

MAINE STATE LEGISLATURE

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**STATE OF MAINE
124TH LEGISLATURE
FIRST REGULAR SESSION**

**REPORT OF THE STATE FIRE MARSHAL'S OFFICE
ON THE EFFECTIVENESS OF MAINE'S REDUCED
IGNITION PROPENSITY CIGARETTE ACT**

MARCH 1, 2009



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EXECUTIVE SUMMARY

Smoking has been the leading cause of fire deaths in Maine and across the nation for three decades and perhaps more. It is not however, a leading cause of fires in Maine. Smoking related fires are more lethal in contrast to cooking, heating, electrical, and arson fires due primarily to the proximity of the victim to the ignition of the fire. This history and the nature of smoking related fire deaths, in combination with other states passing similar pieces of legislation lead Maine's 123rd legislature to pass "An Act Concerning Reduced Ignition Propensity Cigarettes," Chapter 253, 22 M.R.S.A. §1555-E.

Prior to Maine's passage of Chapter 253, the states of Vermont, New Hampshire, California, Oregon and New York had passed similar legislation. In addition, Canada had passed national legislation. In 2007 therefore Maine was surrounded by states and Canada who had enacted legislation requiring cigarettes sold within their boundaries be reduced ignition propensity (RIP) cigarettes. At the time this report was written a total of 22 states had implemented RIP laws and another 15 had passed legislation and are in the process of implementation. In addition, 9 states now have pending RIP legislation filed for consideration this year.

This report describes RIP cigarettes; summarizes Maine's implementation effort; examines some data on smoking related fire in Maine and other findings regarding the impact of this legislation.

INTRODUCTION

Fires started by smoking materials, primarily cigarettes constitute a leading cause of residential fire deaths in Maine and across the nation. According to analyses by the United States Fire Administration (USFA) and the National Fire Protection Association (NFPA) smoking related fire deaths are almost three times as likely as residential fire deaths due to others causes.¹ This higher level of lethality is due to the fact that smoking related fire deaths frequently involve an individual close to the point of ignition. The majority of home smoking related fire deaths involve mattresses, bedding and upholstered furniture in addition to the trash. The close proximity to ignition minimizes the chances of an individual being saved by other mitigation technologies such as smoke detectors or escape planning strategies.

Though the number of individuals smoking as a percentage of the total population is declining due to cessation programming and other efforts, there is still a segment of the population that still smoke. Older Americans in general, already at high risk in terms of fire fatality, continue to smoke more. The fact that millions of people still smoke combined with the facts about smoking related fire deaths set the foundation for a movement to propose and pass RIP legislation beginning in New York in 2004.

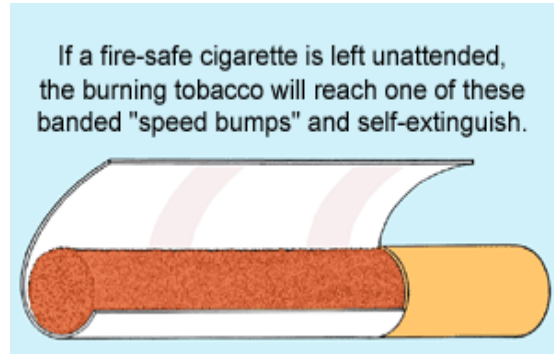
¹ *Behavioral Mitigation of Smoking Fires*, FA-302. United States Fire Administration, February 2006 (Department of Homeland Security).

Ultimately the best strategy for reducing smoking related fire fatalities is prevention. Prevention can include efforts to educate the public and change behaviors in addition to the requirements that only RIP cigarettes be available to the consumer.

REDUCED IGNITION PROPENSITY CIGARETTES

A fire-safe cigarette has a reduced propensity to burn when left unattended. The most common fire-safe technology used by cigarette manufacturers is to wrap cigarettes with two or three thin bands of less-porous paper that act as “speed bumps” to slow down a burning cigarette. If a fire-safe cigarette is left unattended, the burning tobacco will reach one of these speed bumps and self-extinguish.

Fire-safe cigarettes meet an established cigarette fire safety performance standard, based on ASTM E2187, Standard Test Method for Measuring the Ignition Strength of Cigarettes. Cigarette packs, cartons, and boxing are also required to meet marking requirements set forth in the law.



