

**State of Hawaii**  
**Department of the Attorney General**



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**STUDY OF THE IMPACT OF  
CIGARETTE FIRE SAFETY  
STANDARDS  
ESTABLISHED IN OTHER STATES**

*Submitted to  
The Twenty-Fourth State Legislature  
Regular Session of 2008*

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## **INTRODUCTION**

This study was prepared in response to Senate Concurrent Resolution No. 32 and Senate Resolution No. 14, Requesting the Department of the Attorney General to Study the Impact of Cigarette Fire Safety Standards Established in Other States, adopted by the Twenty-Fourth Legislature of the State of Hawaii in the Regular Session of 2007. The Legislature requested that the Department of the Attorney General, in consultation with the Department of Health, the Department of Taxation, and the State Fire Counsel (SFC) study the impact of cigarette fire safety standards established in the states of New York, Vermont, California, Illinois, New Hampshire, and New Jersey and in Canada to determine how reduced ignition propensity (RIP) cigarette statutes that have been adopted in the aforementioned states and Canada could be adopted in Hawaii with a minimum of cost to the State and with minimal burden to cigarette manufacturers, distributors, and retail sellers.

Information to complete this project was sought from the Department of Health, the Department of Taxation, and the State Fire Counsel. In addition, inquiry was made of other states, cigarette manufacturers, cigarette tax stampers, cigarette distributors, cigarette wholesalers, cigarette retailer associations, Health Canada, Coalition for Fire-Safe Cigarettes, and commercial laboratories who conduct testing of cigarettes for compliance with RIP cigarette statutes. Model RIP cigarette legislation proposed by the Coalition for Fire-Safe Cigarettes, as well as the RIP cigarette statutes from the aforementioned states and Canada, were also examined for this report. It should be noted that at the time of this writing only Canada and the states of New York, California, Vermont, Oregon, and New Hampshire actually required all cigarettes sold within their borders to be RIP cigarette compliant. Oregon's effective date was July 2007 and New Hampshire's effective date was October 2007. The other 17 states that have passed similar legislation have RIP cigarette program effective dates that span from late 2007 through 2010.<sup>1</sup>

## **DEFINITION OF REDUCED IGNITION PROPENSITY (“RIP”) CIGARETTE**

An RIP cigarette is one that has a reduced propensity to burn when left unattended. Generally, most cigarettes are designed to continue to burn even when they are not being smoked. However, cigarettes can be manufactured so that they will self-extinguish when not being actively smoked. Cigarette manufacturers can wrap cigarettes with two or three thin bands of less porous paper that act as “speed bumps” to slow down a burning cigarette. If an RIP cigarette is left unattended, the burning tobacco will reach one of the “speed bumps” and self-extinguish. It must be stressed that all cigarettes have the potential to ignite fires. The use of RIP cigarette technology is meant to reduce the risk of fire and does not produce a “fire safe” cigarette.

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<sup>1</sup> North Carolina's RIP cigarette statute takes effect on January 1, 2010.

It should be noted that not all cigarettes consumed in the State would be subject to this regulation. RIP cigarette regulation would not apply to “roll your own” cigarettes, cigarettes sold on military installations, and duty free cigarettes. Cigarettes of the “roll your own” variety are constructed by the individual smoker and are made up of loose tobacco rolled in rolling paper or tubes constructed either manually or with the use of a cigarette rolling device.

## **PURPOSE OF RIP CIGARETTE LEGISLATION**

The common impetus for RIP cigarette legislation is fire safety and fire protection. Specifically, RIP cigarette legislation aims to reduce the likelihood that cigarettes will cause fires and result in deaths, injuries, and property damage.

The Coalition for Fire Safe Cigarettes, a national group of fire service members, consumer and disabled rights advocates, medical and public health practitioners, and others, regard RIP cigarettes as a promising opportunity to improve fire protection in this country, and have drafted model legislation (hereinafter “model statute”) that has been utilized throughout the country as a template for RIP cigarette legislation. According to the Western Fire Chiefs Association,<sup>2</sup> cigarettes are the leading cause of fatal residential fires in the United States, killing 700 to 900 people annually and injuring 2,500 to 3,000 per year. Losses in western states have generally been proportional to national statistics. Unlike pipes and cigars, which go out if not puffed on, commercially mass-produced cigarettes continue to burn once lit. In 2001, cigarette fires resulted in 31,200 fires in the U.S. and 830 deaths – 60 of them children.

