

MAINE STATE LEGISLATURE

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2 Date: 5/29/07

3 **CRIMINAL JUSTICE AND PUBLIC SAFETY**

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5 **STATE OF MAINE**
6 **HOUSE OF REPRESENTATIVES**
7 **123RD LEGISLATURE**
8 **FIRST REGULAR SESSION**

9 COMMITTEE AMENDMENT "A" to H.P. 68, L.D. 70, Bill, "An Act To Require
10 Cigarettes Sold in Maine To Be Fire-safe"

11 Amend the bill by striking out the title and substituting the following:

12 **'An Act Concerning Reduced Ignition Propensity Cigarettes'**

13 Amend the bill by striking out everything after the enacting clause and before the
14 summary and inserting the following:

15 **'Sec. 1. 22 MRSA §1555-E is enacted to read:**

16 **§1555-E. Reduced ignition propensity cigarettes**

17 **1. Definitions. As used in this section, unless the context otherwise indicates, the**
18 **following terms have the following meanings.**

19 **A. "Agent" means any person licensed by the State Tax Assessor to purchase and**
20 **affix stamps on packages of cigarettes.**

21 **B. "ASTM" means the American Society of Testing and Materials or a successor**
22 **organization.**

23 **C. "Cigarette" means any product that contains nicotine, is intended to be burned or**
24 **heated under ordinary conditions of use and consists of or contains any roll of**
25 **tobacco wrapped in paper or in any substance not containing tobacco or in any**
26 **substance other than tobacco and, because of its appearance, the type of tobacco used**
27 **or its packaging or labeling, is offered to or purchased by consumers as a cigarette.**

28 **D. "Distributor" has the same meaning as in Title 36, section 4401, subsection 2.**

29 **E. "Manufacturer" means:**

30 **(1) An entity that manufactures or otherwise produces cigarettes, or causes**
31 **cigarettes to be manufactured or produced anywhere, that the entity intends to be**

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1 sold in this State, including cigarettes intended to be sold in the United States
2 through an importer;

3 (2) The first purchaser anywhere that intends to resell in the United States
4 cigarettes manufactured anywhere that the original manufacturer or maker does
5 not intend to be sold in the United States; or

6 (3) An entity that becomes a successor of an entity described in subparagraph (1)
7 or (2).

8 F. "Quality control and quality assurance program" means the laboratory procedures
9 implemented to ensure that operator bias, systematic and nonsystematic
10 methodological errors and equipment-related problems do not affect the results of
11 testing under subsection 2. A quality control and quality assurance program ensures
12 that the testing repeatability remains within the required repeatability values stated in
13 subsection 2, paragraph A, subparagraph (6) for all test trials used to certify cigarettes
14 in accordance with this section.

15 G. "Repeatability" means the range of values within which the results of repeated
16 cigarette test trials from a single laboratory will fall 95% of the time.

17 H. "Sale" means any transfer of possession or exchange or barter, conditional or
18 otherwise, of cigarettes in any manner or by any means or any agreement. In addition
19 to cash and credit sales, the giving of cigarettes as samples, prizes or gifts and the
20 exchanging of cigarettes for any consideration other than money are considered sales.

21 I. "Sell" includes offering to sell or agreeing to sell.

22 J. "Tobacco retailer" has the same meaning as in section 1551, subsection 3-A.

23 **2. Test methods and performance standards. Cigarette test methods and**
24 **performance standards are governed by the provisions of this subsection.**

25 A. Unless federal law provides otherwise, cigarettes may not be sold or offered for
26 sale in this State or offered for sale or sold to persons located in this State unless the
27 cigarettes have been tested in accordance with the test methods and meet the
28 performance standards specified in this subsection, a written certification has been
29 filed by the manufacturer with the State Fire Marshal in accordance with subsection 3
30 and the cigarettes have been marked in accordance with subsection 4.

31 (1) Testing of cigarettes must be conducted in accordance with ASTM Standard
32 E2187-04, "Standard Test Method for Measuring the Ignition Strength of
33 Cigarettes."

34 (2) Testing must be conducted on 10 layers of filter paper.