STATISTICS ON SMOKING RELATED FIRES AND DEATHS IN MAINE

Cigarettes were reported as the heat source in 430 reports filed by Maine Fire Departments between 2003 and 2007. Of these 430 fires, 151 occurred in structures. Because the impetus of the Fire Safe Cigarette effort was to reduce deaths due to smoking fires which occur almost always in a structure, we focused on structures alone. As Table 1 below indicates, smoking fires as a cause of all structure fires, is not as frequently reported by Maine Fire Departments as other causes. They only comprise between one to two percent of fires in contrast to other causes such as *cooking, heating,* and *other* fires that cause twenty percent or more of the fires in Maine.

Table 1

	Maine Fire Incident Reporting System - Structure Fire Causes 2003 - 2007									
	2003		2004		2005		2006		2007	
	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL
Incendiary/suspicious	95	6.0%	98	4.5%	98	4.8%	97	4.7%	96	4.8%
Smoking	20	1.3%	37	1.7%	20	1.0%	35	1.7%	39	2.0%
Heating	270	16.9%	787	36.0%	786	38.3%	682	33.0%	713	35.9%
Cooking	427	26.8%	572	26.2%	505	24.6%	550	26.6%	484	24.3%
Electrical	14	0.9%	21	1.0%	15	0.7%	17	0.8%	14	0.7%
Other	767	48.1%	671	30.7%	627	30.6%	685	33.2%	642	32.3%
Total	1593	100.0%	2186	100.0%	2051	100.0%	2066	100.0%	1988	100.0%
* In 2004 four of the smoking related fire deaths involved the use of oxygen.										

It should also be noted that structure fires where a cigarette was reported as the source of heat showed little if any seasonality unlike heating fires for instance.

When we look at fires as a cause of residential structure fires, Table 2, we also see that smoking related fires comprise a small share of the different fire causes identified in the table. Residential structure fires are the most frequent among structure fires in Maine and across the nation and where most fire fatalities occur.

Table 2

Maine Fire Incident Reporting System - Residential Structure Fire Causes 2003 - 2007										
	2003		2004		2005		2006		2007	
	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL
Incendiary/supicious	62	5.0%	56	3.2%	71	4.2%	60	3.7%	62	3.9%
Smoking	16	1.3%	32	1.8%	16	1.0%	30	1.9%	36	2.3%
Heating	520	41.6%	712	41.0%	723	43.0%	595	37.0%	645	40.6%
Cooking	334	26.7%	465	26.8%	422	25.1%	458	28.5%	396	24.9%
Electrical	8	0.6%	18	1.0%	9	0.5%	15	0.9%	9	0.6%
Other	310	24.8%	452	26.1%	442	26.3%	450	28.0%	441	27.8%
Total	1250	100.0%	1735	100.0%	1683	100.0%	1608	100.0%	1589	100.0%

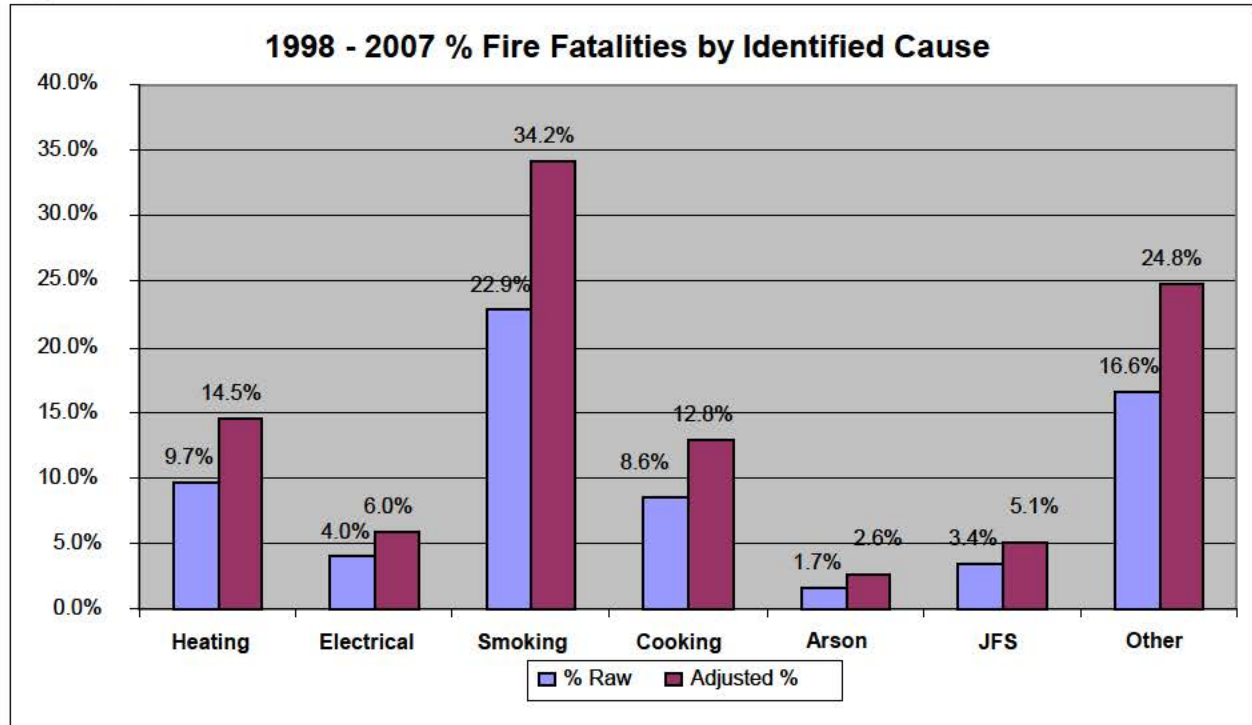
When we look at fire fatality we use the Fire Marshal's Office Investigations files since the bureau is charged with investigating all fires resulting in the death of an individual. In reviewing that data for the years 1998 – 2007, a ten year period, you can see that in contrast to fire cause alone, fire deaths due to smoking demonstrate the lethality of smoking fires. Again, this lethality is due primarily to the proximity of an individual to the ignition of the fire.