The SFC has indicated that in the State of Hawaii, from 2001-2006, there were 438 fire incidents attributable to cigarettes. These fires caused approximately \$1,461,125 in property damage, ten fire-related injuries, and no loss of life. The SFC has no records relating to periods prior to 2001, and was unable to provide relevant statistics on cigarette-related fires.

## **REGULATORY HISTORY**

New York State was the first state to effectively enact a cigarette fire safety law. New York’s law became effective on June 28, 2004. Since New York’s adoption of its RIP cigarette statute, 21 other states: California, Delaware, Vermont, Illinois, New Hampshire, Massachusetts, Kentucky, Utah, Oregon, New Jersey, Minnesota, Montana, Maryland, Texas, Alaska, Maine, Connecticut, Louisiana, Rhode Island, North Carolina and Iowa have all passed similar RIP cigarette statutes. Canada passed a national RIP standard that went into effect on October 1, 2005. (*See Exhibit A*).

To date, no federal legislation has been passed in the United States that requires cigarettes to meet RIP standards. All RIP cigarette legislation activity in the United

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<sup>2</sup> Information Packet: Fire-Safe Cigarette Legislation, Prepared for: The Western Fire Chiefs Association, Revised: April 20, 2007.

States has occurred at the state level. In Canada, RIP cigarette compliance monitoring and enforcement are performed at a national level.

## **ADMINISTRATION OF RIP CIGARETTE STATUTES IN OTHER STATES**

The National Association of State Fire Marshalls has indicated that the policy behind RIP cigarettes is not about getting people to stop smoking or to smoke less. Rather, they assert that RIP cigarette regulation is about making sure that the cigarettes that are smoked are less likely to cause fires.<sup>3</sup>

The research indicates that in those states where RIP cigarette statutes have passed, the agencies tasked with fire protection or public safety are the agencies tasked with taking the lead in administering and making broad rules regarding RIP cigarette laws. For example, the State Fire Marshall in California, the Office of Fire Prevention and Control in New York, the Commissioner of Public Safety who is the ex officio fire marshal in Vermont, the Director of the Division of Consumer Affairs in the Department of Public Safety in consultation with the Division of Fire Safety in the Department of Community Affairs in New Jersey, the Commissioner of Safety in New Hampshire (the Division of Fire Safety, whose head is the State Fire Marshall, is a division within the Department of Safety in New Hampshire), the Office of the State Fire Marshall in Illinois, the Secretary of the Office of Public Safety in Massachusetts (the Department of Fire Services, whose head is the State Fire Marshall, is a department within the Executive Office of Public Safety and Security in the State of Massachusetts), the State Fire Marshall in the State of Kentucky, State Fire Marshall in Alaska, Department of Public Safety in Iowa (the State Fire Marshall Division is a division within the Department of Public Safety in Iowa), the Comptroller, State Fire Safety Commission and Attorney General in Maryland, Commissioner of Revenue and State Fire Marshall in Minnesota, Department of Justice and State Fire Marshall in Montana, State Fire Marshall in Oregon, State Fire Marshall in Delaware, State Fire Marshall in Texas, State Fire Marshall in Maine, State Fire Marshall in Louisiana, State Fire Marshall in Connecticut, State Fire Marshall in Utah, Director of the Department of Health in Rhode Island, and the Commissioner of Insurance who is the State Fire Marshall in North Carolina all have the primary administrative responsibility over fire safe cigarettes in those jurisdictions.

