

INFORMATION PACKET:
Fire-Safe Cigarette Legislation

Prepared for:

The Western Fire Chiefs Association

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Contents:

- Backgrounder
- Important Notice and Resources
- WFCFA Resolution
- Model Bill
- Section-by-Section Explanation of Model Bill

BACKGROUNDER: The “Fire-Safe” Cigarette (as of 1-21-06)

Issue: It has been documented for decades that cigarettes are the leading cause of fatal residential fires in the United States. For over a quarter-century, attempts have been made at the state and federal level to regulate cigarettes for fire safety. These efforts have usually been advanced by public health and tobacco control organizations, with the fire service playing a supporting (and often minor) role. On June 28, 2004 New York State became the first political jurisdiction in America to require cigarettes to meet a fire safety standard. Preliminary data released in late 2005 indicates a significant reduction in fire deaths as a result of this law. Canada became the first nation to enforce such a law, beginning in October of 2005. Last year, the states of Vermont and California passed legislation based on the New York law.

In the American West, California, as noted, has passed a law. Active efforts to pass similar laws have been undertaken in Colorado, Oregon, Washington, and Alaska. The Western Fire Chiefs Association (WFCA) is currently mounting an effort to promote passage of cigarette safety laws in all states under its jurisdiction.

Background: Cigarettes have long been the leading cause of fatal fires in the United States, killing nearly 900 people and injuring 2,500 to 3,000 annually. Losses in western states have been generally proportionate to national statistics. Unlike pipes and cigars, which go out if not puffed on, commercially mass-produced cigarettes continue to burn once lit, igniting bedding, upholstery, and other flammable materials. In 2001, “smoker’s carelessness” resulted in 31,200 fires in the U.S. and 830 deaths - 60 of them children.

The term “smoker’s carelessness” is a euphemism that minimizes the problem and masks the reality of many of these fires. Studies indicate that many of these fires occur when smokers are elderly, disabled, or under the influence of alcohol or drugs. The victims of these fires are not just smokers; they have included children sleeping upstairs, neighbors in the next apartment, and responding firefighters.

The tobacco industry’s approach to this problem has long been one of “deny and delay.” In the early 1980s, for example, it was suggested that the answer was fireproofing home furnishings. The toxic chemicals used to accomplish this are now being found in the environment and mothers’ milk. In the mid-80s, it was suggested that the answer was increased public education on fire safety. The Tobacco Institute (the then-centralized public relations and lobbying arm of the industry) made large monetary grants to major fire departments and fire service associations, which had the effect of chilling fire service advocacy at both the state and national level.

While the tobacco industry has yet to make a coherent argument as to why it opposes cigarette fire safety legislation, it must be noted that the status quo (cigarettes that continue burning once lit) increases sales. Imagine a can of soda pop that, once opened, evaporates in 20 minutes, whether the consumer drinks it or not.

Technical Background: Cigarette burn rates are controlled by design, including such factors as density of packing, paper porosity, and thickness. When this issue arose in the late 70s and early 80s, tobacco industry lobbyists told lawmakers that a fire-safe cigarette was not technically

feasible. As part of the Master Settlement Agreement in national tobacco litigation, a large collection of industry internal memoranda and documents was placed in the public record. These documents clearly show that most cigarette manufacturers have had the ability to produce “fire-safer” cigarettes for at least 20 years, but failed to put them into production. Fire -safe cigarettes being sold in New York typically have a banded paper, in which rings of thicker paper surround the cigarettes, creating “speed bumps.” If not actively drawn upon, the cigarettes extinguish when the burn reaches one of the bands.

Legislative Background: While this issue has been debated in Congress for over a quarter-century, Oregon was the first state to consider the matter; passing Senate Memorial #4 in 1979. Since then, numerous states have attempted to pass legislation requiring safer cigarettes.

At the federal level, a series of compromise bills in the mid-1980s resulted in extensive studies, which created model standards and proved that a fire-safe cigarette could be made. After several previous attempts, New York State passed law requiring all cigarettes sold in New York to meet a state standard for reduced ignition propensity. This law took effect on June 28, 2004.