Table 3

Estimated Fire Fatalities by Cause 1998 - 2007									
	Heating	Electrical	Smoking	Cooking	Arson	JFS	other	Undetermined	Total
1998	1	1	4	2	0	0	2	3	13
1999	1	3	4	2	0	1	0	13	24
2000	1	0	9	0	1	3	2	2	18
2001	2	0	4	4	1	0	1	6	18
2002	2	0	3	2	0	0	5	2	14
2003	3	0	6	1	0	0	4	9	23
2004	1	1	5	2	0	0	2	6	17
2005	4	2	1	1	0	0	6	8	22
2006	2	0	3	1	0	2	4	3	15
2007	0	0	1	0	1	0	3	6	11
Total	17	7	40	15	3	6	29	58	175

The graph below illustrates the lethality of these fires in terms of the percentage of all fire deaths they comprise both in raw numbers and then adjusted for undetermined fires.²

Figure 1



Because Fire Safe Cigarettes are designed to extinguish prior to igniting other materials they are placed upon or in, we decided to look closer at data we have on cigarette fires by occupancy and materials first ignited. Historically, smoking related fire fatalities occur in residential dwellings where an individual is most often in close proximity to the ignition or has carelessly disposed of smoking materials in the trash. In either case the purpose of these cigarettes is to self extinguish prior to ignition.

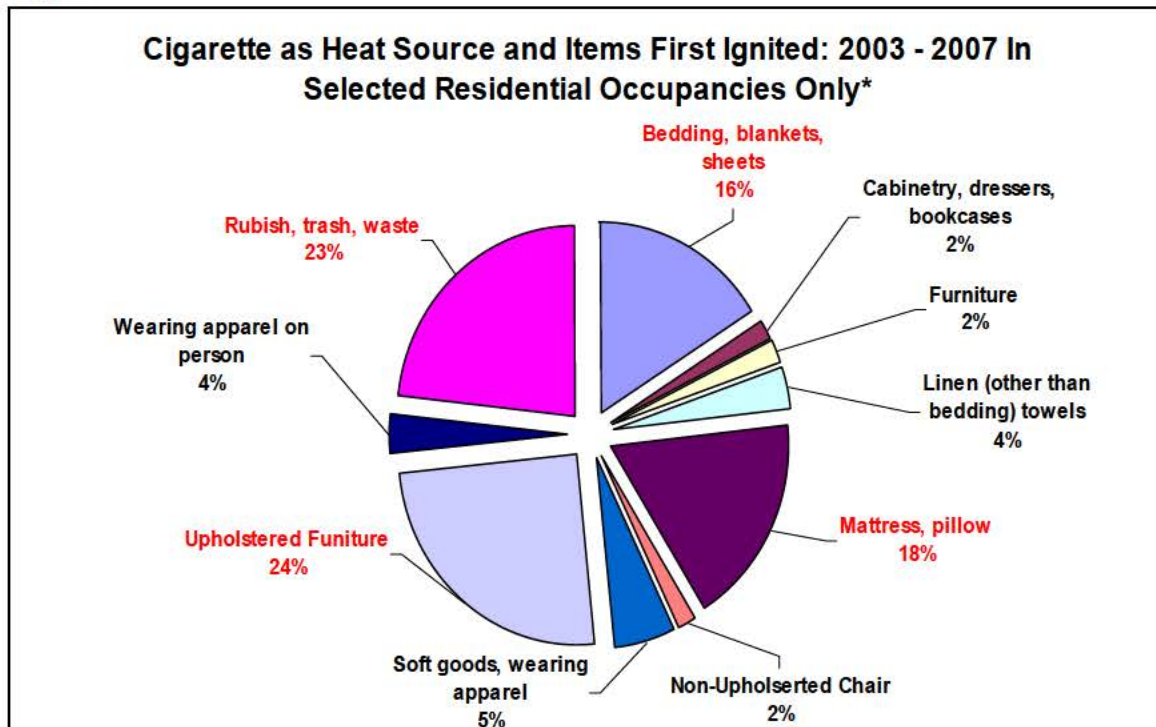
With this in mind we looked at the following residential occupancies in which we have seen smoking fire fatalities occur frequently:

- One and two family dwellings
- Multifamily dwellings
- Room/Boarding Facilities
- Dormitories
- Hotels/Motels

² Adjusted percentages are calculated by dividing the percentage of a known cause by the total percentage known (determined) causes.

We then looked at a range of items first ignited by cigarettes to produce the pie chart on the following page. As you can see the items highlighted in red, with the highest percentage of ignitions, are consistent with the data that confirms most of these fires are directly proximate to an individual or are the result of the careless disposal of smoking materials (see Figure 2 below). Again, in either case the Fire Safe Cigarette should self extinguish in these circumstances.

Figure 2



FINDINGS

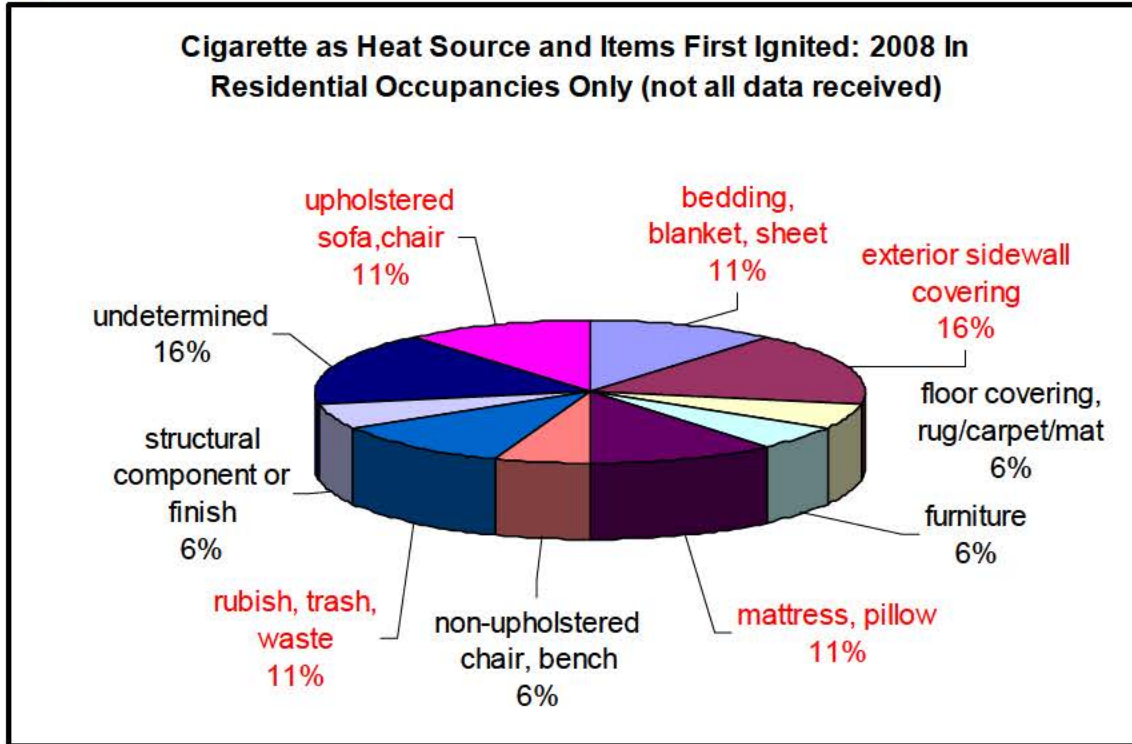
Chapter 253, An Act Concerning Reduced Ignition Cigarettes took effect on January 1, 2008. Though the law required that all cigarettes brought into Maine to be sold in Maine be fire safe it also included a clause to allow the sale of existing inventories. With that in mind, let's look at cigarette fires and deaths in 2008.