In Canada, the federal health agency, Health Canada, has enforcement powers and, to a degree, implements, administers, and enforces Canada's RIP<sup>4</sup> cigarette program. Canada's Federal Tobacco Control Strategy, launched in 2001, outlined a comprehensive, integrated, and sustained approach to the reduction of disease and death associated with tobacco use with four mutually reinforcing components: protection, prevention, cessation, and harm reduction. The RIP cigarette regulations in Canada are regarded as part of the protection and harm reduction components of that strategy.<sup>5</sup>

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<sup>3</sup> Facts About the Tobacco Industry's Arguments Against Laws Regulating the Ignition Strength of Cigarettes, March 2005, National Association of State Fire Marshalls.

<sup>4</sup> Cigarette Ignition Propensity is Canada's equivalent of reduced ignition propensity and fire standard compliant regulation.

<sup>5</sup> Federal Tobacco Control Strategy, Regulatory Proposal for Reducing Fire Risks from Cigarettes, A Consultation Paper, Health Canada, Tobacco Control Programme, December 2002.

## **ENFORCEMENT OF RIP CIGARETTE STATUTES IN OTHER STATES**

The responsibility for enforcing RIP cigarette statutes in other states has been spread amongst a number of agencies, including the Fire Marshall, Revenue Department, Department of Public Safety, Commission of Liquor Control, and Attorney General. In Canada, RIP cigarette enforcement is done by Canada's federal health agency, Health Canada. Health Canada, in proposing to regulate the ignition potential for cigarettes recognized that the decision to regulate the ignition potential for cigarettes also required consideration of the practicalities of regulation and enforcement.<sup>6</sup> Similarly, the practicalities of regulation and enforcement must be considered in the decision to adopt an RIP cigarette program for the State of Hawaii.

The funding and personnel required to implement, administer, and enforce RIP cigarette regulations in each state vary dramatically. For example, in New York, the first state to mandate RIP standards for cigarettes, the Office of Fire Prevention and Control had the financial burden of developing and implementing an RIP performance standard for cigarettes using the American Society of Testing and Materials (ASTM) standard E2187-04-Standard Test Method for Measuring the Ignition Strength of Cigarettes. New York provided more than \$1,000,000 to conduct the necessary work and allocated ongoing funding to conduct a testing program to monitor cigarette compliance with the standard. New York reports having five full-time equivalent staff and 37 part-time inspectors working on RIP cigarette inspection and compliance. New York inspects approximately 27,000 registered retailers of varying sizes for RIP compliance. New York has approximately 174 authorized stamping agents that are authorized to stamp cigarettes for sale in the State of New York. New York also has one fire protection specialist and one key board specialist.

In Vermont, Vermont's Division of Fire Safety reviews applications for package labeling and cigarette certification and approves or denies them. Information on approved applications are sent to the Vermont Attorney General and then are included on the list of cigarettes approved in the State of Vermont. Cigarettes must also be approved by the Vermont Attorney General for participation in tobacco settlement programs. The Vermont Department of Liquor Control inspectors have broad authority to treat illegal products as contraband (including cigarettes that are not RIP cigarette compliant and are subject to seizure) and handle the daily review of retail sales. Vermont's Division of Fire Safety and Vermont's state police collaborate on fire investigation and additional enforcement.

In California, inspections for RIP cigarette compliance are handled by the California Board of Equalization, which inspects cigarettes at retail for tax stamp compliance. California has approximately 40 inspectors, regulating approximately 38,000 retailers and 2,000 licensed wholesalers and distributors.

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<sup>6</sup> Regulatory Proposal for Reducing Fire Risks from Cigarettes, A Consultation Paper, Health Canada, Tobacco Control Programme, December 2002.

In Oregon, the State Fire Marshall may enter into a cooperative agreement with any state or local agency that allows the agency to act as an authorized representative of the State Fire Marshall for enforcement of Oregon's RIP cigarette statute. Oregon has also considered the following enforcement mechanism:

If a person should distribute or offer to sell cigarettes not in compliance with Oregon's fire-safer cigarette statutes, OSFM [Office of State Fire Marshall] will continue their policy of working with stakeholders to gain voluntary compliance. In those instances where voluntary compliance cannot be achieved, OSFM would then initiate a series of progressive discipline steps to gain compliance including issuing a civil penalty notice. If the person receiving the civil penalty notice requested an administrative hearing, the Attorney General would be involved in the case according to the requirements of the Administrative Procedures Act.<sup>7</sup>