As a result of New York’s success, the movement for fire-safe cigarettes has gained momentum. A “Model Bill” has been developed, based on the New York law. **The national coalition promoting this movement is asking that all state efforts be based on the Model Bill, as the tobacco industry has fought state bills by arguing that they would create a “patchwork” of different regulations in different states. So long as all state bills are the same, this industry argument is baseless and not credible.**

Most Recent Developments: On January 24, 2005 the Harvard School of Public Health releases report on the New York Cigarette Fire Safety Standard. The report tests five major cigarette brands sold in New York, Massachusetts, and California and finds New York cigarettes are less likely to continue burning to the end, and that cigarette tax data for the previous six months shows no decline in sales. The report concludes that prior industry objections to fire-safe cigarettes are unfounded, and “there is no reason cigarette manufacturers shouldn’t sell such cigarettes nationwide.”

The National Fire Protection Association makes fire-safe cigarette legislation a priority, directing regional representatives to support legislation, and throwing full support behind such efforts.

On December 9, 2005 the first world conference on fire-safe cigarettes is held at the Harvard School of Public Health in Boston.

IMPORTANT NOTICE & RESOURCES:

All state and (in the case of Canada) national fire-safe cigarette laws passed to date have been fundamentally identical; containing the same standard and test protocols. The tobacco industry typically argues against state legislation, claiming that it creates a “patchwork” of laws. **As long as the state laws continue to mirror each other, this argument is baseless and not credible. For this reason, it is critical that advocates in each state ensure their bills remain true to these standards and protocols, which are incorporated in the “Model Bill.”** Amendments to any state bill, especially those proposed by tobacco lobbyists or legislators believed friendly to the industry, should be reviewed by national advocates.

The following national resources and advocates are available for consultation on state-level legislative efforts...

For legal issues and review of bill language and amendments:

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National advocacy website:

www.firesafecigarettes.org

(contains the Model Bill, section-by-section explanation of model bill, issue history, news clips and other extensive background info)

WFCA BOARD RESOLUTION:

TITLE: FIRE-SAFE CIGARETTE LEGISLATION

WHEREAS, the Western Fire Chiefs' Association (WFCA) represents the interests of the fire service of the ten Western states, and

WHEREAS, commercially, mass-produced cigarettes have long been the leading cause of fire death in the United States, and

WHEREAS, decades of research have shown that reduced ignition propensity cigarettes can be manufactured, and

WHEREAS, laws have been passed in the states of New York, Vermont, and California as well as the nation of Canada requiring cigarettes sold in those jurisdictions to meet the standard in the New York law, and

WHEREAS, preliminary data from New York State already shows a significant reduction in fire deaths following implementation of the law;

WHEREAS, individuals representing the fire service, public health community, and tobacco control interest groups are joining together as a growing coalition to advance these efforts;

THEREFORE, BE IT RESOLVED, the WFCA endorses the Coalition for Fire-Safe Cigarettes and will support efforts to pass further laws based upon the "New York" standard, and urges its member states to pursue this legislation in a coordinated manner.

APPROVED AND ADOPTED [and signed] on January 30, 2006

MODEL BILL:

From national advocacy website: www.firesafecigarettes.org

The Cigarette Fire Safety and Firefighter Protection Act

The ____ law is amended to add new sections __ to ____.

Section 101. Short title.

This act shall be known and may be cited as the "Cigarette Fire Safety and Firefighter Protection Act."

Section 102. Legislative findings and intent.

The Legislature finds that cigarettes are the leading cause of fire deaths in this state and in the nation. Each year 1,000 persons are killed in the United States due to cigarette fires; 3,000 are injured in fires ignited by cigarettes. In the state of ____, ____, are killed and ____ injured each year by cigarette fires. A high proportion of the victims of cigarette fires are non-smokers, including senior citizens and young children. Cigarette-caused fires result in billions of dollars of property losses and damage in the United States and millions of dollars in this state. Cigarette fires unnecessarily jeopardize firefighters and result in avoidable emergency response costs for municipalities.

The Legislature further finds that the state of New York has enacted a cigarette fire safety regulation effective June 28, 2004 that requires that cigarettes sold in that state meet a fire safety performance standard. In 2005, the states of Vermont and California signed into law cigarette fire safety acts that directly incorporate New York's regulation into statute. Canada implemented the New York State fire safety standard as of October 2005, becoming the first nation to have a cigarette fire safety standard.

