

SB

84

25-LS0596\O
Bannister
3/19/07

CS FOR SENATE BILL NO. 84()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS OLSON, Elton, Ellis, Davis, Dyson, McGuire, Thomas

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the testing and packaging of cigarettes to be sold, offered for sale, or**
2 **possessed in this state; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 18 is amended by adding a new chapter to read:

5 **Chapter 74. Cigarette Fire Safety.**

6 **Sec. 18.74.010. Requirement for sale.** Except as provided by AS 18.74.060, a
7 person may not sell or offer to sell cigarettes in this state, or sell or offer to sell
8 cigarettes to another person located in this state, unless

9 (1) the cigarettes are tested under

10 (A) AS 18.74.030 and satisfy the performance standard in
11 AS 18.74.030(d); or

12 (B) AS 18.74.040 and satisfy an alternative performance
13 standard under AS 18.74.040;

14 (2) the cigarettes have been marked as required by AS 18.74.130; and

1 (3) a certification has been submitted by the manufacturer of the
2 cigarettes under AS 18.74.080.

3 **Sec. 18.74.030. Testing of cigarettes.** (a) Cigarettes shall be tested under

4 (1) the ASTM International Standard E2187-04, entitled "Standard
5 Test Method for Measuring the Ignition Strength of Cigarettes"; or

6 (2) a test method established under (b) of this section.

7 (b) The state fire marshal may adopt an ASTM International standard test
8 method that is adopted by the American Society of Testing and Materials after the
9 standard test method identified under (a) of this section if the state fire marshal finds
10 that the method does not result in a change in the percentage of full-length burns
11 exhibited by any tested cigarette when compared to the percentage of full-length burns
12 that the same cigarette would exhibit when tested under

13 (1) the standard test method identified under (a)(1) of this section; and

14 (2) the criteria established under (c) and (d) of this section.

15 (c) The testing under this section shall be conducted on 10 layers of filter
16 paper. A complete test trial consists of 40 replicate tests of each cigarette. The
17 performance standard required by (d) of this section may only be applied to a
18 complete test trial.

19 (d) When tested under this section, not more than 25 percent of the cigarettes
20 tested in a test trial may exhibit full-length burns.

21 **Sec. 18.74.040. Alternative test methods.** (a) If the state fire marshal
22 determines that cigarettes cannot be tested by a test method established in
23 AS 18.74.030(a), a manufacturer of the cigarettes shall propose an alternative test
24 method and performance standard for the cigarettes to the state fire marshal. On
25 approval of the proposed test method and a determination by the state fire marshal that
26 the performance standard proposed by the manufacturer is equivalent to the
27 performance standard prescribed by AS 18.74.030(d), the manufacturer may employ
28 the proposed alternative test method and performance standard to certify the cigarette
29 under AS 18.74.080.

30 (b) Unless the state fire marshal demonstrates a reasonable basis why the
31 alternative test method should not be accepted under this chapter, the state fire marshal

1 shall authorize a manufacturer to use an alternative test method and performance
2 standard to certify cigarettes for sale in this state if the state fire marshal

3 (1) determines that another state has enacted reduced cigarette ignition
4 propensity standards that include a test method and performance standard that are the
5 same as those contained in this chapter; and

6 (2) finds that the officials responsible for implementing those
7 requirements have approved a proposed alternative test method and performance
8 standard for particular cigarettes proposed by a manufacturer as meeting the fire safety
9 standards of that state's law under a legal provision comparable to this section.

10 (c) All other applicable requirements of this chapter apply to the manufacturer
11 of the cigarettes tested under this section.

12 **Sec. 18.74.050. Testing laboratories.** (a) Testing of cigarettes under this
13 chapter shall be performed by a laboratory that has been accredited under standard
14 ISO/IEC 17025 of the International Organization for Standardization or by another
15 comparable accreditation standard required by the state fire marshal.

16 (b) A laboratory that conducts cigarette testing under this chapter shall
17 implement a quality control and quality assurance program that ensures the
18 repeatability of the testing results. The repeatability value may not be greater than
19 0.19. In this subsection,

20 (1) "quality control and quality assurance program" means the
21 laboratory procedures implemented to ensure that operator bias, systematic and
22 nonsystematic methodological errors, and equipment-related problems do not affect
23 the results of the testing quality control program;

24 (2) "repeatability" means the range of values within which the repeat
25 results of cigarette test trials from a single laboratory will fall 95 percent of the time.

26 **Sec. 18.74.060. Testing for another purpose.** AS 18.74.030 and 18.74.040 do
27 not require cigarettes to be tested if the cigarettes are tested for another purpose and
28 the testing is consistent with this chapter.

29 **Sec. 18.74.065. Testing by state fire marshal.** The state fire marshal may
30 perform testing of cigarettes to determine compliance with this chapter. If the state fire
31 marshal or a contractor of the state fire marshal performs testing to determine a

1 cigarette's compliance with the performance standard in AS 18.74.030(d) or an
2 alternative performance standard under AS 18.74.040, the testing shall be performed
3 under this chapter.

4 **Sec. 18.74.070. Maintenance of records.** A manufacturer shall keep for three
5 years copies of the reports of all tests conducted on all cigarettes offered for sale. The
6 manufacturer shall make copies of those reports available to the state fire marshal and
7 the attorney general on written request.

8 **Sec. 18.74.080. Certification requirement.** (a) A manufacturer shall submit to
9 the state fire marshal a certification that each cigarette listed in the certification has
10 been tested under AS 18.74.030 and satisfies the performance standard in
11 AS 18.74.030(d), or has been tested under AS 18.74.040 and satisfies an alternative
12 performance standard under AS 18.74.040.

13 (b) If a manufacturer has certified a cigarette under this section and
14 subsequently makes a change to the cigarette that is likely to alter its compliance with
15 the performance standard under AS 18.74.030(d) or an alternative performance
16 standard under AS 18.74.040, the cigarette may not be sold or offered for sale in this
17 state or sold to a person located in this state until the manufacturer retests the cigarette
18 under AS 18.74.030 or 18.74.040, the cigarette meets the performance standard under
19 AS 18.74.030(d) or the alternative performance standard under AS 18.74.040, and the
20 manufacturer maintains records of the retesting under AS 18.74.070.

21 (c) For each cigarette listed in a certification submitted under (a) of this
22 section, a manufacturer shall pay to the state fire marshal a fee of \$250. The state fire
23 marshal may adjust this fee annually to ensure that it defrays the actual costs of the
24 processing, testing, enforcement, and oversight activities required by this chapter.

25 (d) Each cigarette certified under this section shall be recertified every three
26 years.

27 **Sec. 18.74.090. Contents of certification.** The certification required by
28 AS 18.74.080 must provide the following information for each cigarette listed in the
29 certification:

- 30 (1) the brand or trade name on the package;
31 (2) the style, such as "light" or "ultra-light";

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

- (3) the length in millimeters;
- (4) the circumference in millimeters;
- (5) the flavor, if applicable;
- (6) whether the cigarette is filtered or nonfiltered;
- (7) a description of the package;
- (8) the marking approved under AS 18.74.120;
- (9) the name, address, and telephone number of the laboratory that conducted the test, if different than the manufacturer who conducted the test; and
- (10) the date that the testing occurred.

Sec. 18.74.100. Banding requirement. Each cigarette listed in a certification submitted under AS 18.74.080 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard in AS 18.74.030(d) must have at least two 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 two bands fully located at least

- (1) 15 millimeters from the lighting end; and
- (2) 10 millimeters from
 - (A) the filter end of the tobacco column; or
 - (B) the labeled end of the tobacco column of a nonfiltered cigarette.

Sec. 18.74.110. Availability of certifications. The certification required by AS 18.74.080 shall be made available to the attorney general for purposes consistent with this chapter and to the department for the purpose of ensuring compliance with AS 18.74.080.

Sec. 18.74.120. Packaging marking approval. (a) Before submitting a certification of a cigarette under AS 18.74.080, a manufacturer shall present its proposed packaging marking to the state fire marshal for approval. The state fire marshal shall approve or disapprove the proposed packaging marking. Proposed packaging marking shall be considered approved if the state fire marshal fails to act within 10 business days after receiving a request for approval.

1 (b) Notwithstanding AS 18.74.130, the state fire marshal shall give a
2 preference to proposed packaging marking for a cigarette that is in use and approved
3 for the cigarette under the fire safety standards for cigarettes established by the law of
4 the state of New York, unless the state fire marshal demonstrates a reasonable basis
5 why the proposed packaging marking should not be approved under this chapter.

