

MAINE STATE LEGISLATURE

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**STATE OF MAINE
129th LEGISLATURE
FIRST REGULAR SESSION**

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

Joint Standing Committee on Criminal Justice and Public Safety

April 2021

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Table of Contents

Executive Summary	3
Introduction	3
Reduced Ignition Propensity Cigarettes.....	4
Statistics on Smoking Related Fires and Deaths in Maine.....	4 - 8
Consumption	11
Implementation Efforts	12
Findings	13
Summary and Recommendations.....	14
Appendix A: Chapter 253, An Act Concerning Reduced Ignition Propensity Cigarettes	

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 fire in Maine. The rate of fire deaths due to smoking are higher than any other cause including cooking, heating, electrical, and arson fires primarily due to the proximity of the victim to the heat source (cigarette) and material first ignited (clothes, bedding, etc.) 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. By 2007 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 is being written all 50 states have implemented RIP laws. In general these laws are similar the most significant exception being that Maine's law did not require payment of a fee for the certification of fire safe cigarettes. Many states charge a fee ranging from \$100 to \$1,500 per brand style and up.

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

INTRODUCTION

According to the National Fire Protection Association, fires started by smoking materials remains one of the top 5 causes of structural fires in the United States and the top cause of structural fire related deaths. According to the Centers for Disease Control and Prevention (CDC), only 15.5% of the adult population were current smokers in 2016 compared to 33.2% in 1980. Despite today's comparatively small percentage of smokers, smoking remained the leading cause of home fire deaths over the total five-year period of 2012-2016.

This higher level of lethality is due to the fact that smoking related fire deaths frequently involve an individual close to the heat source (cigarette), materials first ignited (upholstery, clothes) and point of ignition (where the fire started). The majority of home smoking related fire deaths involve mattresses, bedding and upholstered furniture in addition to the trash. The close proximity to ignition worsens burn and smoke inhalation injury because mitigation technologies such as smoke detectors, sprinklers or escape planning strategies can't be activated soon enough to mitigate injury.

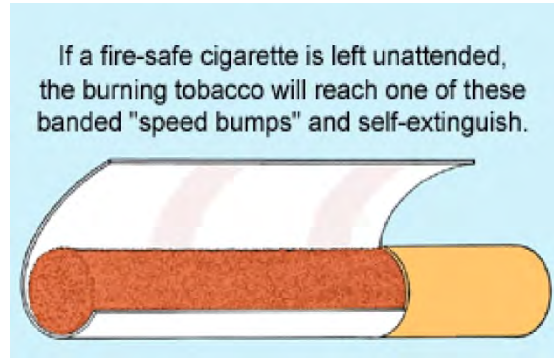
Mid to older age citizens comprise 76% of smoking related fire deaths. Older adults in general, already at high risk in terms of fire fatality, continue to smoke more. A substantial number of Maine's older adult population use medical oxygen. Since 2009 Maine has averaged at least one death per year due to smoking while on oxygen. The combination of so many residents still smoking and the data on smoking related fire deaths set the foundation for a movement to propose and pass RIP legislation with New York leading the way in 2004.

Ultimately the best strategy for reducing smoking related fire fatalities is prevention. Prevention can include efforts to educate the public and change behaviors, continued efforts at smoking cessation in addition to the policy requiring 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 the American Society for Testing and Materials (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

Cigarette fires comprise a small overall percentage of fires but are the most lethal. Cigarettes were reported as the heat source in 345 fire reports filed by Maine Fire Departments between 2018 and 2020. These fires killed 7 civilians and 1 firefighter. Another 14 civilians and 1 firefighter were injured. The fires resulted in total contents and property losses of \$1,926,651. Of these 345 fires, smoking was the cause of the fire in 158 structures¹ and 129 residential structures (1 & 2, multifamily structures). Because the impetus of the Fire Safe Cigarette effort was to reduce deaths due to smoking fires which occur almost always in a residential structure, we focused on structures and residential structures. Table 1 below provides you with the frequency of structure fires by cause for 2008, the year the law was enacted, and the last three years covered in this report. Structure fires caused by smoking have increased since the law was enacted. However, in contrast to other causes smoking continue to comprise a smaller percentage of all structure fire causes.

Table 1

Maine Fire Incident Reporting System - All Structure Fire Causes 2008, 2018 – 2020 (Maine NFIRS Reporting System)								
	2008		2018		2019		2020	
	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL
Incendiary/suspicious	54	2.8%	59	2.6%	57	2.5%	58	3.0%
Smoking	34	1.7%	63	2.7%	42	1.9%	57	2.9%
Heating	756	38.7%	691	30.0%	659	29.1%	520	26.6%
Cooking	469	24.0%	588	25.5%	615	27.2%	519	26.6%
Electrical Malfunction	82	4.2%	139	6.0%	152	6.7%	109	5.6%
Other	559	28.6%	767	33.2%	739	32.6%	690	35.3%
Total	1,954	100.0%	2,307	100.0%	2,264	100.0%	1,953	100.0%

¹ This would include any type of structure, i.e. piers, tunnels, bridges in addition to non-residential buildings.