There were a total of 111 fires reported where the heat source was a cigarette. Of the 111, 18 were structure fires and 17 of those were one, two of multi-family residential structures. The reader should understand that all fire reports for the 2008 year will not be entered into the system until June of 2009. Still in comparing the distributions of items first ignited from the 2008 (Figure 3) data to that of 2003 – 2007 (Figure 2) you can see the leading sources highlighted in red are similar.

Finally, let's look at fire fatalities for the year 2008. In 2008 there were a total of 15 fire fatalities in Maine. Of those, three (20%) were determined to be related to smoking while another may have been. Of the three determined to be smoking related,

one was due to the careless disposal of cigarettes and two were due to smoking while on oxygen. This latter type of cigarette fire fatality involved older adults and is not likely to be remedied by RIP cigarette brands.

Figure 3

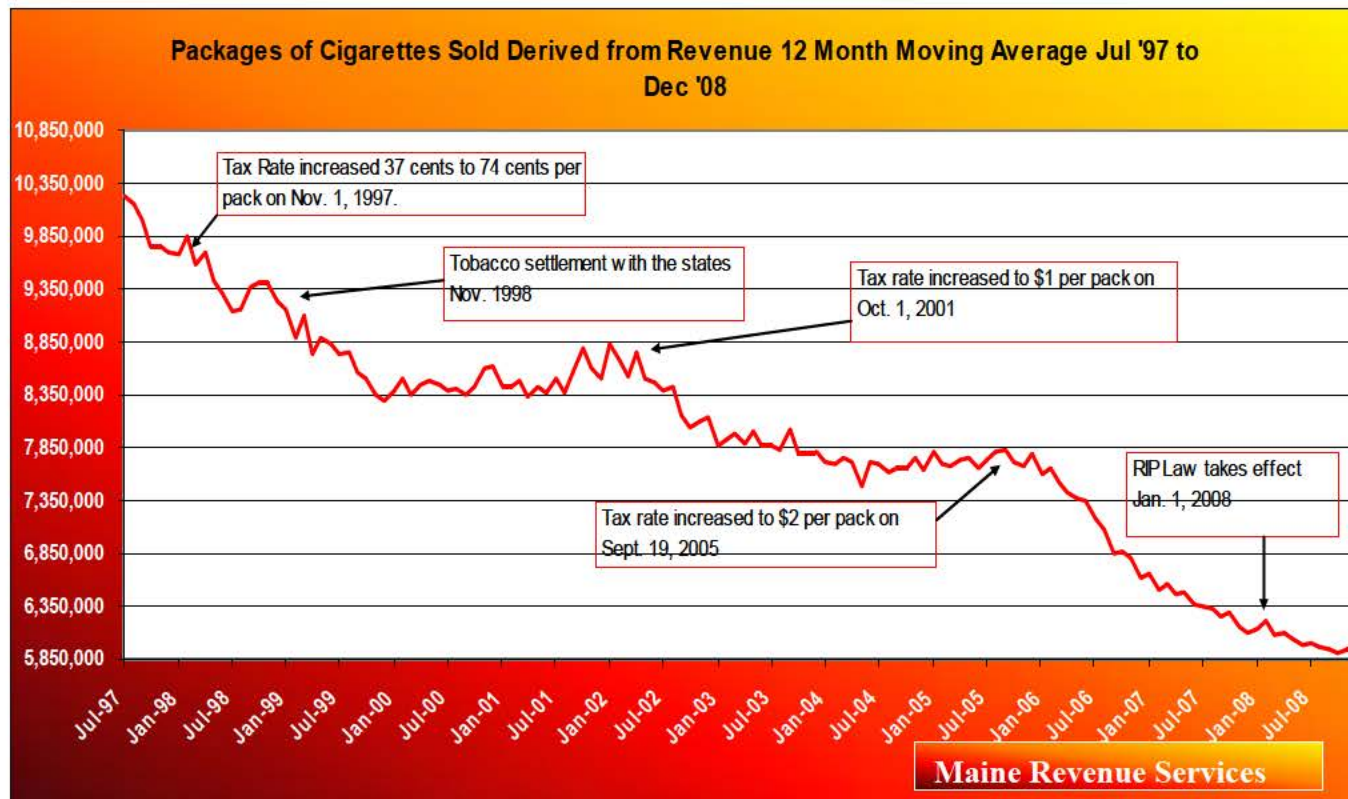


Data from 2008 on cigarette fires, deaths, and the details as to occupancy type and items first ignited provide little information as to the effectiveness of Maine’s Reduced Ignition Propensity Cigarette law since it is only one year’s worth of information. However, the data from 2003 – 2007, used as a baseline against the 2008 data and data from future years will give us an idea as to how effective the law has been.

As RIP cigarette laws have been implemented throughout the country many have wondered about the laws impact on the consumption of cigarettes. The line chart below (Figure 4) provided by Maine Revenue Services gives you an idea of cigarette consumption in Maine using packages of cigarettes sold as a measure. As the chart indicates, cigarette consumption has been diminishing in Maine at least since 1997. This is due in part to Maine’s concerted effort to reduce that consumption due to the associated health risks and cost in addition to taxation policies.

Other variables effecting consumption would include the fact that many people just quit and there are changes in across the border and internet sales. All of these variables have contributed to a steady decline in sales. The continued decline we see for 2008 can not be realistically attributed to Maine’s RIP cigarette legislation. It should be noted however that the steady decline may also have been playing a role in cigarette related fires.

Figure 4



Implementation of Maine's RIP Cigarette Law