6 (c) Notwithstanding AS 18.74.130, the state fire marshal shall approve the use
7 of the letters "FSC" for "fire standards compliant" on proposed packaging marking to
8 indicate that the cigarettes comply with the performance standard in AS 18.74.030(d)
9 or an alternative performance standard under AS 18.74.040.

10 (d) A manufacturer may not change its approved packaging marking unless
11 the state fire marshal has approved the modification under this section.

12 (e) A wholesale dealer, an agent, and a retail dealer shall permit the state fire
13 marshal, the department, the attorney general, and the employees of those persons to
14 inspect packaging markings of cigarettes.

15 **Sec. 18.74.130. Marking of cigarette packaging.** (a) The packaging
16 containing a brand and style of cigarette that a manufacturer certifies under
17 AS 18.74.080 must be marked to indicate compliance with the requirements of this
18 chapter. The packaging marking must be in eight-point type or larger and consist of

19 (1) a modification of the universal product code to include a visible
20 mark printed at or around the area of the code; the mark may consist of alphanumeric
21 or symbolic characters and must be permanently stamped, engraved, embossed, or
22 printed in conjunction with the universal product code;

23 (2) any visible combination of alphanumeric or symbolic characters
24 permanently stamped, engraved, or embossed on the package or wrapping; or

25 (3) printed, stamped, engraved, or embossed text on the cigarette
26 package that indicates that the cigarettes satisfy the requirements of this chapter.

27 (b) A manufacturer shall use only one packaging marking and apply that
28 packaging marking uniformly to all packaging and to all brands marketed by the
29 manufacturer for sale in this state.

30 **Sec. 18.74.150. Copies.** A manufacturer who certifies a cigarette under
31 AS 18.74.080 shall provide a copy of the certification to each wholesale dealer and

1 agent to whom the manufacturer sells the cigarette. The manufacturer shall also
2 provide the wholesale dealer and agent with sufficient copies of an illustration of the
3 cigarette packaging markings used by the manufacturer under AS 18.74.130 for each
4 retail dealer to whom the wholesale dealer or agent sells cigarettes. A wholesale dealer
5 or an agent shall provide a copy of the cigarette packaging markings received from a
6 manufacturer to each retail dealer to whom the wholesale dealer or agent sells
7 cigarettes.

8 **Sec. 18.74.160. Penalties for violations.** (a) A manufacturer, a wholesale
9 dealer, an agent, or another person who knowingly sells or offers to sell cigarettes
10 other than through retail sale and in violation of AS 18.74.010 is subject to a civil
11 penalty not to exceed

12 (1) \$10,000 for a first violation;

13 (2) \$25,000 for each violation that is not a first violation.

14 (b) A retail dealer who knowingly sells or offers to sell cigarettes in violation
15 of AS 18.74.010 is subject, for each sale or offer to sell, to a civil penalty not to
16 exceed

17 (1) \$500 for a first violation in which the total number of cigarettes
18 sold or offered for sale does not exceed 1,000 cigarettes;

19 (2) \$2,000 for each violation that is not a first violation and in which
20 the total number of cigarettes sold or offered for sale does not exceed 1,000 cigarettes;

21 (3) \$1,000 for a first violation in which the total number of cigarettes
22 sold or offered for sale exceeds 1,000 cigarettes;

23 (4) \$5,000 for a violation that is not a first violation and in which the
24 total number of cigarettes sold or offered for sale exceeds 1,000 cigarettes.

25 (c) The penalties against

26 (1) one manufacturer, wholesale dealer, agent, or other person under
27 (a) of this section may not exceed \$100,000 for violations occurring during a 30-day
28 period; or

29 (2) one retail dealer under (b) of this section may not exceed \$25,000
30 for violations occurring during a 30-day period.

31 (d) In addition to any other penalty prescribed by law, a person engaged in the

1 manufacture of cigarettes who knowingly makes a false certification under
2 AS 18.74.080 is subject to a civil penalty of at least \$75,000 for a first violation and a
3 civil penalty not exceeding \$250,000 for each violation that is not a first violation.

4 (e) A manufacturer who fails to make copies of reports available under
5 AS 18.74.070 within 60 days after receiving a written request from the state fire
6 marshal or the attorney general is subject to a civil penalty not to exceed \$10,000 for
7 each day after the 60th day that the manufacturer does not make the copies available.

8 (f) If a person violates a provision of this chapter and a civil penalty is not set
9 for the violation, the person is subject to a civil penalty not to exceed \$1,000 for a first
10 violation and a civil penalty not exceeding \$5,000 for each violation that is not a first
11 violation.

12 **Sec. 18.74.180. Separate accounting.** The fee received under AS 18.74.080(c)
13 and the civil penalties imposed under AS 18.74.160 shall be deposited into the general
14 fund and separately accounted for under AS 37.05.142. The legislature may
15 appropriate the money accounted for under this section to the fire prevention and
16 public safety fund established under AS 18.74.210.

17 **Sec. 18.74.190. Seizure of cigarettes.** (a) If a person is offering for sale or has
18 made a sale of cigarettes in violation of AS 18.74.010, the state fire marshal, the
19 department, or a law enforcement agency shall seize and, subject to (b) of this section,
20 dispose of the cigarettes.

21 (b) Before disposal of cigarettes under (a) of this section, the state fire marshal
22 or the department shall

23 (1) provide the person from whom the cigarette was seized with notice
24 of the seizure and an opportunity for a hearing regarding the seizure; and

25 (2) permit the holder of the trademark rights in the cigarette brand to
26 inspect the cigarettes.

27 **Sec. 18.74.200. Other remedies.** In addition to any other remedy provided by
28 law, the state fire marshal or attorney general may file an action in superior court for a
29 violation of this chapter, including an action for injunctive relief or to recover costs or
30 damages suffered by the state because of a violation of this chapter, including
31 enforcement costs relating to the specific violation. Each violation of this chapter or of

1 the regulations adopted under this chapter constitutes a separate cause of action for
2 which the state fire marshal or attorney general may obtain relief.

3 **Sec. 18.74.210. Fire prevention and public safety fund.** (a) The fire
4 prevention and public safety fund is established. The fund consists of appropriations
5 made to the fund.

6 (b) The purpose of the fund is to pay the expenses of the state fire marshal and
7 the department for implementing and enforcing this chapter.

8 (c) Money appropriated to the fund may be spent for the purposes of the fund
9 without further appropriation. Money appropriated to the fund does not lapse.

10 **Sec. 18.74.220. Implementation.** The substance of the fire safety standards for
11 cigarettes established by the law of the state of New York and the implementation of
12 these standards by the state of New York shall be persuasive authority in the
13 implementation of this chapter by the state fire marshal and the attorney general.

14 **Sec. 18.74.230 Review by state fire marshal.** The state fire marshal shall
15 review the effectiveness of this chapter, report the state fire marshal's findings to the
16 legislature every three years on or by January 30 of the reporting year, and, if
17 appropriate, recommend legislation to improve the effectiveness of this chapter.

18 **Sec. 18.74.240. Regulations.** The state fire marshal may adopt regulations to
19 implement this chapter.

20 **Sec. 18.74.250. Inspections.** (a) The department may inspect cigarettes held by
21 wholesale dealers, agents, and retail dealers to determine if the cigarettes are marked
22 as required by AS 18.74.120 and 18.74.130. If the cigarettes are not marked as
23 required, the department shall notify the state fire marshal.

24 (b) To determine compliance with this chapter, the state fire marshal and the
25 attorney general may examine the books, papers, invoices, and other records of a
26 person who possesses, controls, or occupies premises where cigarettes are placed,
27 stored, sold, or offered for sale, and the stock of cigarettes on the premises.

28 (c) A person who possesses, controls, or occupies premises where cigarettes
29 are placed, sold, or offered for sale, shall allow the state fire marshal and the attorney
30 general to make the inspections authorized by this section.

31 **Sec. 18.74.260. Sale outside the state.** This chapter may not be interpreted to

1 prohibit a person from manufacturing or selling cigarettes that do not meet the
2 requirements of this chapter if the cigarettes are or will be stamped for sale in another
3 state or are packaged for sale outside the United States and the person has taken
4 reasonable steps to ensure that the cigarettes will not be sold or offered for sale to
5 persons located in this state.

6 **Sec. 18.74.270. Regulation by municipality.** Notwithstanding any other
7 provision of law, a municipality may not enact or enforce an ordinance or another law
8 of the municipality that conflicts with this chapter.

9 **Sec. 18.74.280. Relationship to federal law.** This chapter does not apply if a
10 federal law is enacted that establishes a reduced cigarette ignition propensity standard
11 and preempts this chapter.