The Legislature finds that New York State's cigarette fire safety standard is based upon decades of research by the National Institute of Standards and Technology, Congressional research groups and private industry.

It is the Legislature's intent that the state of ____ adopt the cigarette fire safety standard that is in effect in New York State to reduce the likelihood that cigarettes will cause fires and result in deaths, injuries and property damage. It is further the Legislature's intent to adopt such a cigarette fire safety standard with a minimum of cost to the state and with minimal burden to cigarette manufacturers, distributors and retail sellers as set forth herein.

Section 103. Definitions.

The following terms shall have the following meanings as used in this chapter.

1. "Agent" shall mean any person authorized by the state to purchase and affix tax stamps on packages of cigarettes.
2. "Cigarette" shall mean any roll for smoking whether made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco, and that because of its size, appearance, the type of tobacco used in its filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette or cigarette equivalent.
3. "Commissioner" shall mean the commissioner of _____.
4. "Manufacturer" shall mean:
 - A. any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer; or

B. 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

C. any entity that becomes a successor of an entity described in paragraph (a) or (b) of this subdivision.

5. "Repeatability" shall mean the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

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

7. "Sale" shall mean any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts, and the exchanging of cigarettes for any consideration other than money are considered sales.

8. "Sell" shall mean to sell, or to offer or agree to do the same.

9. "Quality control and quality assurance program" shall mean the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. This program ensures that the testing repeatability remains within the required repeatability values stated in subsection 104 (5) for all test trials used to certify cigarettes in accordance with this law.

10. "Wholesale dealer" shall mean any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

Section 104. Standards for cigarette fire safety

a. No cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless such cigarettes have been tested in accordance with the test method and meet the performance standard specified in this subsection; and a written certification has been filed by the manufacturer with the Commissioner in accordance with section 105 of this Article.

1. Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials ("ASTM") standard E2187-04 "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

2. Testing shall be conducted on 10 layers of filter paper.

3. No more than 25 percent of the cigarettes tested in a test trial in accordance with this subsection shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

4. The performance standard required by this subsection shall only be applied to a complete test trial.

5. Laboratories conducting testing in accordance with this subsection shall implement a quality control and quality assurance program that includes a procedure to determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

b. Each cigarette listed in a certification submitted pursuant to section 105 of this Article that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco column for a non-filtered cigarette.

c. The manufacturer or manufacturers of a cigarette that the Commissioner determines cannot be tested in accordance with the test method prescribed in subsection 104 (a) shall propose a test method and performance standard for such cigarette to the Commissioner. Upon approval of the proposed test method and a determination by the Commissioner that the performance standard proposed by the manufacturer or manufacturers is equivalent to the performance standard prescribed in subsection 104 (a), the manufacturer or manufacturers may employ such test method and performance standard to certify such cigarette pursuant to section 105 of this Article. All other applicable requirements of this section shall apply to such manufacturer or manufacturers.

d. In order to ensure compliance with the performance standard specified in subsection 104 (a) or (c), data from testing conducted by manufacturers to comply with this performance standard shall be kept on file by such manufacturers for a period of 3 (three) years and shall be sent to the Commissioner upon its request, and to the office of the Attorney General upon its request.

e. The Commissioner may adopt a subsequent ASTM Standard Test Method upon a finding that such subsequent method does not result in a decrease 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.

f. As of January 1, 2010, and at least every three years thereafter, the Commissioner shall undertake a review of the performance standard set forth herein based upon, but not limited to, incidents of cigarette-caused fires, advances in cigarette fire safety, including improvements in cigarette technology, and the data submitted to demonstrate compliance with the performance standard. Based upon such review the Commissioner may revise the performance standard so that it is more stringent than the performance standard set forth herein to provide the public with a greater level of fire safety protection. Such revised performance standard shall be effective 180 days after the final standard is published in the state register.

Section 105. Certification of compliance by manufacturers.