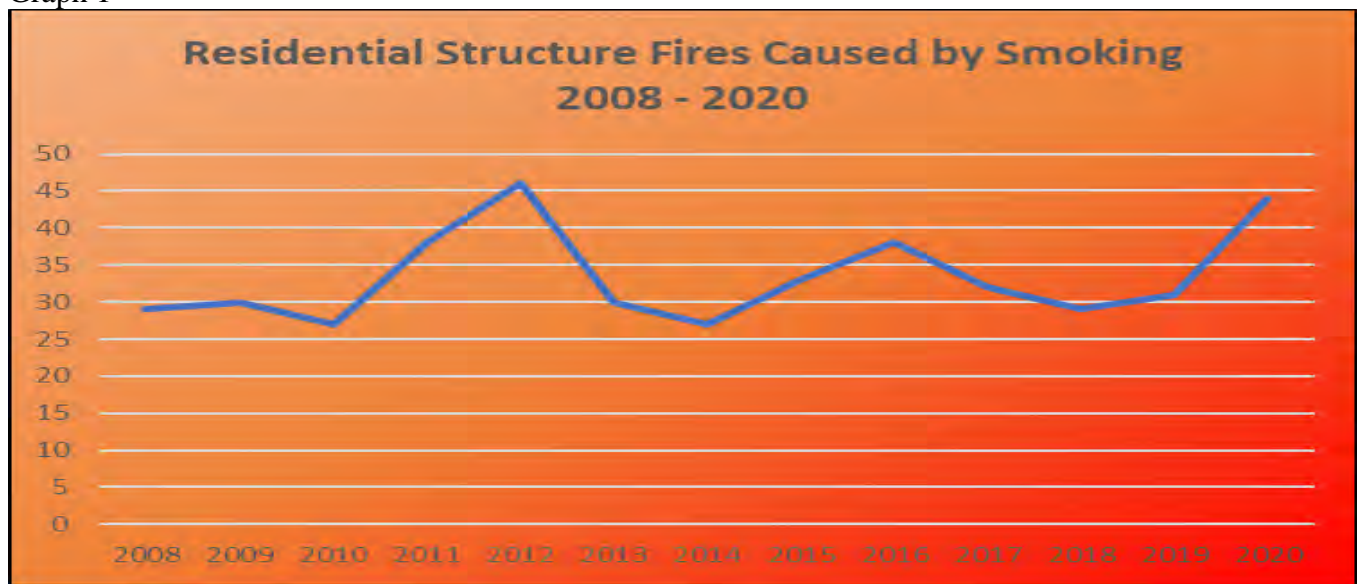
When we look at smoking as the cause of residential structure fires, Table 2, we also see that smoking related fires comprise a small share of the distribution of fire causes. Residential structure fires are the most frequent among structure fires in Maine and across the nation and are where most fire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

Table 2

Maine Fire Incident Reporting System - Residential (1 or 2, multifamily) Structure Fire Causes 2018 – 2020 (Maine NFIRS Reporting System)								
Cause	2008		2018		2019		2020	
	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL
Incendiary/suspicious	31	1.9%	38	2.1%	36	2.0%	39	2.5%
Smoking	29	1.8%	54	3.0%	31	1.7%	44	2.9%
Heating	661	41.1%	597	32.7%	567	31.6%	455	29.5%
Cooking	348	21.6%	439	24.1%	452	25.2%	397	25.8%
Electrical	55	3.4%	93	5.1%	106	5.9%	83	5.4%
Other	485	30.1%	602	33.0%	600	33.5%	523	33.9%
Total	1,609	100.0%	1,823	100.0%	1,792	100.0%	1,541	100.0%

Overall, smoking related fires in residential 1 or 2 and multifamily dwellings have remained relatively steady since 2008.²

Graph 1



Source: Maine NFIRS Reporting System

When we look at fire fatality’s 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 ten-year period beginning in 2011 you can see that fatalities due to smoking caused fires contrast sharply with other causes. Nearly double the count of heating related fires resulting in a fatality. *What is most surprising about Table 3 is the fact that there were no smoking related fire deaths in 2020. A year in which people remained in their homes more so than any other year due to COVID.*