35 (3) No more than 25% of the cigarettes tested in a test trial in accordance with
36 this subsection may exhibit full-length burns. Forty replicate tests constitutes a
37 complete test trial for each cigarette tested.

38 (4) The performance standards required by this subsection may be applied only
39 to a complete test trial.

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- 1 (5) Written certifications must be based upon testing conducted by a laboratory
2 that has been accredited pursuant to standard ISO/IEC 17025 of the International
3 Organization for Standardization or other comparable accreditation standards
4 required by the State Fire Marshal.
- 5 (6) Laboratories conducting testing in accordance with this subsection shall
6 implement a quality control and quality assurance program that includes a
7 procedure that will determine the repeatability of the testing results. The
8 repeatability value must be no greater than 0.19.
- 9 (7) This subsection does not require additional testing if cigarettes are tested
10 consistent with this section for any other purpose.
- 11 (8) Testing performed or sponsored by the State Fire Marshal to determine a
12 cigarette's compliance with the performance standards required by this subsection
13 must be conducted in accordance with this subsection.
- 14 B. Each cigarette listed in a certification submitted pursuant to subsection 3 that uses
15 lowered permeability bands in the cigarette paper to achieve compliance with the
16 performance standards set forth in this subsection must have at least 2 nominally
17 identical bands on the paper surrounding the tobacco column. At least one complete
18 band must be located at least 15 millimeters from the lighting end of the cigarette.
19 For cigarettes on which the bands are positioned by design, there must be at least 2
20 bands located at least 15 millimeters from the lighting end and 10 millimeters from
21 the filter end of the tobacco column or 10 millimeters from the labeled end of the
22 tobacco column for nonfiltered cigarettes.
- 23 C. The provisions of this paragraph apply to alternative test methods.
- 24 (1) A manufacturer of a cigarette that the State Fire Marshal determines cannot
25 be tested in accordance with the test methods prescribed in paragraph A shall
26 propose test methods and performance standards for the cigarette to the State Fire
27 Marshal. Upon approval of the proposed test methods and a determination by the
28 State Fire Marshal that the performance standards proposed by the manufacturer
29 are equivalent to the performance standards prescribed in paragraph A, the
30 manufacturer may employ the test methods and performance standards to certify
31 the cigarette pursuant to subsection 3.
- 32 (2) If a manufacturer has certified a cigarette pursuant to subsection 3 and
33 thereafter makes any change to the cigarette that is likely to alter its compliance
34 with the reduced ignition propensity standards required by this section, that
35 cigarette may not be sold or offered for sale in this State until the manufacturer
36 retests the cigarette in accordance with the testing standards set forth in this
37 subsection and maintains records of that retesting as required by this subsection.
38 Any altered cigarette that does not meet the performance standards set forth in
39 this subsection may not be sold in this State.
- 40 (3) If the State Fire Marshal determines that another state has enacted reduced
41 ignition propensity standards that include test methods and performance
42 standards that are the same as those contained in this subsection and finds that the
43 officials responsible for implementing those requirements have approved the

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1 proposed alternative test methods and performance standards for a particular
2 cigarette proposed by a manufacturer as meeting the fire safety standards of that
3 state's law or regulation, then the State Fire Marshal shall authorize that
4 manufacturer to employ the alternative test methods and performance standards
5 to certify that cigarette for sale in this State, unless the State Fire Marshal finds a
6 reasonable basis that the alternative test should not be accepted under this
7 section. All other applicable requirements of this subsection apply to the
8 manufacturer.

9 D. Each manufacturer shall maintain copies of the reports of all tests conducted on
10 all cigarettes offered for sale for a period of 3 years and shall make copies of these
11 reports available to the State Fire Marshal and the Attorney General upon written
12 request. Any manufacturer who fails to make copies of these reports available within
13 60 days of receiving a written request commits a civil violation for which a fine not
14 to exceed \$5,000 must be applied for each day after the 60th day that the
15 manufacturer does not make such copies available.