12 **Sec. 18.74.290. Definitions.** In this chapter,

13 (1) "agent" means a person authorized by the department to purchase
14 and affix stamps on packages of cigarettes under AS 43.50.500 - 43.50.700;

15 (2) "cigarette" means a roll for smoking of any size or shape, made
16 wholly or in part of tobacco, whether or not the tobacco is flavored, adulterated, or
17 mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a
18 material other than tobacco;

19 (3) "department" means the Department of Revenue;

20 (4) "manufacturer" means

21 (A) a person who manufactures or otherwise produces
22 cigarettes, or causes cigarettes to be manufactured or produced anywhere, if
23 the manufacturer intends the cigarettes to be sold in this state, including
24 cigarettes intended to be sold in the United States through an importer;

25 (B) the first purchaser anywhere who intends to resell in the
26 United States cigarettes that are manufactured anywhere and that the original
27 manufacturer or maker does not intend to be sold in the United States; or

28 (C) a person who becomes a successor of a person described in
29 (A) or (B) of this paragraph;

30 (5) "retail dealer" means a person, other than a manufacturer or
31 wholesale dealer, who sells cigarettes or tobacco products;

1 (6) "sale" or "sell" means a sale, exchange, barter, and any other
2 manner of transferring the ownership of personal property;

3 (7) "wholesale dealer" means a person who

4 (A) sells cigarettes or tobacco products to retail dealers or other
5 persons for resale; and

6 (B) owns, operates, or maintains cigarette or tobacco vending
7 machines in, at, or on premises owned or occupied by another person.

8 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITION. (a) AS 18.74.010, enacted by sec. 1 of this Act, does not prohibit a
11 wholesale dealer or retail dealer from selling or offering to sell an inventory of cigarettes
12 existing on the effective date of this Act if the wholesale dealer or retail dealer establishes that

13 (1) state tax stamps were affixed to the cigarettes under AS 43.50 before the
14 effective date of this Act; and

15 (2) the inventory was purchased before the effective date of this Act in
16 comparable quantity to the inventory purchased during the same period of the previous year.

17 (b) In this section, "retail dealer," "sell," and "wholesale dealer" have the meanings
18 given in AS 18.74.290.

19 * Sec. 3. This Act takes effect on the first day of the 13th month after the month in which
20 this Act becomes law under AS 01.10.070.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 19, 2007

SUBJECT: CSSB 84() relating to the testing and packaging of cigarettes to be sold, offered for sale, or possessed in this state (Work Order No. 25-LS0596\L)

TO: Senator Donald Olson
Attn: Denise Liccioli

FROM: *JB*
Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Delegation issue. Please be aware that certain sections in the bill raise issues relating to unlawful delegation of legislative authority. See secs. 18.74.040(b), 18.74.120(b), and 18.74.220.
2. Civil penalties. Some of the civil penalties in sec. 18.74.160 seem high, although it may be appropriate in this situation for cigarettes. A civil penalty may be considered a criminal matter by the courts if it is large enough to indicate that the community considers it criminal.
3. Interstate commerce issue. Since this bill establishes a requirement for cigarettes coming into the state, it will place some level of a burden on interstate commerce. This raises the issue whether the requirement would be prohibited by the interstate commerce provision of the United States Constitution. The question will be whether the burden the bill imposes on interstate commerce is clearly excessive in relation to the anticipated local benefits. I do not have enough information to evaluate the burden that this bill will impose.

If I may be of further assistance, please advise.

TLB:lmb
07-059.lmb

Enclosure

MEMORANDUM

To: Altria Corporate Services, Inc.
From: Michael D. White, Esq.
Date: March 20, 2007
Subject: Comments on Alaska's RCIP Bills (Senate Bill 84 and House Bill 131)

COMMENTS ON ALASKA'S RCIP BILLS (SENATE BILL 84 AND HOUSE BILL 131)

The following sets forth Philip Morris USA's further comments on certain points raised by Legislative Counsel with respect to the drafts of Senate Bill 84 and House Bill 131, concerning reduced cigarette ignition propensity (RCIP). In particular, Legislative Counsel has questioned whether sections 18.74.040(b), 18.74.120(b), and 18.74.220 of those bills unlawfully delegate legislative power. For the following reasons, we believe that those provisions, if ever challenged as an unlawful delegation of legislative power, would be upheld as constitutional.

1. The Legislature's delegation of authority in the Alaska RCIP bills is permissible.

Delegation of legislative authority is not prohibited in Alaska. *See Municipality of Anchorage v. Anchorage Police Dept. Employees Assoc.*, 839 P.2d 1080, 1084 (Alaska 1992); *see also DeArmond v. Alaska State Development Corp.*, 376 P.2d 717, 722-725 (Alaska 1962) (affirming legislative delegation where the delegation had "sufficient standards" for guidance); *Walker v. Alaska State Mortgage*, 416 P.2d 245, 249-51 (Alaska 1966) (adopting the *DeArmond* approach); *Western Star Trucks v. Big Iron Equipment*, 101 P.3d 1047, 1053 (Alaska 2004) (applying federal judicial decisions as persuasive authority based on legislative history and intent); *Kenai Peninsula Borough v. Kenai Peninsula Ed. Ass'n*, 572 P.2d 416, 420-421 (Alaska 1977) (finding permissible delegation of legislative authority to a private group or persons).

Rather, the Alaska Supreme Court has adopted a sliding scale approach to analyze delegation of legislative authority. *Usibelli Coal Mine, Inc. v. State, Dept. of Natural Resources*, 921 P.2d 1134, 1144 (Alaska 1996). The broader the grant of authority, the more specific the standards must be to govern its exercise. Conversely, where authority is delegated within "a

narrowly defined field ... there is less need for explicit, detailed standards to guide agency action." *Id.* (citation omitted); *see also Anchorage Police Dept. Empl. Ass'n*, 839 P.2d at 1085.

With respect to the Alaska RCIP bills at issue here, the field of delegation is extraordinarily narrow, and delegation concerns are correspondingly at their weakest. Particularly given this context, the specific sections at issue -- which require the state fire marshal to look to the implementation decisions made by another state in deciding whether to approve an alternative test method (section 18.74.040(b)), whether to accept a proposed packaging marking (section 18.74.120(b)), and responsibility for enforcing and implementing the RCIP law (section 18.74.220) -- give the fire marshal sufficient direction to guide his or her actions.

2. The Legislature's adoption of the laws of other jurisdictions, as in the Alaska RCIP bills, has been repeatedly recognized as valid in Alaska.

The Alaska RCIP bills' references to the laws of other jurisdictions in sections 18.74.040(b), 18.74.120(b), and 18.74.220 reflect a legitimate exercise of legislative power. Indeed, Alaska statutes and case law have repeatedly recognized the validity of adoption of the laws of other jurisdictions, either by incorporation or as a source of guidance. For example, Alaska statutes specifically incorporate portions of federal tax law by reference. *See* AS 43.20.021 "Internal Revenue Code Adopted by Reference"; AS 43.20.200(b) (adopting limitation period to assess and collect taxes). The Alaska Supreme Court has recognized these incorporations and given effect to them as the Legislature intended. *Louisiana Pac. Corp. v. State of Alaska, Dept. of Revenue*, 26 P.3d 422, 427 (Alaska 2000). *See also State Dept. of Revenue v. Dyncorp and Subsidiaries*, 14 P.3d 981, 985-86 (Alaska 2000) (affirming the adoption of the IRC by reference as well as the body of case law interpreting the adopted provisions).

Similarly, a wide range of Alaska statutes have expressly required reliance upon the construction of laws of other jurisdictions as persuasive authority:

- AS 45.50.545 (Consumer Protection) "In interpreting AS 45.50.471 due consideration and great weight should be given the interpretations of 15 U.S.C. 45(a)(1)(§5(a)(1) of the Federal Trade Commission Act)."
- AS 12.37.060(b) (Authorized Communications Interceptions) "When the language of AS 12.37.010-12.37.130 is the same or similar to the language of 18 U.S.C. 2510-2521, the courts of this state in construing AS 12.37.010-12.37.130 shall follow the construction given to those federal statutes by the federal courts."
- AS 40.19.050 (Public Records and Recordors) "To the extent the provisions of this chapter follow the Uniform Federal Lien Registration Act (1978) they shall be applied and construed to effectuate their general purpose to make uniform with the law with respect to the subject of this chapter among the states enacting it."