In Canada, Cigarette Ignition Propensity (CIP) Regulations are a national standard applicable across Canada. Under Canada's CIP Regulations, the definition of manufacturers include importers. Therefore, the CIP Regulations apply both to manufacturers of cigarettes in Canada and importers who import cigarettes into Canada. The majority of all manufacturers and importers are located in Canada's two biggest provinces, Ontario and Quebec. It is estimated that there are less than 20 manufacturers and less than five importers of cigarettes located in Canada. CIP enforcement is undertaken by three Full-Time Equivalent Inspector positions budgeted at \$125,000 (Canadian dollars) with an additional \$50,000 (Canadian dollars) for administrative costs.

As an aside, we note that the model statute, includes provisions for civil penalties for the "knowing" violation of the statute by a manufacturer, wholesale dealer, agent, any other person, entity, or retail seller. Similarly, all states that have RIP cigarette legislation currently in effect, with the exception of Oregon, specifically require a "knowing" violation of the statute. Knowing conduct is a high standard of proof to meet, which may limit the number of successful enforcement actions. A more workable standard of proof in any civil RIP actions would be "simple negligence," or at the most "reckless" conduct, on the part of the manufacturer, wholesaler, dealer, agent, or any other entity.

## **COMPLIANCE TESTING**

Currently, RIP cigarettes sold in New York, other states, and Canada are required to meet an established performance standard. That standard is based on ASTM E2187 Standard Method for Measuring the Ignition Strength of Cigarettes. The SFC has indicated that standard E2187-04- Standard Test Method for Measuring the Ignition Strength of Cigarettes method was developed by the National Institute of Standards and Technology, Center for Fire Research. In order to conduct a laboratory test using this standard, cigarettes would need to be purchased at retail from various retail outlets. A

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<sup>7</sup> Fiscal Impact Statement, Attachment to Oregon Legislative Concept LC 662 for Fire-Safer Cigarettes, dated 12-07-06.



minimum of four packs must be purchased per brand style. A lit cigarette from the test sample is placed in a draft free chamber on ten layers of test paper and then observed to determine whether or not the cigarette self-extinguishes, burns through to the filter in filtered cigarettes, or burns completely in the case of non-filtered cigarettes. Forty replicate tests comprise a complete test trial for each cigarette used. The standard is met if no more than 25 percent of 40 cigarettes tested burn their full length when placed on the ten layers of standard filter paper. In other words, at least 75 percent or 30 of 40 cigarettes tested must extinguish of their own accord before burning their full length for a brand style to be accepted.

Additional research indicates that the cost of testing cigarettes for compliance with the ASTM standard can vary considerably depending on the number of packs needed for testing. Once a testing laboratory establishes a testing chamber, the testing cost would include the cigarette purchase and operational costs of a laboratory technician and supervisor to produce a document summarizing test results. For example, New York State is actively involved in laboratory testing RIP cigarettes for compliance at the retail level. Kidde-Fenwal, Inc. is the laboratory with the contract to test New York's cigarettes. New York has an annual budget of approximately \$400,000 for testing, which allows for the testing of approximately 300 brand styles per year. The testing includes compliance with the ASTM standard and compliance with the placement requirements of the lowered permeability bands in the cigarette paper itself in order to meet compliance with the New York statute.

In Oregon,<sup>8</sup> testing is reserved for random sampling or for those instances where the Oregon State Fire Marshall has reason to believe a brand being sold in Oregon does not meet the self extinguishing criteria. Fire insurance premium tax funds in Oregon are a potential funding source to be used to support the testing as fire insurance premium tax funds correlate directly to fire prevention efforts in Oregon. Oregon has identified two known laboratories qualified to perform testing on cigarettes-Kidde Fenwal and Arista, with costs running from \$500 to \$1,600 per month. The Oregon State Fire Marshall anticipated an average of \$1,050 per month or \$25,200 per biennium.