Implementation of Chapter 253 "An Act Concerning Reduced Ignition Propensity Cigarettes" began almost immediately upon passage of the legislation. Manufacturers such as Phillip Morris and R.J. Reynolds began to send certification documents attesting to their compliance with the testing and marking requirements outlined in Maine's RIP law. Though the law became effective on January 1, 2008, certification documents were being received by the Fire Marshal in December of 2007.

Certification documents include three essential elements:

1. A letter attesting to the manufacturer's compliance with Maine's law.
2. Testing results for each brand and brand style of cigarette stating that the cigarette was tested in accordance with ASTM Standard E2187-04.
3. A sample of packaging which includes the marking used to designate the cigarette as being a Fire Safe Cigarette (FSC) brand.

Upon receiving the certification documents the Fire Marshal's Office reviews

them to see that the ASTM standard was applied and each cigarette brand name, style, length and other information for each cigarette required under section 3 of Chapter 253 was provided. The Fire Marshal's Office looks at the marking on the package samples to check for correct font size and location on the package, carton or box. Upon verification that the testing and marking requirements have been met the State Fire Marshal's Office responds to the manufacturer in writing that the certification requirements have been met and the cigarette is in compliance with Maine law. If there is a problem the manufacturer is also notified. All correspondence is forwarded to the Maine Attorney General's Office so they can make sure the cigarette brand is one that is listed in the directory of all tobacco manufactures required under Title 22 §1580-L.

In addition the Fire Marshal's Office has begun, but not yet completed, its own directory of cigarettes meeting the requirements of Chapter 253. Phillip Morris and R.J. Reynolds alone manufacture 428 styles of different brands which all have to be entered into a database. At present the incomplete list has 738 entries includes the following details for each brand style:

- (1) Brand or trade name on the package;
- (2) Style, such as light or ultra light;
- (3) Length in millimeters;
- (4) Circumference in millimeters;
- (5) Flavor, such as menthol, if applicable;
- (6) Filter or nonfilter;
- (7) Package description, such as soft pack or box;
- (8) Marking approved in accordance with subsection 4;
- (9) The name, address and telephone number of the laboratory, if different than the manufacturer, that conducted the test; and
- (10) The date that the testing occurred.