16 E. The State Fire Marshal may adopt a subsequent ASTM standard test method for
17 measuring the ignition strength of cigarettes upon a finding that the subsequent
18 method does not result in a change in the percentage of full-length burns exhibited by
19 any tested cigarette when compared to the percentage of full-length burns the same
20 cigarette would exhibit when tested in accordance with ASTM Standard E2187-04
21 and the performance standard in paragraph A, subparagraph (3).

22 3. Certification. This subsection governs the certification of cigarettes under this
23 section.

24 A. Each manufacturer shall submit to the State Fire Marshal a written certification
25 attesting that:

26 (1) Each cigarette listed in the certification has been tested in accordance with
27 subsection 2; and

28 (2) Each cigarette listed in the certification meets the performance standards set
29 forth in subsection 2.

30 B. Information listed in the certification of each cigarette must include:

31 (1) Brand or trade name on the package;

32 (2) Style, such as light or ultra light;

33 (3) Length in millimeters;

34 (4) Circumference in millimeters;

35 (5) Flavor, such as menthol, if applicable;

36 (6) Filter or nonfilter;

37 (7) Package description, such as soft pack or box;

38 (8) Marking approved in accordance with subsection 4;

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1 (9) The name, address and telephone number of the laboratory, if different than
2 the manufacturer, that conducted the test; and

3 (10) The date that the testing occurred.

4 C. The manufacturer must make a certification available to the Attorney General for
5 purposes consistent with this section and the State Tax Assessor for the purposes of
6 ensuring compliance with this section.

7 D. Each cigarette certified under this subsection must be recertified every 3 years.

8 4. Marking of cigarette packaging. The provisions of this subsection govern
9 marking of cigarette packaging.

10 A. The packaging of cigarettes that are certified by a manufacturer in accordance
11 with subsection 3 must be marked to indicate compliance with the requirements of
12 subsection 2. The marking must be in 8-point or larger type and consist of:

13 (1) Modification of the universal product code to include a visible mark printed
14 in the area of the universal product code. This mark may consist of an
15 alphanumeric or symbolic character or characters permanently stamped,
16 engraved, embossed or printed in conjunction with the universal product code; or

17 (2) Any visible combination of alphanumeric or symbolic characters or text
18 permanently stamped, engraved or embossed upon the cigarette package or
19 cellophane wrap.

20 B. A manufacturer shall use only one marking and shall apply this marking
21 uniformly for all packages, including, but not limited to, packs, cartons and cases,
22 and brands marketed by that manufacturer.

23 C. Prior to the certification of any cigarette, a manufacturer shall present its proposed
24 marking to the State Fire Marshal for approval. Upon receipt of the request, the State
25 Fire Marshal shall approve or disapprove the marking offered, except that the State
26 Fire Marshal shall approve any marking in use and approved for sale in New York
27 pursuant to the New York Fire Safety Standards for Cigarettes. Proposed markings
28 are deemed approved if the State Fire Marshal fails to act within 10 business days of
29 receiving a request for approval. The State Fire Marshal shall notify the State Tax
30 Assessor as to the marking that has been approved.

31 D. A manufacturer may not modify its approved marking unless the modification has
32 been approved by the State Fire Marshal in accordance with this subsection.

33 E. A manufacturer certifying cigarettes in accordance with subsection 3 shall provide
34 a copy of the certification to all distributors and agents to which the manufacturer
35 sells cigarettes and shall also provide sufficient copies of an illustration of the
36 package marking used by the manufacturer pursuant to this section for each tobacco
37 retailer to which the distributors or agents sell cigarettes. Distributors and agents
38 shall provide copies of these illustrations to all tobacco retailers to which they sell
39 cigarettes. Distributors, agents and tobacco retailers shall permit the State Fire
40 Marshal, the State Tax Assessor, the Attorney General and their employees to inspect
41 cigarette packaging marked in accordance with this subsection.