Alternatively, the SFC has noted that a major university or college science department may be able to follow the testing procedures and protocols and may be able to supply the necessary materials to carry out the testing. However, because a university or college science department may not be internationally certified, testing at a commercial laboratory is recommended. With regard to the laboratory conducting the certification tests for the manufacturers, the model statute requires:

1. Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization ("ISO"), or other comparable accreditation

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<sup>8</sup> Fiscal Impact Statement, Attachment to Oregon Legislative Concept LC 662 for Fire-Safer Cigarettes, dated 12-07-06.

standard required by the [state entity responsible for administering the provisions of this Act].

The model statute goes on to address independent testing by the State and states that such:

Testing performed or sponsored by the [state entity responsible for administering the provisions of this Act] to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.

Clearly, the laboratory used by the State to test for RIP cigarette compliance must have the same certification as the manufacturer's laboratory in order to provide adequate compliance data.

In Canada, compliance is monitored through sampling of cigarettes and subsequent analysis and targets all cigarettes manufactured or imported into Canada.<sup>9</sup> Currently, Health Canada has a memorandum of understanding (MOU) with the National Research Council's laboratory to perform CIP analysis of samples collected in the field by Health Canada's inspectors. The MOU is basically a three-year contract, which allows Health Canada to send a maximum of 150 samples per year to the contracted laboratory for analysis. The cost is approximately \$130,000 (Canadian dollars) per year. Health Canada maintains a website<sup>10</sup> that posts the laboratory analysis of cigarette for ignition propensity. Not all cigarettes that have been tested have succeeded in meeting the standard. According to Health Canada, the first step when a brand in question does not meet the CIP standard is to retest. Depending on the results of the second analysis, further action including a third sampling and another enforcement action, including possible prosecution, can be considered.

## **BUDGETING AND FUNDING OF RIP CIGARETTE PROGRAMS IN OTHER STATES**

Budgeting and funding for the administration, implementation, and enforcement of RIP cigarette programs varies from state to state. In some states, such as California, no additional funding has been authorized and no fees are collected. In those states, RIP cigarette programs are supported by existing budgets and resources. In others, a certification fee program has been established. In most states where fees are collected, the fees are paid as part of a certification program that is renewed every three years. The three-year renewal cycle is the period suggested by the model statute. In Texas, contingency appropriations have been made:

[T]he Texas Department of Insurance is appropriated \$98,390 and 2.0 FTEs in fiscal year 2008 and \$380,557 and 9.0 FTEs in fiscal year 2009 in

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<sup>9</sup> Regulatory Impact Analysis Statement for the Proposed Cigarette Ignition Propensity Regulations and Proposed Regulations Amending the Tobacco Reporting Regulations, Health Canada.

<sup>10</sup> Please refer to the following website for results to date: [http://www.hc-sc.gc.ca/hl-vs/tobac-tabac/legislation/reg/ignition-alllumage/analys\\_e.html](http://www.hc-sc.gc.ca/hl-vs/tobac-tabac/legislation/reg/ignition-alllumage/analys_e.html)

General Revenue-Dedicated Fund 36 funds to implement the provisions of the legislation.<sup>11</sup>

No fees are assessed in the states of California, Illinois, New Hampshire, New York, Oregon, and Vermont. For example, the SFC reports that New York's RIP cigarette program is supported by the existing budget of the State of New York's Office of Fire Prevention and Control. Similarly, the State of Vermont's RIP cigarette program does not have a separate staff or budget to implement Vermont's RIP cigarette requirements. The Vermont Division of Fire Safety, Department of Liquor Control, and Department of the Attorney General utilize their existing staff and budgets. Other states have established fees that are collected once every three years due to the certification cycle being three years in duration. Kentucky has a fee of \$1,000 per brand family. Alaska, Massachusetts, Maryland, Minnesota, Montana,<sup>12</sup> New Jersey, Delaware, Texas, Rhode Island, Louisiana, Connecticut, North Carolina, and Utah charge a \$250 fee per brand sought to be certified in the State. Iowa has a \$100 fee. The impact of a fee structure in the distribution of cigarettes below the manufacturer level is dependant upon whether a manufacturer passes on the cost of the fee to its wholesalers, dealers, and distributors. If the costs are passed through the distribution stream there will clearly be an impact based upon the increased cost of the product at the retail level. We note that the model statute calls for the fee to be assessed for each individual brand style and not by individual certification.