Other states have managed this burden through a fee paid for the certification of each brand. Here is a list of what states are charging in terms of fees for certification per brand:

Alaska	\$250.00	Maryland	\$250.00	RI	\$250.00
Connecticut	\$250.00	Massachusetts	\$3,000.00	Texas	\$250.00
Delaware	\$250.00	Minnesota	\$250.00	Utah	\$1,000.00
Iowa	\$100.00	Montana	\$250.00		

Kentucky	\$250.00	New Jersey	\$250.00
Louisiana	\$250.00	North Carolina	\$250.00

The fees are used by some states to hire staff to manage the program which includes the review of certification documents and the maintenance of a data base directory of cigarettes certified for sale in the given state. It should be noted that in Maine and all other states the manufacturer is required to recertify brands. In Maine recertification is required every three years. The data base helps in developing and making sure recertification documents are filed at the appropriate time.

Summary and Recommendations

This report has provided the legislature with a model of indicators that will be used to measure the effectiveness of LD 70, “An Act Concerning Reduced Ignition Propensity Cigarettes” passed during the 123rd legislature. We have examined data on smoking fires, deaths, and examined those within all structures, residential structures and the item first ignited. We have good data on smoking related deaths since the Fire Marshal’s Office investigates such incidents in Maine but only nominally (5 year) good data on fires since we must rely on fire departments to provide us with that information.

We believe the information we do have justifies the action taken by Maine’s legislature in enacting this legislation for the following reasons:

- Smoking related fires kill more people in Maine and across the nation than any other known cause;
- These deaths are due primarily to the proximity of the victim to the ignition of the fire;
- The type of items first ignited most frequently by cigarettes are also frequently proximate to individuals;
- These same items are items common in residential dwellings;
- The ratio of fires caused by cigarettes to fire deaths cause by smoking related fires indicate how lethal these fires can be;
- RIP cigarettes seem to have had no impact on cigarette consumption in Maine.

The history of smoking fires and deaths examined within the context of variables presented indicate that a cigarette with a reduced propensity to ignite will be less likely to result in someone being killed as the result of a fire caused by a cigarette. However, education aimed at prevention is ultimately the best approach to reducing smoking related fire deaths. Given Maine’s aging population, a population that smokes more than other age cohorts, and this populations increased use of oxygen assisted breathing apparatus, public education and awareness programs targeting this audience will still be useful.

With this summary in mind the State Fire Marshal recommends:

- That the public education efforts focused on Maine's older adult population currently underway remain in place;
- Continue to work toward obtaining more quality data from Maine's fire service reporting fires so that a more quality analysis of RIP cigarette effectiveness, and the States overall fire burden, can be made;
- The legislature may wish to consider a fee for certification of cigarette brands as most other states have done. A nominal fee would cover the cost of reviewing each cigarette brand for compliance with the testing and marking requirements in addition to completing and maintaining a data base directory of certified cigarettes. The directory would also serve to ensure that recertification is done in accordance with the three year interval required in Maine law.
- The fee could also cover additional public education efforts such as PSAs that target Maine's older adults.

Public Law, Chapter 253, 123rd Legislature, First Regular Session

PLEASE NOTE: The Office of the Revisor of Statutes **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Public Law

123rd Legislature

First Regular Session

Chapter 253

H.P. 68 - L.D. 70

An Act Concerning Reduced Ignition Propensity Cigarettes

Be it enacted by the People of the State of Maine as follows:

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

§ 1555-E. Reduced ignition propensity cigarettes

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

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

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

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

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

E. "Manufacturer" means:

(1) An entity that manufactures or otherwise produces cigarettes, or causes cigarettes to be manufactured or produced anywhere, that the entity intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer;

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

F. "Quality control and quality assurance program" means the laboratory procedures implemented to

ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of testing under subsection 2. A quality control and quality assurance program ensures that the testing repeatability remains within the required repeatability values stated in subsection 2, paragraph A, subparagraph (6) for all test trials used to certify cigarettes in accordance with this section.

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

H. "Sale" means any transfer of possession or exchange or barter, conditional or otherwise, of cigarettes in any manner or by any means or any agreement. 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.

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

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

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

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

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

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

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

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

(5) Written certifications must be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standards required by the State Fire Marshal.

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

(7) This subsection does not require additional testing if cigarettes are tested consistent with this section for any other purpose.

(8) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standards required by this subsection must be conducted in

accordance with this subsection.

B. Each cigarette listed in a certification submitted pursuant to subsection 3 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standards set forth in this subsection must have at least 2 nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least 2 bands 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 nonfiltered cigarettes.

C. The provisions of this paragraph apply to alternative test methods.

(1) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test methods prescribed in paragraph A shall propose test methods and performance standards for the cigarette to the State Fire Marshal. Upon approval of the proposed test methods and a determination by the State Fire Marshal that the performance standards proposed by the manufacturer are equivalent to the performance standards prescribed in paragraph A, the manufacturer may employ the test methods and performance standards to certify the cigarette pursuant to subsection 3.