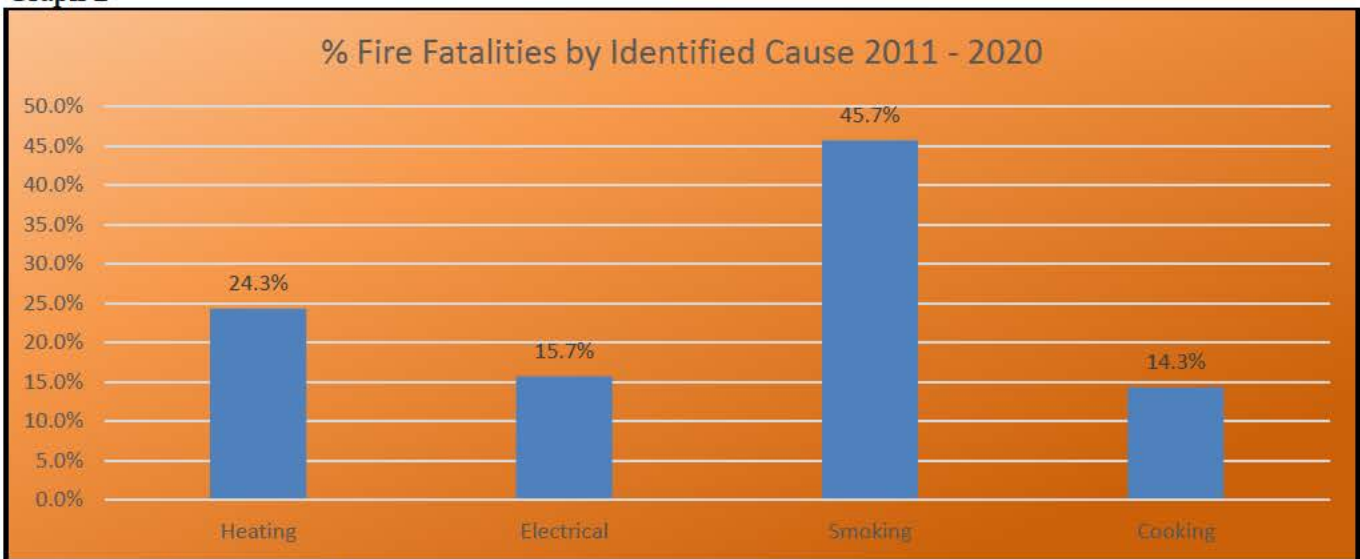
² Fire reporting among Maine fire departments increased during this time frame. Possibly influencing the upward trend.

Table 3

Fire Fatality by Year: Four Determined Leading Causes of Fire Death (Maine Fire Investigators Reports)				
Year	Heating	Electrical	Smoking	Cooking
2011	2	1	6	1
2012	0	0	0	0
2013	0	2	3	2
2014	2	1	7	1
2015	2	0	6	1
2016	3	1	1	1
2017	3	0	2	1
2018	1	3	1	2
2019	4	2	6	0
2020	0	1	0	1
Total	17	11	32	10

Graph 2 below illustrates the lethality of smoking related fires in terms of the percentage of all fire deaths they comprise. Though smoking only comprises a small percentage of structure fire causes and even smaller percentage of all fires, it comprises nearly half of all fire deaths in structures.

Graph 2



Source: Maine Fire Investigators Reports

There were a total 129 smoking related fires in 1 or 2 family dwellings and apartments from 2018 to 2020. Of these 80 took place in single family dwellings and 49³ in apartments. Smoking related fires in other occupancies such as dorms, hotels and others have always experienced a lower rate of smoking related fires and deaths. Fires in these occupancies continue to decline because these occupancies are highly regulated and subsequently mostly smoke free.⁴