For each cigarette listed in a certification, a manufacturer shall pay to the [state entity responsible for administering the provisions of this Act] a \$250 fee. The [state entity responsible for administering the provisions of this Act] is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement and oversight activities required by this Act.

## **CERTIFICATION**

The manufacturer is required to submit a written certification attesting to the fact that each cigarette brand style listed on the certification meets all of the relevant requirements. The model statute recommends that a certification period run for a period of three years. For each cigarette brand style listed on the certification, a fee is recommended to be paid. Where a fee is required, the fee ranges from \$250 per cigarette brand style to \$1,000 per cigarette brand style.

Currently, a number of states provide lists of RIP compliant cigarettes through the use of web sites to provide notice and inform distributors and retailers of those cigarettes that are RIP compliant. The states of Oregon and Connecticut require the posting of an RIP compliant listing of cigarettes in their respective RIP cigarette statutes.

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<sup>11</sup> Wording contained in contingency fund provisions provided by the Texas Department of Insurance State Fire Marshall's Office.

<sup>12</sup> Montana legislation provides that fee should not exceed \$250.00, to offset actual costs of processing, testing, enforcement, and oversight activities.

In Connecticut, a Processing Technician will maintain the list, maintain the website information, and handle the re-certification process every three years.

Other states, such as New York, Vermont, and New Hampshire that do not have such a requirement, make the information available through the respective web sites of the New York Department of State's Office of Fire Prevention and Control, the State of Vermont's Department of Public Safety Division of Fire Safety and Department of Attorney General, and the State of New Hampshire's Division of Fire Safety.<sup>13</sup>

## **RIP CIGARETTE MARKINGS**

The placement and type of a manufacturer's RIP markings have varied; however, New York has recently adopted a standard marking and placement requirement. Effective August 16, 2007,<sup>14</sup> New York required that each individual pack of cigarettes be marked with the letters "FSC"<sup>15</sup> at or near the UPC code, if present, to signify that they are fire standards compliant. Other states will be adopting New York's standards. Discussions with California indicate that ideally the standard marking should be on the bottom of the pack in order to facilitate inspections. Currently tax stamps are placed on the bottom of cigarette packs where they are clearly visible when displayed for sale in cigarette racks. However, stamping methods utilized in the majority of states do not lend themselves well to an RIP marking on the bottom of cigarette packs as the mark could well be covered by a tax stamp whose placement varies from corner to corner and middle of the bottom of a pack of cigarettes. California's development of new tax stamping technology and methods may lead the way to changes in the future.

## **ADOPTION OF AN RIP CIGARETTE STANDARD IN HAWAII**

It is clear that all of the jurisdictions that have adopted an RIP cigarette standard have adopted the ASTM E2187 standard developed by the State of New York. For purposes of uniformity and consistency, this is a reasonable standard for Hawaii to adopt.

## **IMPLEMENTATION AND ADMINISTRATION OF AN RIP CIGARETTE PROGRAM IN HAWAII**

RIP cigarette programs necessarily involve the monitoring and testing of cigarettes for fire safety and prevention. Therefore, most states that have RIP cigarette programs delegate the implementation and administration of these programs to the state agency tasked with fire safety. In Hawaii, that entity is the SFC. Pursuant to the statutory provisions of chapter 132, Hawaii Revised Statutes, fire safety and protection

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<sup>13</sup> There are approximately 538 brand styles listed on the New Hampshire Division of Fire Safety's web site, which was updated April 6, 2007.

<sup>14</sup> New York State Department of Taxation and Finance Office of Tax Policy Analysis Technical Service Division, Enforcement Provisions Regarding Fire Safe Standards for Cigarettes, TSB-M-06(8) M, Cigarette Tax, December 11, 2006.