- 1 **5. Violations.** Penalties for violating this section are as set out in this subsection.
- 2 A. A manufacturer, distributor, agent or any other person or entity who knowingly
3 sells or offers to sell cigarettes, other than through retail sale, in violation of
4 subsection 2, paragraph A commits a civil violation for which a fine of not more than
5 \$10,000 per each sale of cigarettes must be imposed.
- 6 B. A manufacturer, distributor, agent or any other person or entity who knowingly
7 sells or offers to sell cigarettes, other than through retail sale, in violation of
8 subsection 2, paragraph A and has previously been adjudicated of violating that
9 subsection commits a civil violation for which a fine of not more than \$25,000 per
10 each sale of cigarettes must be imposed, except that the fine against any one person
11 or entity may not exceed \$100,000 during any 30-day period.
- 12 C. A tobacco retailer who knowingly sells 1,000 cigarettes or less in violation of
13 subsection 2, paragraph A commits a civil violation for which a fine of not more than
14 \$500 per each sale or offer for sale of cigarettes must be imposed.
- 15 D. A tobacco retailer who commits a violation as described in paragraph C and has
16 previously been adjudicated of committing that violation commits a civil violation for
17 which a fine of not more than \$2,000 per each sale or offer for sale of cigarettes must
18 be imposed.
- 19 E. A tobacco retailer who knowingly sells more than 1,000 cigarettes in violation of
20 subsection 2, paragraph A commits a civil violation for which a fine of not more than
21 \$1,000 per each sale or offer for sale of cigarettes must be imposed, except that this
22 fine against any tobacco retailer may not exceed \$25,000 during a 30-day period.
- 23 F. A tobacco retailer who commits a violation as described in paragraph E and has
24 previously been adjudicated of committing that violation commits a civil violation for
25 which a fine of not more than \$5,000 per each sale or offer for sale of cigarettes must
26 be imposed, except that this fine against any tobacco retailer may not exceed \$25,000
27 during a 30-day period.
- 28 G. In addition to any other penalty prescribed by law, a corporation, partnership, sole
29 proprietor, limited partnership or association engaged in the manufacture of cigarettes
30 that knowingly makes a false certification pursuant to subsection 3 commits a civil
31 violation for which a fine of not less than \$75,000 must be imposed for each false
32 certification.
- 33 H. A corporation, partnership, sole proprietor, limited partnership or association
34 engaged in the manufacture of cigarettes that commits a violation as described in
35 paragraph G after having previously being adjudicated of committing that violation
36 commits a civil violation for which a fine of at least \$75,000 and not more than
37 \$250,000 must be imposed for each false certification.
- 38 I. A person who commits a violation of a provision of this section other than those
39 described in paragraphs A to H commits a civil violation for which a fine of not more
40 than \$1,000 must be imposed for each violation.
- 41 J. A person who commits a violation as described in paragraph I and has been
42 previously adjudicated of committing a violation described in paragraph I commits a

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1 civil violation for which a fine of not more than \$5,000 must be imposed for each
2 violation.

3 **6. Forfeiture.** Any cigarettes that have been sold or offered for sale that do not
4 comply with the performance standards required by this section are subject to forfeiture
5 under Title 36, section 4372-A, as long as, prior to the destruction of any cigarette
6 forfeited pursuant to these provisions, the true holder of the trademark rights in the
7 cigarette brand must be permitted to inspect the cigarette.

8 **7. Injunctive relief.** In addition to any other remedy provided by law, the Attorney
9 General may file an action in District Court or Superior Court for a violation of this
10 section, including petitioning for injunctive relief or to recover any costs or damages
11 suffered by the State because of a violation of this section, including enforcement costs
12 relating to the specific violation and attorney's fees. Each violation of this section or of
13 rules adopted under this section constitutes a separate civil violation for which the State
14 Fire Marshal or Attorney General may obtain relief.

15 **8. Implementation.** This section must be implemented as set out in this subsection.

16 A. The State Fire Marshal may adopt routine technical rules, pursuant to Title 5,
17 chapter 375, subchapter 2-A, necessary to effectuate the purposes of this section.

18 B. The State Tax Assessor in the regular course of conducting inspections of
19 distributors, agents and tobacco retailers, as authorized under Title 36, section 4373-
20 A, may inspect cigarette packaging to determine if it is marked as required in
21 subsection 4. If the packaging is not marked as required, the State Tax Assessor shall
22 notify the State Fire Marshal.