In addition to the explicit adoption of other laws for guidance, there is also implicit guidance adopted by the Alaska Legislature. Some examples include the following:

- The Sherman Act. The Alaska Anti-Trust Act is based on the Sherman Anti-Trust Act and the Alaska Legislature gave specific instructions in its committee report to adopt the federal case law for interpreting the Alaska Act. *West v. Whitney -Fidalgo Seafoods, Inc.*, 628 P.2d 10, 14, n.6 (Alaska 1981).
- The Uniform Probate Code. Alaska looks to the interpretations of the Uniform Probate Code for guidance in interpreting its own act's provisions. *Estate of Maldonado*, 117 P.3d 720, 723, n.15-19 (Alaska 2005).

Given that the Legislature has adopted the laws of other jurisdictions (both directly and as persuasive authority) multiple times and in broad reaching statutes, and that the Legislature's adoption of the laws of other jurisdictions has been repeatedly recognized as valid, the Legislature is well within its power to refer to other states' RCIP laws in sections 18.74.040(b), 18.74.120(b), and 18.74.220 of the Alaska RCIP bills.

Prepared at the request of Altria Corporate Services, Inc.

**REFERENCES TO THE NEW YORK REDUCED CIGARETTE IGNITION
PROPENSITY LAW BY OTHER STATES**

Reduced cigarette ignition propensity (RCIP) legislation has been signed into law in Vermont, California, Illinois, New Hampshire, Massachusetts, and Utah, and has passed the legislature and awaits the Governor's signature in Kentucky and New Jersey. As set forth below, all of these laws and bills have provisions that directly refer to the New York RCIP law.¹

Vermont (VSA tit. 20, chapter 173)

"The commissioner ... (3) Shall assure that the implementation and substance of this section is in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes." Section 2757(f)

"Any marking approved and in use for the sale of cigarettes in the state of New York shall be approved unless the commissioner determines that the New York Fire Safety Standards for Cigarettes have changed significantly since those standards were effective on June 28, 2004." Section 2757(d)(2)

California (Health and Safety Code §§ 14950-14960)

"This section shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes that are effective on June 28, 2004." Section 14952(g)

"A marking in use and approved for the sale of cigarettes in the State of New York shall be deemed approved." Section 14954(b)

Illinois (425 ILCS 8/)

"This Act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes." 425 ILCS 8/20(d)

"A marking in use and approved for sale of cigarettes in the State of New York shall be deemed approved." 425 ILCS 8/40(d)

¹ The New York requirements are codified as the "Fire Safety Standards for Cigarettes" at Title 19 NYCRR Part 429. The New York regulations took effect on June 28, 2004. The underlying statute is the "Cigarette Fire Safety Act of 2000" (codified at Executive Law 156-c, entitled "Fire Safety Standards for Cigarettes"), which was amended on August 16, 2006.



New Hampshire (RSA 339-F)

“This chapter shall be implemented in accordance with the substance of the New York Fire Safety Standards for Cigarettes, as amended.” Section 4(IV)

“A marking in use and approved for the sale of cigarettes in the state of New York shall be deemed approved.” Section 8

Massachusetts (MGLA 64C)

**“Upon receipt of the request, the secretary shall approve or disapprove the marking offered, except that the secretary shall approve any marking in use and approved for sale in New York State pursuant to the New York fire safety standards for cigarettes.”
Section 2D(d)**

Utah (2007 UT SB 200, signed by the Governor on March 19, 2007)

“This part shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 53-7-403(9)

“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.” Section 53-7-405(4)

Kentucky (2007 KY S 134, enrolled on March 12, 2007)

**“The implementation and substance of the New York Fire Safety Standards for Cigarettes shall be persuasive authority in the implementation of Sections 1 to 8 of this Act.”
Section 2(8)**

New Jersey (A2575, passed both houses on March 15, 2007)

“This act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 4(h)

“Upon receipt of the request, the director shall approve or disapprove the marking offered, except that the director shall approve any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes.” Section 6(d)



Cindy Smith

From: Steven R Belanger Sr [steven_belanger@dps.state.ak.us]
Sent: Friday, March 23, 2007 10:29 AM
To: Sen. Hollis French
Cc: Cindy Smith
Subject: Cigarette question

Senator French,

During the hearing for CSSB84 that took place on Wednesday a question was asked regarding effects of cigarettes such as marijuana, roll your own and cigars. The question was if any of the statistics regarding the losses of life or property due to cigarettes included these styles of cigarettes.

I posed the question to our statistician and also our public education office and this is what was discovered. We have no reports that indicate these types of cigarettes as ignition sources. The reason being is these cigarettes due to the nature of their composition do not burn on their own. In order for these cigarettes to deliver a full length burn they must be continually drawn on to sustain their burning capability. If left unattended they go out on their own and need to be relit.

I hope this answers that question. If you or the committee have any other questions that I might be able to help with please don't hesitate to contact me.

Rusty Belanger
Acting State Fire Marshal

Steve "Rusty" Belanger
Department of Public Safety
Alaska State Fire Marshals Office
Assistant State Fire Marshal
5700 East Tudor Road
Anchorage, AK 99507
Phone: 907-269-5491
Fax: 907-338-4375
steven_belanger@dps.state.ak.us

ALASKA STATE LEGISLATURE

SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907) 465-3707
FAX (907) 465-4821

DATE: March 8, 2007

TO: Senator Hollis French, Chair
Senate Judiciary Committee

FROM: *Senator Olson*
Senator Donald C. Olson

SUBJECT: Senate Bill 84 – Request for Hearing

I am requesting a hearing for Senate Bill 84 at your earliest convenience. Attached you will find a copy of SB 84, the sponsor statement, sectional analysis, and some additional backup to support the bill. Letters of support from the Alaska Fire Chiefs Association, the Alaska State Firefighters Association, the Department of Public Safety Acting State Fire Marshal, and the National Fire Protection Association are also included.

Please let Denise Liccioli of my staff know if there is anything else we can provide. Thank you for your consideration.

Attachments

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 23, 2007

SUBJECT: CSSB 84(), relating to tobacco products
(Work Order No. 25-LS0596\E)

TO: Senator Donny Olson
Attn: Denise Licctoli

FROM: *JB* Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. General comment. As I mentioned on the phone, I have not been able to come up with language that would eliminate the issue of delegation in certain provisions of this bill and also satisfy the apparent goal of the person requesting the language. The draft does contain slightly modified versions of the language requested. See the following paragraphs for suggestions.
2. Sec. 18.74.040(b). Notwithstanding the arguments presented in the material provided, this subsection continues to raise the issue of unlawful delegation.
3. Testing by state fire marshal. Sec. 18.74.065 contains the new provision requested regarding testing by the state fire marshal. However, there does not appear to be authority in the new chapter for the state fire marshal to test cigarettes. Do you want to add this authority?
4. Sec. 18.74.120(b). Although an improvement from the previous language, this requested revision of the previous language does not eliminate the delegation issue: the presence of the exception (the "unless" clause) does not eliminate the general requirement for the state fire marshal to give a preference to the acts of officials in another state. It is not clear just what "give a preference to" means. Since there's already a delegation issue, do you want to use "approve"? If the language could be changed to a provision that allows the state fire marshal to consider the New York standards, this may eliminate the delegation issue.
5. Sec. 18.74.130(b). The words, "for sale in this state," were added at the end of the subsection.

*Approved
D. Bannister
1/23/07*

Senator Danny Olson

February 23, 2007

Page 2

6. Sec. 18.74.220. The persuasive authority of this section is limited to its implementation by the state fire marshal and the attorney general in order to not impose a restriction on decisions by the court, which may cause a separation of powers problem. The fact that the implementation is "persuasive," and not just activity to be considered, continues to raise the unlawful delegation issue. If the wording were changed to provide that the state fire marshal and attorney general may consider these items, this may eliminate the delegation issue.

7. Sec. 18.74.280. This is the new language that was requested. Is there a reason for being so specific about the type of pre-emption federal law? Usually this type of provision is just used to preserve the sections that are not preempted. If a federal law preempts this law, it will be preempted whatever the state says. The requested provision states the obvious without providing anything useful (e.g., saving a provision that is not preempted). As we discussed, the meaning of "reduced cigarette ignition standard" may need to be made clearer, either in the bill or by regulation.

If I may be of further assistance, please advise.

TLB:ljw
07-095.ljw

Enclosure

ALASKA STATE SENATE

SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907)465-3707
FAX (907) 465-4821

SECTIONAL ANALYSIS

CSSB 84(L&C), "Testing and Packaging of Cigarettes"

Section 1 establishes a new Chapter 74 for cigarette fire safety.