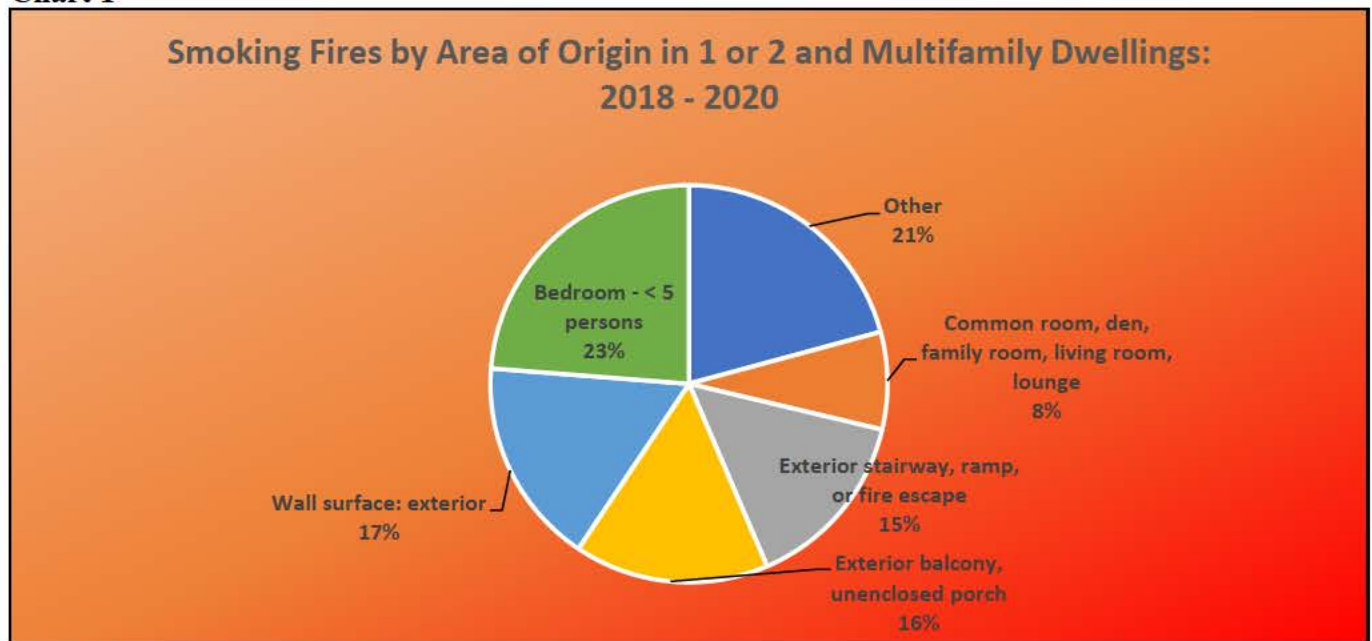
³ Thanks to the effort of organizations such as the “Smoke-Free Housing Coalition” the number of apartments prohibiting smoking has grown and is very likely a contributing factor to there being fewer smoking related fires in multifamily dwellings.

⁴ Boarding houses, hotels, fraternities, and other residential occupancies combined for a total 4 smoking related fire incidents between 2018 and 2020.

Because Fire Safe Cigarettes were designed to extinguish prior to igniting other materials they are placed upon, the Fire Marshal’s Office decided to look closer at the data we have on cigarette fires in homes (1 or 2 and multifamily dwellings) and where the fires originate, what materials are first ignited and the type (composition) of materials first ignited. Historically, smoking related fire fatalities occur in residential dwellings where an individual is most often near the ignition by dropping the cigarette into furniture or has carelessly disposed of smoking materials in the trash. We will not focus on the trash scenario because the cigarette was probably damaged prior to being emptied into the trash. The damage would render the speed bumps in the cigarette inoperable.

In chart 1 below you can see the distribution of smoking fires in the home by where they started in the home.⁵ We ranked them and focused on the top 5 and grouped those remaining into other. Giving the history of “never smoke in bed” public messaging it is somewhat both surprising and disappointing to see that the bedroom still ranks first in area of origin of smoking fires in the home. However, more people seem to be stepping outside to smoke. Overall, 57% of these fires started just outside the dwelling furthering the hypothesis that smoking indoors is becoming a less accepted behavior. This is good for both fire safety, indoor air quality and health.