23 C. Beginning in 2009 and every 3 years thereafter, the State Fire Marshal shall
24 review the effectiveness of this section and report to the Legislature the State Fire
25 Marshal's findings and, if appropriate, recommendations for legislation to improve
26 the effectiveness of the implementation of the standards and certification of those
27 standards in this section. The report and legislative recommendations must be
28 submitted no later than March 1st of each year a report is required.

29 D. This section must be implemented by the State Fire Marshal in accordance with
30 the implementation and substance of the New York Fire Safety Standards for
31 Cigarettes or a comparable or successor standard.

32 **9. Inspection.** To enforce the provisions of this section, the Attorney General and
33 the State Fire Marshal may examine the books, papers, invoices and other records of any
34 person in possession, control or occupancy of any premises where cigarettes are
35 manufactured, tested, placed, stored, sold or offered for sale, as well as the stock of
36 cigarettes on the premises. Such a person shall give the Attorney General and the State
37 Fire Marshal the means, facilities and opportunity for the examinations authorized by this
38 subsection.

39 **10. Fire Prevention and Public Safety Fund.** The Fire Prevention and Public
40 Safety Fund is established as a nonlapsing fund. The fund must consist of all money
41 recovered as penalties for violations of this section. The money must be deposited to the
42 credit of the fund and, in addition to any other money made available for such purpose,

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1 must be made available to the State Fire Marshal to support fire safety and prevention
2 programs.

3 11. Sale outside of State. Nothing in this section may be construed to prohibit a
4 person or entity from manufacturing or selling cigarettes that do not meet the
5 requirements of this section if the cigarettes are or will be stamped for sale in another
6 state or are packaged for sale outside the United States and that person or entity has taken
7 reasonable steps to ensure that such cigarettes will not be sold or offered for sale to
8 persons located in this State.

9 **Sec. 2. Existing inventory may be sold.** Notwithstanding the Maine Revised
10 Statutes, Title 22, section 1555-E, subsection 2, paragraph A, distributors or tobacco
11 retailers, as defined in Title 22, section 1551, subsection 3-A, may sell their existing
12 inventory of cigarettes on or after January 1, 2008 if the distributor or tobacco retailer can
13 establish that state tax stamps were affixed to the cigarettes prior to January 1, 2008 and
14 can establish that the inventory was purchased prior to January 1, 2008 in comparable
15 quantity to the inventory purchased during the same period of the prior year.

16 **Sec. 3. Effective date.** This Act takes effect January 1, 2008.'

17 **SUMMARY**

18 This amendment replaces the bill. Whereas the bill prohibited the sale of cigarettes
19 that do not meet the fire-safe standards established by the State Fire Marshal, the
20 amendment requires that all cigarettes sold in the State be certified as meeting reduced
21 ignition propensity standards by January 1, 2008 and creates standards for testing in the
22 Maine Revised Statutes, Title 22. The amendment includes provisions to allow for the
23 sale of existing inventory.

24 The amendment also authorizes the State Fire Marshal, the State Tax Assessor and
25 the Attorney General to enforce the standards and creates the Fire Prevention and Public
26 Safety Fund from fines collected for noncompliance.

27 **FISCAL NOTE REQUIRED**
28 **(See attached)**

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LD 70

LR 429(02)

An Act To Require Cigarettes Sold in Maine To Be Fire-safe

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund
Minor cost increase - Other Special Revenue Funds
Minor revenue increase - Other Special Revenue Funds

Correctional and Judicial Impact Statements

Establishes new civil violations.

This bill may increase the number of civil suits filed in the court system.

The collection of additional fines and filing fees may increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The Office of the State Fire Marshal within the Department of Public Safety will incur minor additional costs to administer certain requirements pertaining to reduced ignition propensity cigarettes. In addition, the establishment of the Fire Prevention and Public Safety Fund will increase dedicated revenue collections and expenditures of the department; the amounts can not be determined at this time. The additional costs to the Department of the Attorney General can be absorbed utilizing existing budgeted resources.