Subsection 18.74.010 prohibits the sale of any cigarette that does not have fire extinguishing characteristics determined by:

- (1) testing to an approved performance standard under 18.74.030 or 040,
- (2) marking and identification under 18.74.130, and
- (3) a certification by the manufacturer to the state fire marshal that each cigarette offered for sale complies with the requirements of this chapter.

Subsection 18.74.030 establishes the test methods based on the National Institute of Standards & Technology (NIST) performance standards by which cigarettes are determined to have acceptable fire extinguishing characteristics. The state fire marshal may select a variation of the standards if he finds that the results better assure the diminished burning capabilities of the cigarettes.

Subsection 18.74.040 allows the state fire marshal to accept alternative test methods and performance standards under certain conditions and findings.

Subsection 18.74.050 requires testing by laboratories that meet the accreditation and other requirements for acceptability in determining quality assurance and repeatability of test results regarding fire extinguishing characteristics.

Subsection 18.74.060 allows testing of cigarettes for other purposes, provided that said testing is consistent with this chapter.

ALASKA STATE SENATE

SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907)465-3707
FAX (907) 465-4821

Subsection 18.74.065 allows the state fire marshal to perform testing; and requires the state fire marshal or a contractor of the fire marshal to follow this chapter if they should perform a test to determine a cigarette's compliance with this chapter.

Subsection 18.74.070 requires manufacturers to keep all cigarette test results for a period of three years.

Subsection 18.74.080 requires a manufacturer to certify to the state fire marshal that each type of cigarette listed satisfies the performance standards of this chapter. Any subsequent change to the cigarette type that may alter its fire extinguishing performance must be re-tested. There is an annual certification fee of \$250 paid to the fire marshal for each type of cigarette. The fire marshal may adjust this fee.

Subsection 18.74.090 lists the information required in the certification about the nature of the cigarette and its test results.

Subsection 18.74.100 lists the banding requirements for cigarettes that use lowered permeability bands to achieve the performance standards of the chapter.

Subsection 18.74.110 allows the attorney general and the Department of Revenue access to the certification information in order to enforce provisions of the chapter.

Subsection 18.74.120 requires approval of the manufacturer's packaging and marking of fire extinguishing cigarettes by the fire marshal prior to certification, and requires the fire marshal to act within 10 business days. Certain state officials are permitted to inspect the packaging markings of cigarettes being sold by wholesalers, agents, and retailers in the state.

Subsection 18.74.130 specifies the cigarette package marking requirements to indicate compliance with this chapter.

ALASKA STATE SENATE

SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907)465-3707
FAX (907) 465-4821

Subsection 18.74.150 requires copies of a manufacturer's certification under 18.74.080 to be provided to every wholesaler, agent, and retailer who sells the cigarette.

Subsection 18.74.160 lists civil penalties for sales of cigarettes in the state that are in violation of this chapter by a manufacturer, wholesaler, agent, or retailer.

Subsection 18.74.180 directs that certification fees and civil penalties received shall be deposited in a separate account in the general fund. The legislature may appropriate from this account to the fire prevention and public safety fund established under subsection 18.74.210.

Subsection 18.74.190 allows the fire marshal, the Department of Revenue, or a law enforcement agency to seize cigarettes that are sold or offered for sale that are in violation of this chapter. Conditions for disposal of seized cigarettes are detailed.

Subsection 18.74.200 allows the state fire marshal or the attorney general to seek additional remedies for violations of this chapter through superior court action.

Subsection 18.74.210 establishes a fire prevention and public safety fund for the purpose of paying for the expenses of the state fire marshal in implementing and enforcing this chapter. Money appropriated to the fund may be expended without further appropriation.

Subsection 18.74.220 specifies the requirements for implementation of this chapter.

Subsection 18.74.230 requires the state fire marshal to report to the legislature every three years on the effectiveness of this chapter in reducing cigarette caused fires.

Subsection 18.74.240 is the fire marshal's authority to adopt regulations.

ALASKA STATE SENATE

SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907)465-3707
FAX (907) 465-4821

Subsection 18.74.250 authorizes inspections by certain state officials of cigarettes being sold; and examination of paper, invoices, and records of persons who possess, control, or occupies premises where cigarettes are being sold or stored.

Subsection 18.74.260 exempts cigarettes manufactured in Alaska for sale in another state or another country from the requirements of this chapter as long as reasonable steps are taken to exclude sales in Alaska.

Subsection 18.74.270 prohibits a municipality from enacting or enforcing an ordinance that is in conflict with the purpose and provisions of this chapter.

Subsection 18.74.280 confirms the supremacy of federal law over provisions of this chapter. Should a federal law be enacted to establish a reduced cigarette ignition propensity standard, it would preempt this chapter.

Subsection 18.74.290 provides definitions of terms used in this chapter.

Section 2, 3, 4, and 5 are conforming sections that reference this chapter to the tobacco product manufacturer certification provision and other provisions in AS 43.50 relating to tobacco taxes and sales.

Section 6 provides for the transition from currently allow cigarette sales to the mandated sale of fire safe cigarettes only in the 13 month transition period.

Section 7 provides a 13 month delayed effective date.

ALASKA STATE SENATE

SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907)465-3707
FAX (907) 465-4821

SPONSOR STATEMENT

CSSB 84 (L&C)

"Testing and Packaging of Cigarettes"

SB 84 mandates that only self-extinguishing cigarettes can be sold in Alaska, and establishes the testing and certification requirements to assure that only self-extinguishing cigarettes are sold in Alaska. Although no cigarette could ever be called safe, so called self-extinguishing or "fire safe" cigarettes are reduced ignition propensity cigarettes. These are cigarettes that are designed to be less likely than a conventional cigarette to ignite soft furnishings such as a couch or mattress. The bill also provides for the marking of cigarette packaging in an approved and easily identifiable manner to indicate they are fire safe.

Cigarettes are the leading cause of home fire fatalities in Alaska and the United States. The most common material first ignited in home fires are mattresses and bedding, upholstered furniture, and floor coverings. A typical scenario for fires is when a lit cigarette is forgotten or dropped by a smoker. The cigarette fire can smolder for hours before it flares up into a full blaze.

One fourth of victims of smoking-material fire fatalities are *not* the smoker whose cigarette started the fire; over one third of these are children. The risk of dying in a residential structure fire caused by smoking rises with age: 38 percent of fatal smoking-material-fire victims are age 65 or older.

The most common technology used by cigarette manufacturers for reduced cigarette ignition propensity (RCIP) is to make the paper thicker in places to slow down a burning cigarette. If such a cigarette is left unattended, when the burn reaches one of the thicker places, or "speed bumps", the burning will self-extinguish. Self-extinguishing cigarettes meet established fire safety performance standards.

Legislation similar to SB 84 has been enacted in New York, Massachusetts, Vermont, New Hampshire, California, and Illinois. A fire safe cigarette mandate has also been approved for all of Canada. This legislation is supported by the Alaska Fire Chiefs Association, the Alaska Firefighters Association, and Department of Public Safety, Division of Fire Prevention.

SB 84 will save lives, as well as reduce injuries and damage to property in Alaska. I urge you to give favorable consideration to this bill.



State of Alaska

Department of Public Safety
Division of

Fire Prevention

Sarah Palin, Governor
Walt Monegan, Commissioner

February 21, 2007

The Honorable Donny Olson
State Senate
State Capitol, Room 514
Juneau, AK 99801-1182

Dear Senator Olson:

The Division of Fire Prevention supports SB84 sponsored by you: "An Act relating to the burning capability of cigarettes being sold or offered for sale, or possessed for sale; relating to compliance certifications by tobacco product manufacturers, a directory of tobacco product manufacturers, the affixing of stamps to cigarette packages, and cigarette tax stamps; and providing for an effective date."

This bill embodies the focus of the Division's mission statement which is to prevent the loss of life and property from fire and explosion. This bill recognizes significant losses of life and property due to cigarettes; as the following statistics will show.

Between 1996 and 2005 Alaska lost \$8.0 million in property to fires with cigarettes as an ignition source.

Between 1996 and 2006 cigarette related fires caused 28% (51 Alaskans) of the deaths due to fire. This is the leading cause of fire fatalities in Alaska.

It is our belief that this bill will significantly lower fire fatalities in Alaska related to cigarettes, as the manufacturers will have to meet the new requirements for a cigarette that meets a fire safety standard. This would be at minimal cost to the state.

The states that have enacted similar legislation are New York, Vermont, California, Illinois, New Hampshire and Massachusetts. Those states are closely monitoring their fire statistics for the expected decline in fire fatalities. The legislation enactment is recent; therefore the information on fire fatalities is just now being collected for analysis.

If you have any questions or need more information, please do not hesitate to contact me.