Chart 1

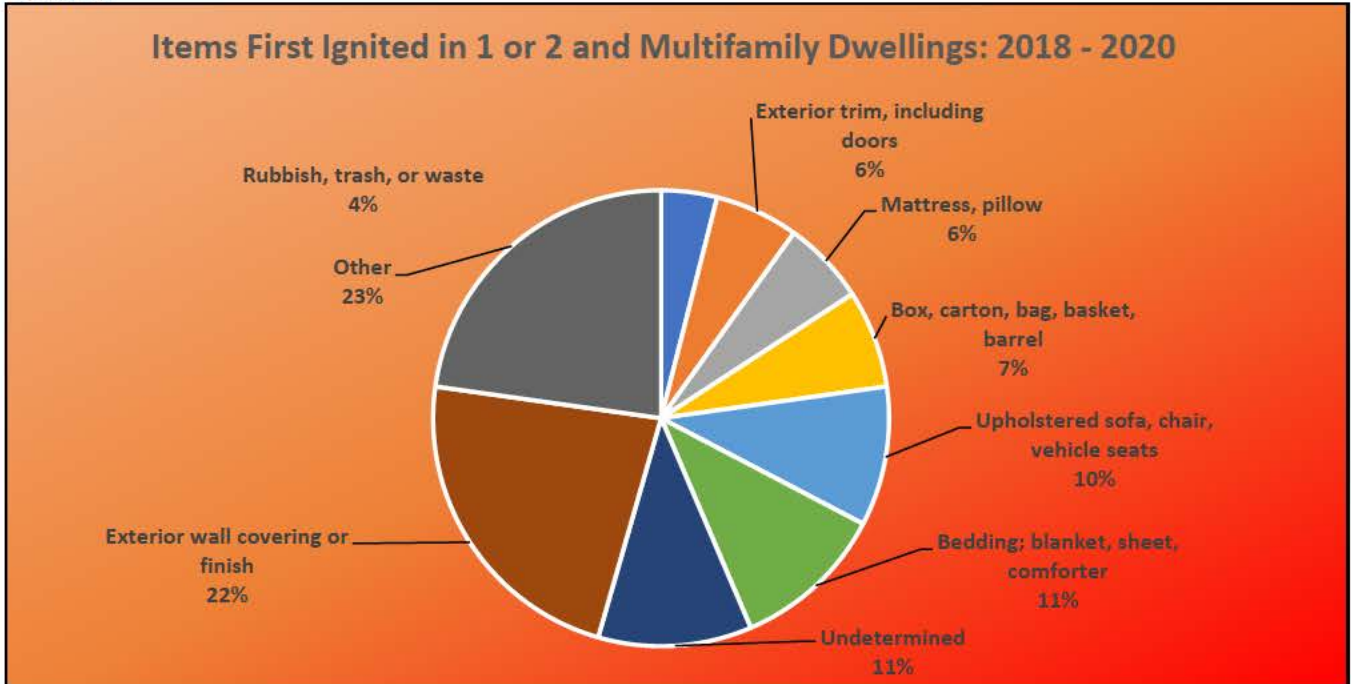


Source: Maine NFIRS Reporting System

A closer look at items first ignited, Chart 2, suggests that we’re still seeing too many fires of the type the fire safe cigarette was meant to prevent. Upholstered furniture, mattress/pillow and bedding comprise 27% of fires by items first ignited. The remaining 73% being distributed between items outside the structure or somewhere other than the bed or living rooms.

⁵ Chart 1 only represents 101 of the 129 total home fires caused by smoking. Where the area of origin was not identified in the data, the fire was excluded.

