2007 DRAFTING REQUEST

Bill

Received: **01/08/2008**

Received By: **mglass**

Wanted: **As time permits**

Identical to LRB:

For: **J.A. Hines (608) 266-7746**

By/Representing: **Doug Parrot**

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

Drafter: **mglass**

May Contact:

Addl. Drafters:

Subject: **Buildings/Safety - clean ind air**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hines@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Fire safety standards for cigarettes

Instructions:

Same as 2251/ companion bill

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mglass 01/08/2008			_____ _____			State
/1			rschluet 01/08/2008	_____ _____	cduerst 01/08/2008	cduerst 01/08/2008	

FE Sent For: "/1" @ intro. 1-22-08

<END>

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mglass	/1 gs 1/8 08				JACKET NOW FOR ASSEMBLY	

FE Sent For:

<END>

Gibson-Glass, Mary

From: Gratz, Nadine
Sent: Monday, January 07, 2008 4:48 PM
To: Parrott, Douglas; Gibson-Glass, Mary
Subject: RE: Drafting request

Mary:

Please jacket an Assembly version of the firesafe cigarette bill -- LRB 2251/3. Thanks.

From: Parrott, Douglas
Sent: Monday, January 07, 2008 3:04 PM
To: Gibson-Glass, Mary
Cc: Gratz, Nadine
Subject: RE: Drafting request

I will have Sen. Robson's office give you a call ASAP.

Thanks,

Doug

From: Gibson-Glass, Mary
Sent: Monday, January 07, 2008 2:31 PM
To: Parrott, Douglas
Subject: RE: Drafting request

Doug,

Our confidentiality guidelines require that you have a copy of the actual draft in your possession or that you have Sen. Robson's office call to give me permission to release it to you. Let me know.

Thanks,

Mary Gibson-Glass
Senior Legislative Attorney
Legislative Reference Bureau
608 267 3215

From: Parrott, Douglas
Sent: Wednesday, January 02, 2008 1:51 PM
To: Gibson-Glass, Mary
Subject: Drafting request

Hi Mary,

Rep. Hines will be introducing the Assembly companion to Sen. Robson's LRB 2251/3, so I'm writing to request a draft with an Assembly LRB #.

Thanks,

Doug

Douglas Parrott
Research Assistant
Office of State Representative J.A. "Doc" Hines
608-266-7746
888-534-0042

State of Wisconsin
2007 - 2008 LEGISLATURE

RM not R
3775/1
LRB-2251/3
MGG&JK:wlj:nwn

sent to typing Stays

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 the Department of Commerce (Commerce) to consider an alternative testing method and alternative performance standard, either proposed by a manufacturer or adopted by another state, if Commerce determines that a type of cigarette made by the manufacturer cannot be tested using the standard test 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.

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).

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

(f) "Manufacturer" means any of the following:

1. Any person who manufactures or otherwise produces cigarettes anywhere or causes cigarettes to be manufactured or produced anywhere, if the person intends that the cigarettes are to be sold in this state, including cigarettes that are sold in the United States through an importer.

2. The first purchaser anywhere that intends to resell in the United States cigarettes that are manufactured anywhere, if the original manufacturer or producer did not intend that the cigarettes be sold in the United States.

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

(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" or "sale" has the meaning given in s. 139.30 (12).

(2) CERTIFICATION FILED BY MANUFACTURERS. (a) Each manufacturer that sells or 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 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.

(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 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).

(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 fire safety performance standard,

no person may offer for sale 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).

(3) TEST 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 for Testing and Materials International standard E2187-04. The department may adopt a substitute test method that is different from the standard test method, if the department finds that the substitute test 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 the standard test method.

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

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

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.

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.

(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 all of the following:

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 value stated in par. (a) 4. for all of the test trials used to certify cigarettes under sub. (2).

(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.

2. Each type of cigarette listed in a certification under 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:

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 column, at least one of them being a complete band located at least 15 millimeters from the lighting end of the tobacco column.

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. At least one of these bands shall fully be located at least 15 millimeters from the lighting end of the tobacco column, and at least one of the remaining bands shall fully

be located at least 10 millimeters from the filter end of the tobacco column or at least 10 millimeters from the labeled end of the tobacco column for a nonfiltered cigarette.

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

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

(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. 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), if the department determines that the safety requirements are comparable to the 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 may not require additional testing under this paragraph, unless the department determines that it is not reasonable for the results to be used for this purpose.

(f) *Reporting requirement.* 1. Each manufacturer shall keep reports on all test results on all types of 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.

(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 the cigarettes must meet the applicable fire safety performance standard under sub. (3).

4. The letters "FSC."

(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.

(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 subject to par. (e). 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.

(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 if either of the following applies:

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."

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

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

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

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

3. The cigarettes are of a type that are covered by a certification filed under sub. (2) (a).

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

(b) Paragraph (a) does not apply to the selling or the offering for sale 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 or the offering for sale 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.

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. (e).

(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. (e).

(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) 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.

(e) The total amount of forfeitures 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 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 from the department of justice, from the department of commerce, and from 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, offered for sale, or stored 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 who is in control, possession, or occupancy of the premises.

(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 anyone authorized to inspect premises under sub. (7) (c). 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) SELLING CIGARETTES OUTSIDE OF THIS STATE. This section does not apply to any manufacturer or any person who sells or offers to sell cigarettes that are prohibited from being sold under sub. (5) (a) if either of the following applies:

(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 manufacturer 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 accordance with the New York safety standards.

(b) If the department determines that the federal government has enacted legislation that establishes a fire safety performance standard that conflicts with or that preempts the provisions of this section that establish fire safety 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 or adopt and enforce a resolution 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 section.

SECTION 4. Effective dates. This act takes effect on the first day of the 18th month beginning after publication, except as follows:

(1) The treatment of section 167.35 (10) (c) of the statutes takes effect on the day after publication.

(END)