Sincerely,

Steven "Rusty" Belanger
Acting State Fire Marshal

ALASKA FIRE CHIEF'S ASSOCIATION

2358 Bradway Road, North Pole, AK 99705

EIN #92-0098649

Phone: (907) 488-3400

FAX: (907) 488-6118



Date: February 20, 2007
To: Alaska Legislators
From: Alaska Fire Chiefs Association
Subject: Support SB 84 (Olson) and HB131 (Gatto)

The Alaska Fire Chiefs Association, the largest membership of fire service managers in Alaska, is dedicated to serving the needs and issues that face Alaska's fire service. We would like to inform you that Alaska Chiefs strongly support the Burning Capability of Cigarettes (SB 84/HB131) legislation, and encourage your yes vote when this legislation comes before you.

SB 84/HB131 will prohibit the sale, manufacture or distribution of cigarettes in Alaska that do not meet fire safe standards established by the American Society of Testing and Materials (ASTM).

Careless smoking is the leading cause of fire deaths in Alaska. From 1997 to 2006, fires caused by careless smoking resulted in 23% of all fire deaths in Alaska. This type of fire killed 37 people during the past 10 years.

These costs are simply too great. Fortunately, an effective solution to this problem lies within your reach. California, Illinois, New Hampshire, New York and Vermont have already passed similar legislation to protect their residents. We hope you will do your part to accomplish the same in Alaska.

On behalf of the 150 members of the Alaska Fire Chiefs Association, we thank you for considering our support of this legislation, and we hope you will vote YES on SB 84/HB 131 – a life saving piece of legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Warren B. Cummings".

Warren B. Cummings
President, Alaska Fire Chiefs Association



**ALASKA FIRE CHIEF'S ASSOCIATION
and the
ALASKA STATE FIRE FIGHTERS ASSOCIATION**



JOINT RESOLUTION NO. 2006-1

**A JOINT RESOLUTION TO THE STATE OF ALASKA LEGISLATURE SUPPORTING
PASSAGE OF LEGISLATION TO CREATE A FIRE SAFE CIGARETTE.**

WHEREAS: Commercially, mass produced cigarettes have long been the leading cause of fire deaths in the United States and particularly here in Alaska and,

WHEREAS: Decades of research done by the National Institutes of Standards and Technology, private industry and congressional research groups have shown that reduced ignition propensity cigarettes can be manufactured and,

WHEREAS: Legislation has been passed in the state of New York, Vermont, Illinois, New Hampshire and California as well as the nation of Canada requiring cigarettes sold in those jurisdictions to meet the standard in the New York law requiring fire safety performance and,

WHEREAS: Preliminary data from New York state already shows a significant reduction in fire deaths following implementation of the law and,

WHEREAS: The National Fire Protection Association along with other national safety and health related agencies have formed a coalition to propose legislation in the remaining 44 states,

THEREFORE BE IT RESOLVED: That the Alaska Fire Chiefs Association and the Alaska State Fire Fighters Association request the Alaska State Legislature to pass legislation requiring cigarettes sold in Alaska meet the fire safe requirements of the standard written in New York.

Adopted this 29th day of September 2006 by a vote of the joint memberships at their Fall Conference in Fairbanks, Alaska.

Attested by: Warren B. Cummings
Warren B. Cummings, Alaska Fire Chief's Association President

Attested by: Carol Reed
Carol Reed, President Alaska State Fire Fighters Association



National Fire Protection Association

1 Batterymarch Park, Quincy, MA 02169-7471
Phone: 617-770-3000 • Fax: 617-770-0700 • www.nfpa.org

James M. Shannon
President and Chief Executive Officer

February 23, 2007

Senator Donny Olson
State Capitol, Room 514
Juneau, AK 99801-1182

Dear Senator Olson:

I write to thank you for sponsoring SB 84, a bill that would require all cigarettes sold in Alaska to meet a fire safety standard. This important public safety bill will undoubtedly save lives and protect property all across your state.

By filing this bill, you are taking a critical step to enhance fire safety by preventing fires caused by cigarettes. If the proposed fire-safe cigarette bill becomes law in Alaska, the state will be in good company. Already, legislative requirements for fire-safe cigarettes have been adopted in New York, Vermont, California, Illinois, New Hampshire and Massachusetts — covering over 25 percent of the U.S. population. Currently, there are 22 states across the country considering similar legislation.

Cigarettes are the leading cause of residential fire death across the country, killing 700 to 900 Americans each year. Additionally, thousands of victims suffer devastating burn and lung injuries, and property losses total millions of dollars each year. Cigarette fires also create a significant risk for firefighters battling these fires. Cigarette manufacturers can produce cigarettes that are more likely to go out when left unattended, greatly lowering the risk of igniting nearby furniture and bedding.

Fire-safe cigarettes work. Initial research in New York State since the implementation of its statewide mandate shows a dramatic decline in the number of fires and fatalities caused by cigarettes. Research has also shown that these fire-safe cigarettes have not reduced sales or made cigarettes more toxic to smoke. In short, fire-safe cigarettes save lives, and can make a difference in Alaska as well.

I strongly support this bill and your efforts to better protect the citizens of Alaska. Please let me know if I can be of assistance as the bill moves forward.

Sincerely,


James M. Shannon
President and CEO
National Fire Protection Association

**COALITION
for FIRE-SAFE
CIGARETTES**

The time is now."

Coalition for Fire-Safe Cigarettes (CFSC)

Mission Statement:

The mission of the Coalition for Fire-Safe Cigarettes is to save lives, prevent injuries and devastation from cigarette-ignited fires by calling on cigarette manufacturers to immediately produce and market only cigarettes that adhere to an established cigarette fire safety performance standard, (based on ASTM E2187, Standard Test Method for Measuring the Ignition Strength of Cigarettes); and working to see that these standards for fire-safe cigarettes are required in every state in the country.

Who We Are:

The Coalition for Fire-Safe Cigarettes (CFSC) is a national group of fire service members, consumer and disabled rights advocates, medical and public health practitioners and others, coordinated by the National Fire Protection Association (NFPA), who are committed to saving lives and preventing injuries by reducing the threat of cigarette-ignited fires.

Background:

Cigarettes currently are the leading cause of home fire fatalities in the U.S. killing 700 to 900 people, smokers and non-smokers alike, per year. In addition, thousands of victims suffer burn and lung injuries, and property losses total millions of dollars each year.

Yet, there is a proven, practical, and effective way to eliminate the risk of cigarette-ignited fires. The use of cigarettes that have a reduced propensity to burn when left unattended will help to prevent tens of thousands of cigarette-ignited fires each year. The use of such "fire-safe" cigarettes has already been mandated in New York, California, Vermont, Illinois, New Hampshire, and Massachusetts (covering 25 percent of Americans) and in all of Canada.

Call to Action:

We applaud the successful actions of state legislatures to mandate that cigarettes sold in their states follow established guidelines for reduced ignition propensity, and we encourage all states to do so.

Therefore, we call on cigarette manufacturers to immediately begin producing and marketing only cigarettes that have a reduced propensity to burn when left unattended (*as established through testing to a performance standard based on ASTM E2187, Standard Test Method for Measuring the Ignition Strength of Cigarettes*).

COALITION for FIRE-SAFE CIGARETTES

The time is now.™

Cigarette Fire Facts

- Cigarettes are the leading cause of home fire fatalities in the United States, killing 700 to 900 people – smokers and non-smokers alike – per year.
- Smoking-material structure fires killed 760 people and injured 1,520 others in 2003.
- Property losses total hundreds of millions of dollars each year.
- There were 25,600 smoking-material structure fires in the United States in 2003.
- Fires caused by smoking materials have declined in recent years, thanks in part to more stringent standards for fire-resistive mattresses and upholstered furniture, public education, and a dramatic decrease in the number of cigarettes consumed per adult in the United States. But cigarettes are still the leading cause of residential fire deaths.
- The risk of dying in a residential structure fire caused by smoking materials rises with age. Two-fifths (38 percent) of fatal smoking-material-fire victims are age 65 or older.
- One-quarter of victims of smoking-material fire fatalities are not the smoker whose cigarette started the fire: 34 percent are children of the smokers; 25 percent are neighbors or friends; 14 percent are spouses or partners; and 13 percent are parents.
- Almost half (43 percent) of fatal home smoking-material fire victims were sleeping when injured; one-third (32 percent) were attempting to escape, to fight the fire, or to rescue others.

Fire-Safe Cigarettes – The Time Is Now!