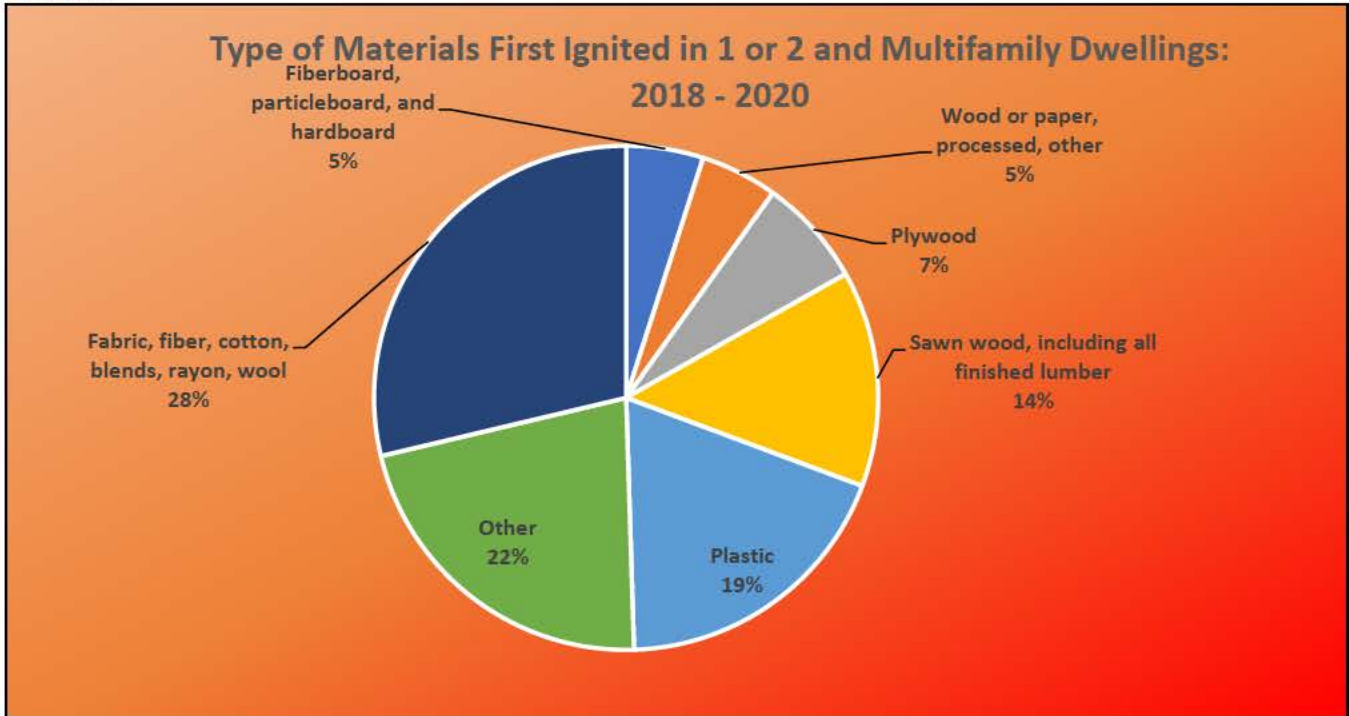
Chart 2



Source: Maine NFIRS Reporting System

Chart 3 below essentially reaffirms what we see in Chart 2 above. Materials associated with cloths or furniture lead the way at 28% of the identified type of (composition) materials followed by materials that might be related to exterior fires and finally materials associated with trash. Materials such as plywood, processed wood and fiberboard reflect new types of composite materials that contribute to faster flashover. We can conclude that based on area of origin, items first ignited, and type of materials first ignited that Maine's Reduced Ignition Propensity law hasn't eliminated the type of fires it was developed to prevent.

Chart 3



Source: Maine NFIRS Reporting System

Though data on where smoking related fires start and what type of materials first ignite suggest fire safe cigarettes might not be effective, the frequency of deaths due to smoking fires has declined (See Table 4). This decline is probably due in part to continued declines in cigarette consumption. The total property and contents dollar loss attributed to smoking for the four years prior to and after the law took effect, remained steady and continued to do so during the period of this report 2018 – 2020. Table 4 shows mixed gains in in terms of smoking related fire deaths and injuries but the overall cost of smoking related fires remains a problem. Deaths, injuries, property losses combined with the personnel and equipment used to fight these fires are costly to Maine residents at the local and state level who pay to maintain fire departments.

Table 4 Maine NFIRS Reporting System

Time Frame	Total Dollar Loss	Civilian Deaths	Civilian Injuries	Firefighter Deaths	Firefighter Injuries	Total Personnel Used	Total Apparatus
2004 - 2007	\$2,037,070	10	12	0	3	na	na
2008 - 2011	\$1,799,237	12	2	0	5	na	na
2018 - 2020	\$1,926,651	7	19	1	1	1,192	535
Total	\$5,762,958	\$29	33	1	9	1,192	535

When smoking related fires happen is worth considering. These fires, in homes, peak in May, begin to decline and start to rise again in January (see Graph 2). The pattern is random for the remaining seven to eight months of the year. In contrast to the months of the year, the time of day in which these fires occur is very clear.

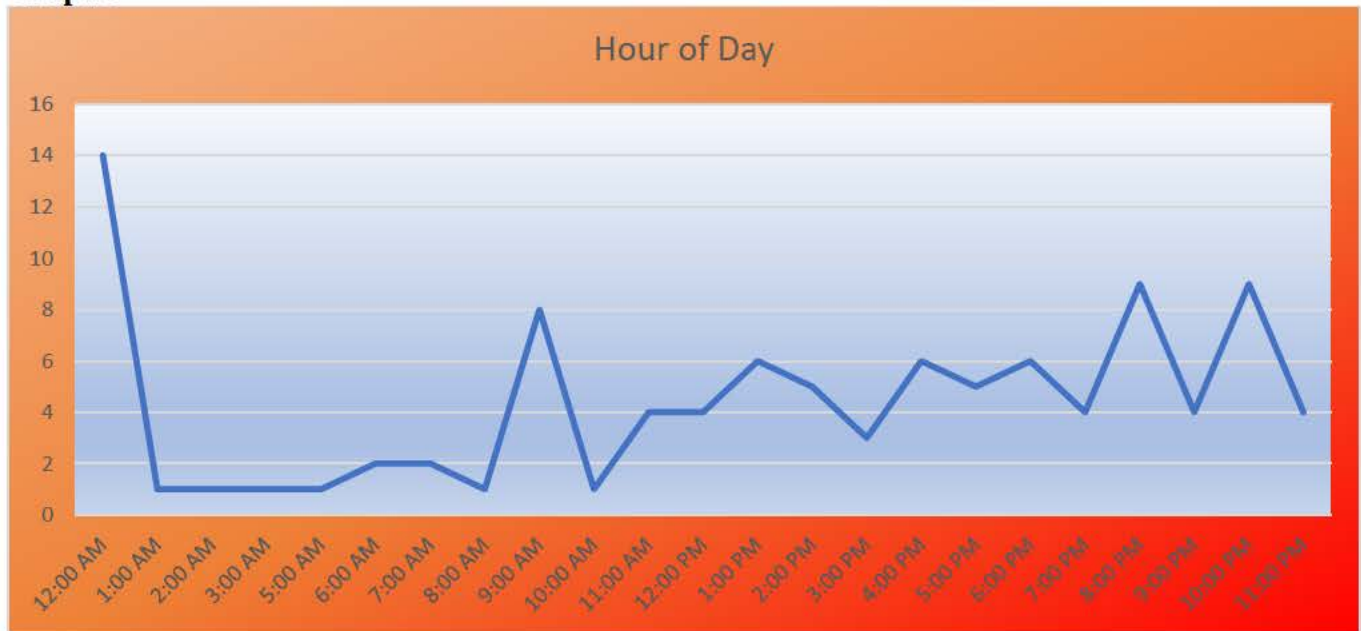
Graph 3 on the following page illustrates the strong correlation between waking hours, being home and smoking related fires. A correlation not as strong in heating, electrical or other fire causes. Fire frequency is at it’s lowest from after midnight to around six and then shoots up from eight to nine in the morning spiking again at seven to ten at night. These morning and after five o’clock hours are those in which homes are occupied the most.