(2) If a manufacturer has certified a cigarette pursuant to subsection 3 and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced ignition propensity standards required by this section, that cigarette may not be sold or offered for sale in this State until the manufacturer retests the cigarette in accordance with the testing standards set forth in this subsection and maintains records of that retesting as required by this subsection. Any altered cigarette that does not meet the performance standards set forth in this subsection may not be sold in this State.

(3) If the State Fire Marshal determines that another state has enacted reduced ignition propensity standards that include test methods and performance standards that are the same as those contained in this subsection and finds that the officials responsible for implementing those requirements have approved the proposed alternative test methods and performance standards for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test methods and performance standards to certify that cigarette for sale in this State, unless the State Fire Marshal finds a reasonable basis that the alternative test should not be accepted under this section. All other applicable requirements of this subsection apply to the manufacturer.

D. 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 these reports available to the State Fire Marshal and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request commits a civil violation for which a fine not to exceed \$5,000 must be applied for each day after the 60th day that the manufacturer does not make such copies available.

E. The State Fire Marshal may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes upon a finding 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 and the performance standard in paragraph A, subparagraph (3).

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

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

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

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

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

(1) Brand or trade name on the package;

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

(3) Length in millimeters;

(4) Circumference in millimeters;

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

(6) Filter or nonfilter;

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

(8) Marking approved in accordance with subsection 4;

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

(10) The date that the testing occurred.

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

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

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

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

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

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

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

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

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

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

5. Violations. Penalties for violating this section are as set out in this subsection.

A. A manufacturer, distributor, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than \$10,000 per each sale of cigarettes must be imposed.

B. A manufacturer, distributor, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of subsection 2, paragraph A and has previously been adjudicated of violating that subsection commits a civil violation for which a fine of not more than \$25,000 per each sale of cigarettes must be imposed, except that the fine against any one person or entity may not exceed \$100,000 during any 30-day period.

C. A tobacco retailer who knowingly sells 1,000 cigarettes or less in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than \$500 per each sale or offer for sale of cigarettes must be imposed.

D. A tobacco retailer who commits a violation as described in paragraph C and has previously been adjudicated of committing that violation commits a civil violation for which a fine of not more than \$2,000 per each sale or offer for sale of cigarettes must be imposed.

E. A tobacco retailer who knowingly sells more than 1,000 cigarettes in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than \$1,000 per each sale or offer for sale of cigarettes must be imposed, except that this fine against any tobacco retailer may not exceed \$25,000 during a 30-day period.

F. A tobacco retailer who commits a violation as described in paragraph E and has previously been adjudicated of committing that violation commits a civil violation for which a fine of not more than \$5,000 per each sale or offer for sale of cigarettes must be imposed, except that this fine against any

tobacco retailer may not exceed \$25,000 during a 30-day period.

G. In addition to any other penalty prescribed by law, a corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to subsection 3 commits a civil violation for which a fine of not less than \$75,000 must be imposed for each false certification.

H. A corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that commits a violation as described in paragraph G after having previously being adjudicated of committing that violation commits a civil violation for which a fine of at least \$75,000 and not more than \$250,000 must be imposed for each false certification.

I. A person who commits a violation of a provision of this section other than those described in paragraphs A to H commits a civil violation for which a fine of not more than \$1,000 must be imposed for each violation.

J. A person who commits a violation as described in paragraph I and has been previously adjudicated of committing a violation described in paragraph I commits a civil violation for which a fine of not more than \$5,000 must be imposed for each violation.

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

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

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

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

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

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

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

9. Inspection. To enforce the provisions of this section, the Attorney General and the State Fire Marshal may examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are manufactured, tested, placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Such a person shall give the Attorney General and

the State Fire Marshal the means, facilities and opportunity for the examinations authorized by this subsection.

10. Fire Prevention and Public Safety Fund. The Fire Prevention and Public Safety Fund is established as a nonlapsing fund. The fund must consist of all money recovered as penalties for violations of this section. The money must be deposited to the credit of the fund and, in addition to any other money made available for such purpose, must be made available to the State Fire Marshal to support fire safety and prevention programs.

11. Sale outside of State. Nothing in this section may be construed to prohibit a person or entity 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 or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this State.

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

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

Effective January 1, 2008.