- One in four Americans is now or soon will be covered by fire-safe cigarette mandates approved in New York, California, Vermont, Illinois, New Hampshire, and Massachusetts. A fire-safe cigarette mandate has also been approved for all of Canada.
- Research in New York State shows no decline in cigarette sales with the introduction of fire-safe cigarettes, but cigarette-fire fatalities were reported to have declined in the state by a third in 2004 when the law was in place for not quite half the year.
- NFPA research in the mid-1980s predicted that fire-safe cigarettes would eliminate three out of four cigarette fire deaths. Had manufacture of fire-safe cigarettes become universal then, approximately 15,000 lives could have been saved by now.

(Source: National Fire Protection Association, 10/06)

www.firesafecigarettes.org

COALITION for FIRE-SAFE CIGARETTES™

The time is now.

Search

GO

- Home - The Coalition for Fire Safe Cigarettes
- › About the Coalition
- › **About fire-safe cigarettes**
 - › **What is a fire-safe cigarette?**
 - › Myths vs. realities
 - › History
- › Research
- › Model legislation
- › Legislative updates
- › In the news
- › Sign online petition
- › Letter to tobacco companies
- › For the media
- › Join the Coalition
- › Contact Us
- › Read the Coalition blog

printer version

email page

What is a fire-safe cigarette?

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).

Fire-safe cigarettes save lives
The good news is that improved standards for cigarette-resistant materials in furniture and mattresses, and public education have all helped cut down the number of fires caused by smoking materials and have saved many lives. The bad news is that 700 to 900 people still die each year due to cigarette-ignited fires. And the fact remains: smoking materials are the #1 cause of fire deaths in the United States.

There is no doubt that fire-safe cigarettes will save hundreds of lives each year. Deaths caused by cigarette fires have declined dramatically in New York State in the first few months that fire-safe cigarettes were mandated there in 2004. The use of cigarettes with a proven, reduced propensity to ignite other materials will save lives and offer the best opportunity to achieve the next big leap forward in fire protection.

Is it possible for a "fire-safe" cigarette to ignite furniture or bedding?
All cigarettes have the *potential* to ignite fires, but the use of "fire safe" technology provides a tremendous reduction in those risks. A fire-safe cigarette cuts the burning time before most cigarettes are able to ignite things like furniture or bedding material.

Isn't the real issue the need to educate people about using cigarettes in a responsible way?
Actually, the real issue is that cigarettes are the leading cause of home fire fatalities every year. Fires started by cigarettes kill smokers and non-smokers alike. Cigarette fires also burn and injure thousands of people, while causing millions of dollars in property losses. But we have the opportunity to prevent those horrible situations through the use of fire-safe cigarettes.

With any fire problem, you can and should try to change the heat source (the cigarette), the items ignited (for example, mattress, couch), and the behavior that brings them together (that is, the smoker's behavior). And all of these strategies are being actively pursued. The reality is that without changing the cigarettes, there will still be hundreds of needless cigarette-fire deaths every year. That is why fire-safe cigarettes offer the best opportunity to achieve the next big leap forward in fire protection.

Wouldn't it be better if the U.S. had a federal standard with which each state had to comply?
All of us wish the tobacco companies would step up and do the right thing in this situation —

If a fire-safe cigarette is left unattended, the burning tobacco will reach one of these banded "speed bumps" and self-extinguish.

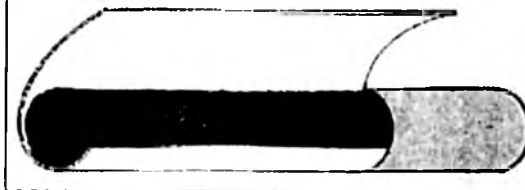
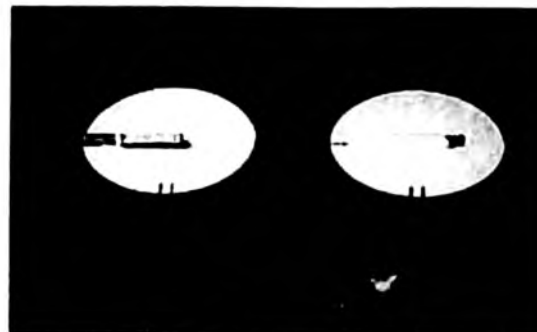


Illustration: John Roman



Cigarette regulations, adopted in New York, California, and Vermont require that no more than 25 percent of 40 cigarettes tested burn their full length when placed on 10 layers of standard filter paper. The established cigarette fire safety performance standard is based on ASTM E2187, Standard Test Method for Measuring the Ignition Strength of Cigarettes. Photo: National Institute of Standards and Technology. See larger image.

replacing traditional cigarettes with fire-safe cigarettes. But, until that happens, strong legislation like this is the best way to prevent fires started by cigarettes. Currently, there is gridlock at the federal level, yet there is tremendous progress on the state level. Until a strong fire safety standard can be enacted by the U.S. Congress, we must pursue regulation at the state level. And to avoid a patchwork of standards, the best approach is to adopt the New York State standards, just as California and Vermont have already done.

What are other states doing?

New York State was the first to require that cigarettes sold and manufactured in the state be fire-safe. Vermont and California both adopted fire-safe legislation late last year. Additional states are considering fire-safe bills now, and many other states and jurisdictions are looking into it. In Canada, fire-safe cigarettes are mandated nationwide using the New York state standard.

[⌂ top of page](#)

[Contact Us](#)

[Privacy Policy](#)

[Terms & Conditions](#)



The Coalition for Fire-Safe Cigarettes
campaign is coordinated by NFPA.

URL: <http://firesafecigarettes.org/itemDetail.asp?categoryID=48&itemID=1190&URL=About%20fire-safe%20cigarettes/What%20is%20a%20fire-safe%20cigarette?>



American Burn Association

625 N. Michigan Avenue, Ste. 2550
Chicago, IL 60611

Voice (312) 642-9260

Fax (312) 642-9130
e-mail: info@ameriburn.org

Fire-Safe Cigarettes American Burn Association Policy Statement

Cigarettes are the leading cause of fatal fires in the United States, killing 700 to 900 people every year and injuring thousands more. Those killed or injured in these fires are oftentimes not the smoker, but family members, children or neighbors. 34,800 smoking-material structure fires in the U.S. in 2002 resulted in property losses in the hundreds of millions of dollars.

The typical scenario for fires cause by cigarettes is the following: a lit cigarette is forgotten or dropped by a smoker whose alertness may be impaired by alcohol or medication. The cigarette fire can smolder for hours hidden between seat cushions or elsewhere before it flares up into a deadly blaze. "Fire safe" or reduced ignition propensity cigarettes have less porous paper, less dense tobacco, a smaller diameter, filter tip and no added citrates to the paper. These design changes result in no change in taste to the cigarette.

Fire safe cigarette legislation has passed in New York, California, Vermont, Illinois, New Hampshire and Massachusetts. Legislation is pending in New Jersey, Pennsylvania and Wisconsin.

The American Burn Association has been a strong advocate for the development of fire-safe cigarettes for more than 15 years, supporting past legislation on the issue and participating in two US Government studies that successfully demonstrated the technical and economic feasibility of commercial production of fire safe cigarettes.

The American Burn Association strongly and actively supports the passage of legislation mandating the manufacture and sale of fire-safe cigarettes along with the efforts of the Fire Safe Cigarette Coalition, a national group of fire service members, consumer, elderly and disabled rights advocates, medical and public health practitioners and other who are committed to saving lives and preventing injuries by reducing the threat of cigarette-ignited fires.. The ABA is a member of the Fire Safe Cigarette Coalition.

For more information, contact Kitty Vineyard at the American Burn Association at (312) 642-9260 or vineyard@ameriburn.org.



Certificate of Analysis

Standard Reference Material[®] 1082

Cigarette Ignition Strength Standard

This Standard Reference Material (SRM) is intended for use by test laboratories to assess and control their testing of cigarette ignition strength in accordance with ASTM Standard Methods E 2187-04 (or ASTM E2187-02b). The SRM unit consists of one carton of cigarettes containing 10 packs of 20 cigarettes each.

Certified Values and Uncertainties: A NIST certified value is a value for which NIST has the highest confidence in its accuracy and that all known or suspected sources of bias have been investigated or accounted for by NIST. The certified value for ignition strength is given in Table 1. The certified value is the result of testing at NIST, Kidde-Fenwal, and the National Research Council, Canada. The certified value and its uncertainty were obtained by fitting a Bayesian hierarchical model [1] to the data from the two laboratories. The model accounts for random variation both within and between laboratories. The data from each laboratory was modeled using individual binomial likelihood functions, the between-laboratory variation was modeled using a beta distribution, and non-informative prior distributions were used for all parameters in the model. The model was fit to the data using Markov chain Monte Carlo methods. The expanded uncertainty given in Table 1 is reported at the 95 % probability level. This uncertainty includes measurement variability within and between laboratories. Tests for cigarette uniformity did not show evidence of any significant variation in ignition strength between packs. A combined standard uncertainty for the certified ignition strength of $u_c = 1.65$ % should be used in further uncertainty calculations.