- a. Each manufacturer shall submit to the commissioner a written certification attesting that:
1. each cigarette listed in the certification has been tested in accordance with section 104 of this Article;
 2. each cigarette listed in the certification meets the performance standard set forth under section 104 of this Article.
 3. Each cigarette listed in the certification shall be described with the following information:
 - A. brand (*i.e.*, the trade name on the package);
 - B. style (*e.g.*, light, ultra light);
 - C. length in millimeters;
 - E. circumference in millimeters;
 - F. flavor (*e.g.*, menthol, chocolate), if applicable;
 - G. filter or non-filter;
 - H. package description (*e.g.*, soft pack, box); and the
 - I. marking approved in accordance with section 106 of this Article.

b. Such certifications shall be made available to the attorney general and the department of taxation for the purposes of ensuring compliance with this section. Each cigarette certified under this section shall be re-certified every three years.

c. For each cigarette listed in a certification a manufacturer shall pay to the Commissioner a \$1,000 fee. The Commissioner shall have the power to adjust this fee to an amount sufficient only to provide for processing, testing, enforcement and oversight activities related to this Article.

d. There is hereby established in the custody of the state comptroller a special fund to be known as the "Cigarette Fire Safety and Firefighter Protection Act Enforcement Fund." Such fund shall consist of all certification fees submitted by manufacturers, and shall, in addition to any other monies made available for such purpose, be available to the _____ Department and shall be used solely to support state processing, testing, enforcement and oversight activities related to this Article. All payments from the Cigarette Fire Safety and Firefighter Protection Act Enforcement Fund shall be made on the audit and warrant of the state treasurer on vouchers certified and submitted by the Commissioner.

Section 106. Package Markings.

a. Cigarettes that are certified by a manufacturer in accordance with section 105 shall be marked to indicate compliance with the requirements of section 104. Such marking shall be in eight point font type or larger and consist of:

1. Modification of the product UPC Code to indicate a visible mark printed at or around the area of the UPC Code. Such mark may consist of alphanumeric or symbolic character(s) permanently stamped, engraved, embossed or printed in conjunction with the UPC; or

2. Any visible combination of alphanumeric or symbolic character(s) permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

3. Printed, stamped, engraved or embossed text that indicates that the cigarettes meet the standards of this section.

b. A manufacturer must use only one marking, and must apply this marking uniformly for all packages (including but not limited to packs, cartons, and cases) and brands marketed by that manufacturer.

c. The Commissioner must be notified as to the marking that is selected.

d. Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the Commissioner for approval. Upon receipt of the request, the Commissioner shall approve or disapprove the marking offered, except that the Commissioner shall approve any marking in use and approved for sale in New York State pursuant to its fire safety regulations, unless the Commissioner determines that cigarettes approved for sale in New York State do not meet the requirements for certification pursuant to section 105 of this Article. Proposed markings shall be deemed approved if the Commissioner fails to act within 10 business days of receiving a request for approval.

g. No manufacturer shall modify its approved marking unless the modification has been approved by the Commissioner in accordance with section 106 of this Article.

h. Manufacturers certifying cigarettes in accordance with section 105 of this Article shall provide a copy of such certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to section 106 of this Article for each retailer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the Commissioner, the Commissioner of the Department of Taxation, the Office of the Attorney General, or employees thereof, to inspect markings of cigarette packaging marked in accordance with this section.

Section 107. Enforcement and penalties.

a. Any manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells cigarettes, other than through retail sale, in violation of section 104 of this Article shall, for a first offense be subject to a civil penalty not to exceed ten thousand dollars per each such sale of such cigarettes, and for a subsequent offense be subject to a civil penalty not to exceed twenty-five thousand dollars per each such sale of cigarettes. Any retail dealer who knowingly sells cigarettes in violation of section 104 of this Article shall be subject to the following: (i) for a first offense be subject to

