you still want this language, please call me at the number below to discuss it further.

The second sentence in s. 167.35 (10) (a) is necessary to address the situation where New York law is amended. Wisconsin law cannot automatically amend itself whenever New York law changes.

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

Duerst, Christina

From: Gratz, Nadine
Sent: Monday, November 12, 2007 8:56 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-2251/3 Topic: Fire safety standards for cigarettes

Please Jacket LRB 07-2251/3 for the SENATE.