Table 1. Certified Values

Measurand	ASTM Method	Certified Value and Expanded Uncertainty
Ignition Strength (on 10 layers of filter paper)	E 2187-04 ^(a)	12.6 % ± 3.3 %

^(a) Standard Test Method for Measuring the Ignition Strength of Cigarettes.

NOTICE AND WARNING TO USERS: THERE ARE SUBSTANTIAL SAFETY HAZARDS ASSOCIATED WITH EXPOSURE TO BOTH PRIMARY AND SECOND-HAND SMOKE FROM CIGARETTES. THESE CIGARETTES ARE ONLY TO BE USED UNDER THE LABORATORY CONDITIONS DESCRIBED IN ASTM E2187-04.

Expiration of Certification: The certification of SRM 1082 is valid, within the measurement uncertainties specified, until **31 December 2015**, provided the SRM is handled in accordance with the instructions given in this certificate (see "Instructions for Use"). This certification is nullified if the SRM is contaminated, disfigured, or otherwise modified.

Maintenance of Certification: NIST will monitor representative samples from this SRM lot over the period of its certification. If substantive changes occur that affect the certification before the expiration date, NIST will notify the purchaser. Registration (see attached sheet) will facilitate notification.

The coordination of the technical measurements leading to certification was performed by R.G. Gann of the NIST Fire Research Division.

Ignition strength measurements at NIST were made by J. Lee of the Fire Research Division.

Statistical consultation on experiment design and analysis of the certification data were performed by W.F. Guthrie of the NIST Statistical Engineering Division.

William L. Grosshandler, Chief
Fire Research Division

Robert L. Watters, Jr., Chief
Measurement Services Division

The support aspects involved in the issuance of this SRM were coordinated through the NIST Measurement Services Division.

The cigarettes were purchased by NIST from Philip Morris USA (Richmond, VA).¹

INSTRUCTIONS FOR USE

Stability and Use: ASTM E2187-04 states that cigarette test specimens are to be protected from physical or environmental damage while in handling and storage. It is important that the specimens not be crushed or deformed in any manner. Careful handling is needed to ensure that the specimens are not contaminated while in storage, and that they are protected from degradation by insects. If test cigarettes are not to be used for more than one week, they are to be stored in a freezer at approximately 0 °C (32 °F).

Prior to testing, the cigarettes are to be removed from the pack(s) and conditioned at a relative humidity of 55 % ± 5 % and a temperature of 23 °C ± 3 °C (73 °F ± 5 °F) for at least 24 h. The cigarettes are to be placed in a clean, open container, with the number of cigarettes being sufficiently small to enable free air access to the specimens, for example, a maximum of 20 cigarettes in a 250 mL polyethylene or glass beaker.

Material Selection and Packaging: The state of New York, the state of Vermont, the state of California, and the dominion of Canada have enacted legislation requiring that all cigarettes sold in their jurisdictions must not exceed 25 % full-length burns using this test method. A test consists of 40 determinations, each on a substrate consisting of 10 layers of filter paper. The filter paper is to meet the weight requirements in ASTM E2187-04 and is to be conditioned prior to testing, as described in the ASTM standard.

This SRM was developed because cigarette companies, the New York Office of Fire Prevention and Control, and Health Canada indicated a need for a standard cigarette that could be used by testing laboratories and manufacturers to assess and control ignition strength testing to assure regulatory compliance and quality control. The planned cigarette was to have a target ignition strength near (a) the required pass/fail criterion and (b) the value to which cigarette companies would need to design products in order to assure success during compliance testing, which is somewhat lower than the pass/fail criterion.

After examining several prototypes, Philip Morris USA submitted the candidate standard cigarettes to NIST. The packs and cartons were printed to NIST specifications at the factory. The cigarettes themselves bear no markings.

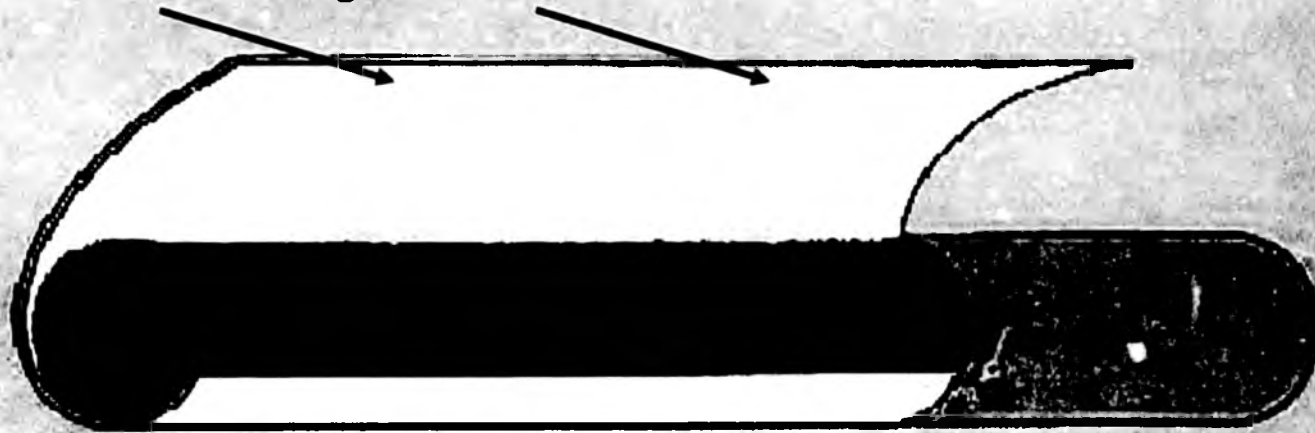
REFERENCE

- [1] Gelman, A.; Carlin, J.B.; Stern, H.S.; Rubin, D.B.; *Bayesian Data Analysis*; Chapman and Hall: London (1995).

Users of this SRM should ensure that the certificate in their possession is current. This can be accomplished by contacting the SRM Program at: telephone (301) 975-6776; fax (301) 926-4751; e-mail srminfo@nist.gov; or via the Internet <http://www.nist.gov/srm>.

¹Certain commercial equipment, instrumentation, or materials are identified in this certificate to specify adequately the experimental procedure. Such identification does not imply recommendation or endorsement by the NIST, nor does it imply that the materials or equipment identified are necessarily the best available for the purpose.

If a fire-safe cigarette is left unattended, the burning tobacco will reach one of these banded "speed bumps" and self-extinguish.



COALITION
for FIRE-SAFE
CIGARETTES
The time is now!

COALITION for FIRE-SAFE CIGARETTES

The time is now.™

Members as of February 1, 2007

American Association of Retired Persons
American Burn Association
American College of Emergency Physicians
American Fire Sprinkler Association
American Health Care Association
American Society of Testing and Materials
International
AMERIND Risk Management Corporation
Asian American Hotel Owners Association
Automatic Fire Alarm Association, Inc.
Boston Society of Vulcans
Business and Institutional Furniture
Manufacturer's Association
Center for Campus Fire Safety
Center for Social Gerontology, Inc.
Firemen's Association of the State of
New York
Florida Association of Fire & Life Safety
Educators
Harvard School of Public Health
Home Safety Council
Illinois Fire Inspectors Association
International Association of Arson
Investigators
International Association of Black
Professional Fire Fighters
International Association of Fire Chiefs
International Association of Fire Fighters
International Association of Hispanic
Firefighters
International Code Council
International Fire Marshals Association

Massachusetts Call/Volunteer Firefighters
Associations
Massachusetts Coalition for Fire-Safe Cigarettes
Metropolitan Fire Chiefs
National Association of Emergency Medical
Technicians
National Association of Hispanic Firefighters
National Association of State Fire Marshals
National Center for Assisted Living
National Fallen Firefighters Foundation
National Fire Protection Association
National Fire Sprinkler Association
National Native American Fire Chiefs Association
National Safety Council
National Volunteer Fire Council
Phoenix Society for Burn Survivors
Polyurethane Foam Association
Property Casualty Insurers Association of
America
Public Citizen
Safe Kids Worldwide
Trauma Foundation
Uniform Fire Code Association
Washington Fire Chiefs
Western Fire Chiefs Association

Supporters/State Groups

Tobacco Free Kids