a civil penalty not to exceed five hundred dollars, and for a subsequent offense be subject to a civil penalty not to exceed two thousand dollars, per each such sale or offer for sale of cigarettes, provided that the total number of cigarettes sold or offered for sale in such sale does not exceed one thousand cigarettes; (ii) for a first offense be subject to a civil penalty not to exceed one thousand dollars, and for a subsequent offense be subject to a civil penalty not to exceed five thousand dollars, per each such sale or offer for sale of such cigarettes, provided that the total number of cigarettes sold or offered for sale in such sale exceeds one thousand cigarettes. In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to section 105 of this Article shall, for a first offense be subject to a civil penalty not to exceed ten thousand dollars, and for a subsequent offense a civil penalty not to exceed twenty-five thousand dollars, for each such false certification. Any person violating any other provision in this section shall be subject to a civil penalty for a first offense not to exceed one thousand dollars, and for a subsequent offense subject to a civil penalty not to exceed five thousand dollars for each such violation. Any cigarettes that have been sold or offered for sale that do not comply with the safety standard required by section 104 of this Article shall be deemed contraband and subject to seizure and disposal by the state.

b. The Commissioner is authorized to enforce this legislation and to promulgate regulations as necessary to implement and administer this law.

c. The Commissioner may, in consultation with the Commissioner of Taxation and Finance and/or the Attorney General, promulgate regulations to conduct random inspections of wholesale dealers, agents, and retail dealers to ensure that only cigarettes complying with this Article are sold in the state.

d. In addition to any other remedy provided by law, the Attorney General may file an action in state court for a violation of this Article, including petitioning for injunctive relief or to recover any costs or damages suffered by the state government because of a violation of this section, including enforcement costs relating to the specific violation and attorney's fees. In any such action, the attorney general shall have the same authority to investigate and to obtain remedies as if the action were brought [under authorizing statutes and authorities]. Each violation of this section or of rules adopted under this section constitutes a separate civil violation for which the attorney general may obtain relief.

Section 108. Fire Prevention and Public Safety Fund.

There is hereby established in the custody of the state comptroller a special fund to be known as the "Fire Prevention and Public Safety Fund." Such fund shall consist of all monies recovered as penalties hereunder. Such monies shall be deposited to the credit of the fund and shall, in addition to any other monies made available for such purpose, be available to the Commissioner to support fire safety and prevention programs. All payments from such fund shall be made on the audit and warrant of the state treasurer on vouchers certified and submitted by the Commissioner.

Section 109. Effective date.

This act shall take effect on January 1, 2007, and the requirement that only cigarettes certified as compliant with the performance standard herein may be sold shall not prohibit wholesale dealers or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2007 if the wholesale dealer or retailer can establish that state tax stamps were affixed to the cigarettes prior to January 1, 2007, and if such wholesale dealer or retailer can establish that such inventory was purchased prior to January 1, 2007 in comparable quantity to the inventory purchased during the same period of the prior year. Nothing in this act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section 104 of this Article if such cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state.

Section 110. Effect of federal regulation.

This act shall be preempted if a federal cigarette fire safety performance standard becomes effective, and the Commissioner makes a determination that such standard provides equal or stronger protections against cigarette-started fires than this act. Portions of this act shall only be preempted to the extent expressly preempted by federal law.

SECTION-BY-SECTION EXPLANATION OF MODEL BILL:

From national advocacy website: www.firesafecigarettes.org

Following is a section-by-section explication of the model legislation to help advocates draft state-appropriate legislation. It will explain quite specifically what language is optional or subject to modification and what language must be preserved to ensure consistency with New York regulations.

Section 101 - Title

Call the law whatever you and your sponsor like, but remember cigarettes meeting this standard are not 100 percent "fire-safe." They exhibit "Reduced Ignition Propensity." Don't promise in your title what the standard cannot deliver.

Section 102 – Legislative findings and intent

It is important to explicitly state the legislature's intent to adopt New York's fire safety standard (paragraph 3).

Section 103 – Definitions

You must determine the appropriate state agency to administer this law (sub-section 3). Be sure to include, and do not change, the language defining "Repeatability" (5) and "Quality control and quality assurance program" (9). Some of the other terms (e.g., "agent") may be appropriately defined by reference to other chapters of state law.

Section 104 – Standards for cigarette fire safety

Subsection (a) – This subsection prevents the sale of cigarettes not meeting the standard defined by the law within your state, or from outside the state to persons in the state. That is, Internet dealers, regardless of where they are based, must ship only compliant cigarettes to customers in your state. This protects consumers from being sold non-compliant cigarettes by out-of-state dealers, and relieves the concerns of in-state retailers that smokers might prefer and purchase noncompliant cigarettes from out-of state competitors.