Graph 2



Maine NFIRS Reporting System

Graph 3



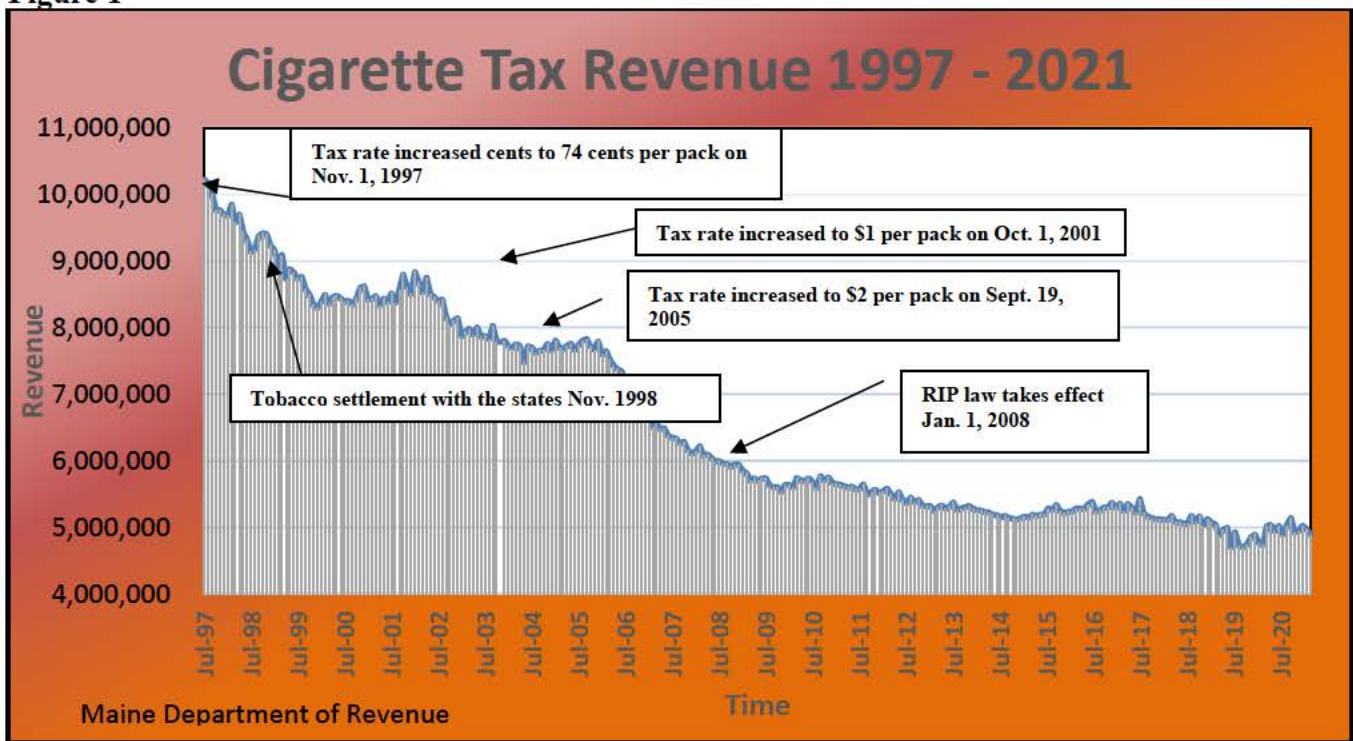
Maine NFIRS Reporting System

CIGARETTE CONSUMPTION AND THE RIP LAW

Cigarette manufacturers expressed concern that RIP regulations would hurt them and small businesses because people wouldn't like the cigarettes, they might cost more, and this would result in a diminished market of buyers.