Subsections (1), (2), (3), (4) and (5) are essential and should be included as drafted to ensure that your RIP standard is the same as New York's.

Ignition propensity testing has typically used three, 10 or 15 layers of filter paper. The more layers of paper, the greater the heat absorption, and the more likely the cigarette will extinguish before burning its full length. The New York standard of 10 layers was adopted after experiments with commercially available cigarettes showed that most burned to their full length on 15 sheets.

Subsection (b) – This subsection establishes a performance standard, not a design standard. However, all manufacturers we are aware of are using some form of banding or "speed bumps," to reduce ignition propensity. Bands of reduced porosity paper around the circumference of the cigarette interrupt burning by reducing airflow to the coal if the smoker does not take a puff. This reduces the total amount of heat generated by an unattended cigarette and transferred to the material with which it is in contact, reducing the chance the material will ignite. This subsection is intended to ensure that manufacturers do not "game the test" by placing a band in proximity to the filter end, causing the cigarette to extinguish just before burning its full length, but not significantly reducing the amount of heat produced.

Subsection (c) – This subsection anticipates the introduction of non-traditional cigarette designs, such as RJR's *Eclipse* cigarette, which heats, but does not burn tobacco. The smoker draws heat generated by a very hot coal through the tobacco column. The cigarette does not "burn down," thus would automatically perform well on the ASTM test. To market such a product, the manufacturer must devise, and the regulating agency approve, an alternative, equivalent test of ignition propensity.

Subsection (e) – All ASTM standard tests are subject to review and revision. If ASTM revises the testing standard referenced in this bill, this subsection allows the state to adopt the revised test protocol, so long as it does not result in a weaker performance standard.

Subsection (f) – We are seeking uniformity, but do not want these regulations frozen in perpetuity. This subsection allows the state to periodically review the standard, beginning in four years, to determine whether a revised standard

would contribute to public safety. The language requires a periodic review and mandates certain factors to be considered in such review, but does not require that any action be taken.

Section 105 – Certification of compliance

Subsection (a) - Every “packing” that a manufacturer wishes to distribute must be certified. Packings are denominated by brand name (e.g., “Marlboro”), style (e.g., “light,” “full flavor”), length, flavor (e.g., “menthol”), filter or non-filter, and packaging (e.g., soft pack, box). Cigarettes with identical names but different packaging, for instance Marlboro Light 100’s Box vs. Marlboro Light 100’s Soft Pack, may report different tar and nicotine yields. Therefore, it is reasonable to assume they may perform differently on an ignition propensity test. More than 750 “packings” have been certified as compliant with New York’s standard. ([See the list.](#))

Each manufacturer must certify that each packing has been tested and meets the performance standard. The test results used to certify a packing in New York may be used to certify the same packing under this law. There is no requirement to perform a duplicate test.

Subsection (c) – The intention of (c) is to produce a revenue stream sufficient to cover the state’s cost of implementing this regulation. Implementation consists of processing and record keeping, random acquisition and testing of cigarettes for compliance, periodic examination of wholesale and retail stocks to ensure that only compliant cigarettes are being sold, and research, including investigation of fires possibly caused by cigarettes. Based on the number of packings certified in New York, we anticipate that a \$1,000 per packing fee would generate between \$750,000 and \$1,000,000 every three years. The size of the fee, or even whether to have a fee, is at each state’s discretion. New York does not charge a fee.

Subsection (d) – This subsection creates a dedicated fund for certification fees. The creation of such a fund is at the discretion of each state. Some states routinely create dedicated funds while others minimize the practice.

Section 106 - Package Markings

Packages (cigarette packs, cartons and the cases in which cigarettes are delivered to retailers) must bear a distinctive mark so that authorities and everyone in the distribution chain from wholesaler to retail customer can be assured the cigarettes conform to state law. This measure allows manufacturers to select the marking in accordance with criteria outlined in subsection (a). To prevent a proliferation of marks, subsection (b) requires that each manufacturer (e.g., Philip Morris, Lorillard) use only one uniform marking on all their packaging.

Subsection (d) – This subsection permits manufacturers to employ the same markings that they use in New York. Since this is easier and more economical for them, we expect they will do so.

Subsection (h) – This subsection requires manufacturers to provide a copy of the certification to wholesalers and, through wholesalers, an illustration of the package markings to retailers so that they can ensure the cigarettes provided to them conform to state law.

Section 107 – Enforcement and Penalties

This section provides substantial graduated penalties against manufacturers and wholesalers who distribute non-compliant cigarettes. It provides smaller, but significant penalties for retailers. Additionally, noncompliant cigarettes are subject to seizure. It is important to ensure that every link in the distribution chain is held accountable for ensuring that only conforming cigarettes are sold to consumers in your state. Additionally (d) provides that the Attorney General may seek to enjoin the sale of non-compliant cigarettes, recover costs and investigate under the general powers granted to the office (you will need to reference the authorizing statute).

(b) and (c) are important because they empower the enforcing agency to codify regulations necessary to the administration and enforcement of the law.

Section 108 – Fire Prevention and Public Safety Fund

The state may wish to establish a fund to receive any penalties collected under this law (to date none have been collected in New York). We suggest this fund be dedicated to fire safety programs.

Section 109 – Effective Date

Since manufacturers are already producing compliant cigarettes for the third most populous state in the country, and

paper manufacturers report ample excess capacity, there should be no delay in marketing RIP cigarettes in your state. No more than six months is required to prepare the distribution network for the new product. (New York State provided only six months from final adoption of its regulation to the implementation date - and that was the first time anywhere.)

This section includes a “sell through” provision allowing retailers to sell noncompliant cigarettes that may be on their store shelves when the law takes effect provided that they can show the cigarettes were purchased prior to the effective date and that they did not stockpile cigarettes by ordering in advance of the law more than they had in inventory a year ago.

Section 110 – Federal Preemption

Should it enact fire-safe cigarette legislation, it is likely that Congress will exercise its prerogative and preempt state regulations. However we believe it is important that states make clear a desire to ensure that their citizens receive the maximum possible protection. This language provides that the state will, to the extent its powers permit, accept federal preemption of its regulatory standard only if the federal standard is at least as protective. It also provides that the state law will lapse only when a federal regulation takes effect, not when enabling legislation is enacted.

About the legislation

The fire-safe cigarette model legislation was developed to [mirror regulations developed by the New York State Office of Fire Prevention and Control](#) after a three-year rule-making process that involved considerable input and comment from the public and affected parties, most notably the cigarette manufacturers. These regulations, building on years of research by a Congressional study group and the National Institute of Standards and Technology, have been in effect in New York since June 28, 2004. (**Note:** Deaths caused by cigarette fires have [declined dramatically in New York State](#) in the first few months that fire-safe cigarettes were mandated there in 2004. The regulations do several things:

1. The regulations reference a specific test method to be used in determining whether cigarettes meet the standard for fire safety. The test, the American Society of Testing and Materials (ASTM) standard E2187-04 “Standard Test Method for Measuring the Ignition Strength of Cigarettes,” was developed by a large committee that included representatives of the tobacco industry. [A copy of this test procedure standard is available for purchase on the ASTM Web site.](#) This test predicts a cigarette’s ignition propensity (that is, the likelihood a cigarette will ignite material that it comes in contact with) by determining the likelihood the cigarette will self-extinguish when placed on a stack of standardized laboratory filter paper.
2. The regulations establish a standard for performance on the ASTM laboratory test that must be met in order for a manufacturer to certify a cigarette as compliant with New York State law. The performance standard is that a cigarette shall not burn its full length more than 25% of the time on a test trial consisting of 40 repeated tests. In other words, at least 30 of 40 cigarettes tested extinguish of their own accord before burning their full length.
3. The regulations establish a protocol by which manufacturers submit to the state certification that their cigarettes meet the mandated performance standard as measured by the prescribed test.
4. [The] regulations provide for the visible marking of cigarette packages so that compliant cigarettes may be distinguished from those not certified as compliant. The specific mark is determined by the manufacturer, subject to state approval.

This model statute is intended to ensure that cigarettes compliant with the New York regulations will be compliant with the law of any state enacting the model statute and that manufacturers may use the same package markings they use in New York.