In Maine this is difficult to ascertain but when we look back over a decade we do observe that consumption of cigarettes in Maine as measured by the number of tax stamps issued was declining prior to the passage of the law and has continued to decline absent any observable significant spike downward. Figure 1 below shows the number of cigarette tax revenue amounts from 1997 and ending in 2021. Sales tax revenues have declined but so has cigarette consumption due in part to smoking cessation programs, taxation and other variables and not necessarily RIP program alone. In addition, tax revenue has leveled off despite no changes in RIP policy.

Figure 1



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 began to send certification documents attesting to their compliance with the testing and marking requirements outlined in the law. The Fire Marshal's Office reviews the testing and marking documentation even though accompanied by a statement attesting to compliance with the law.

Certification documents include three essential elements:

1. A letter attesting the manufacturer's compliance with Maine's law.
2. Testing results for each brand and brand style of cigarette stating that each cigarette being certified was tested in accordance with ASTM Standard E2187-04.
3. A sample of the packaging that 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 for compliance with all aspects of the law. Include all cigarettes being certified are listed on the testing documents with date of test as well as a check to see that the marking is the right font size and clearly visible in the area of the bar code. Upon verification of compliance, the Fire Marshal's Office issues a letter to the manufacturer and copies the Maine Attorney General's to notify them that the specified cigarettes are fire safe. If there is a problem the manufacturer is also notified. All correspondence is forwarded to the Attorney General's Office so they can make sure the cigarette brand is on that is listed in the directory of all tobacco manufactures required under Title 22 § 1580-L.

In addition, the Fire Marshal's Office has built and maintains its own listing of certified cigarettes being sold in Maine. The current list contains approximately 1,732 brand styles many of which will expire or be re-certified with little or no modifications to the physical characteristic of the cigarette. It is the Maine Fire Marshal's Office policy to inform manufacturers that should they alter the physical characteristic of a cigarette, i.e. circumference or length changes, they are required to recertify even though the three-year certification period has not expired. The following details are in the listing for each brand style of cigarette:

1. Brand or trade name on the package;
2. Style, such as light or ultra-light; (these names are no longer used)
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 the law;
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.

The certification and listing costs for the cigarettes and all other required correspondence is absorbed by the Office of the State Fire Marshal. Other states have managed this cost through a fee paid for the certification of each brand or brand style. Here is a list of what states are charging in terms of fees for certification per brand:

FINDINGS

Chapter 253, *An Act Concerning Reduced Ignition Propensity Cigarette* took effect on January 1, 2008. Since that time:

- Smoking related fires remain the most lethal of fires in Maine due to the proximity of the victim to fire ignition.
- Most of these deaths take place in or just outside of 1 or 2 and multifamily dwellings (homes).
- The counts of fire deaths due to smoking related fires remain relatively unchanged.
- The count of all residential structure fires where cigarettes were the source of ignition has ranged from a high of 46 in 2012 to a low of 27 in 2014. Overall the trend has remained relatively steady since the law was enacted.
- The distribution of cigarette related structure and residential structure fires by area of origin, items first ignited, and materials first ignited suggests that smoking in sleeping areas and living room areas remains a problem. More fires are taking place directly outside of the dwelling.
- RIP cigarettes have had no discernable impact on cigarette consumption in Maine.

SUMMARY AND RECOMENDATIONS

This report has provided the legislature with a set of model indicators that can be used to measure the effectiveness of LD 70, “An Act Concerning Reduced Ignition Propensity Cigarettes” passed during the 123rd Maine legislature. We have examined fire deaths and fires caused by cigarettes over a three and ten-year periods in structures with a focus on residential structures. Because the RIP cigarette is designed to reduce the frequency of fire deaths in homes and on upholstered furniture, we also looked closely at the distribution these fires in terms of the area of origin, items first ignited, and type of material first ignited.

We believe the information we do have supports the law for the following reasons:

- Smoking related fires continue to kill more people and injure many others.
- These deaths are due primarily to the proximity of the victim to the ignition of the fire and therefore the FSC designed to go out on such materials makes is still of value.
- Cigarette fires cost Maine communities in terms of life lost, injury, property loss and the cost of fire department personnel and apparatus.
- RIP cigarettes seem to have no negative impact on cigarette consumption in Maine.

The history of smoking fires and deaths examined within the context of variables presented in this analysis 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 and uses oxygen therapy more than any other age cohort, 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 middle age to older adult population and smoking currently underway remain in place.
- ✓ Continue to monitor cigarette related fires in Maine and its cost.
- ✓ Continue to work toward obtaining more quality data from Maine’s fire service who report these fires so that a more quality analysis of the impact of fire safe cigarettes can be conducted.

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.