<sup>15</sup> "FSC" stands for Fire Standard Compliant.

are the province and jurisdiction of the SFC and the fire departments of each county. Section 132-1(b), Hawaii Revised Statutes, provides that the fire chief of each county shall:

- (1) Investigate the cause, origin, and circumstances of fires; [and]
- (2) Supervise and make or cause to be made periodically a thorough inspection of all property, which might constitute a fire hazard within the county.

Section 132-2, Hawaii Revised Statutes, authorizes the county fire chiefs to make rules related to:

- (1) Prevention of fires, and the inspection of property, periodically or otherwise, or for the prevention of or reduction of loss by fire, or to promote the safety of persons in case of fire; [and]
- (2) Manufacture, storage, sale, and use of combustibles and explosives.

Section 132-4, Hawaii Revised Statutes, with regard to investigation of fires states that:

The fire chief of the county in which any fire occurs shall immediately investigate the cause, origin, and circumstances of fire by which property has been destroyed or damaged and so far as possible determine whether the fire was the result of carelessness or design.

Section 132-6, Hawaii Revised Statutes, with regard to the duties of county fire chiefs provide that:

(a) Each county fire chief, in person or by officers, or members of the fire chief's fire department designated by the fire chief for that purpose, shall inspect all buildings, premises, and public thoroughfares, except the interiors of private dwellings and state-owned airport facilities, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire or any violation of any law, ordinance, rule, or order relating to fire hazard or to the prevention of fires.

(b) The inspection shall be made at least once each year at all public schools, and every two years, or as often as deemed practicable or necessary by the county fire chief, at all other facilities within the jurisdiction of the county fire chief. The State shall conduct fire and safety inspections at all state-owned airport facilities at least once a year.

(e) Each county fire chief is vested with the power and jurisdiction over, and shall have supervision of, every building and

premises in the county as may be necessary to enforce any law, ordinance, rule, and order relating to protection from fire loss.

Section 132-16(c), Hawaii Revised Statutes, sets forth the function of the SFC, which provides in relevant part that the SFC, among other things, is tasked to do the following:

- (1) Appoint advisory committees comprised of representatives from each county fire department to assist in the drafting of state fire code and coordinating statewide training, data collection, and contingency planning needs for firefighters; and
- (2) Advise and assist the county fire departments where appropriate, may prescribe standard procedures and forms relating to inspections, investigations, and reporting of fires, may approve plans for cooperation among the county fire departments, and may advise the governor and the legislature with respect to fire prevention and protection, life safety, and any other functions or activities for which the various county fire departments are generally responsible.

The SFC has expressed the position that although it functions as a state fire marshall, it has no statewide legal powers or staff. The SFC proposes that, because it lacks state-wide authority, another state agency, such as the Department of the Attorney General, the Department of Taxation, or the Department of Public Safety should oversee the implementation and administration of an RIP cigarette program. The SFC further states that it lacks inspection or enforcement powers because these are delegated to the county fire departments at the county level. Accordingly, the SFC proposes that the Department of the Attorney General or the Department of Taxation be responsible to inspect and enforce laws requiring proof of RIP. In correspondence dated September 17, 2007, the SFC provided the following information:

In accordance with section 132-3, Hawaii Revised Statutes (HRS), the SFC shall, after public hearings and pursuant to Chapter 91, adopt prior to July 1, 1979, a state fire code that sets forth minimum requirements relative to the protection of persons and property from fire loss including, without limitation, (1) the storage, handling, and use of hazardous substances, materials, and devices; and (2) the control of conditions hazardous to life or property in the design, use, or occupancy of buildings and premises. The state fire code insofar as is practicable, is to complement, augment, and be consistent in form and language with the building and other codes of the respective counties. The SFC shall meet annually thereafter to review and amend the state fire code.

In addition, to adopting a state fire code, Section 132-16, HRS, states that the SFC shall serve as a focal point through which all applications to the

federal government for federal grant assistance for fire-related projects shall be made. We offer this addition of the SFC responsibilities, as they are not included in the study of the Attorney General and because the work to review, amend, and adopt the state fire code is accomplished with county resources and personnel. . . .

Pursuant to chapter 132, Hawaii Revised Statutes, the SFC was established on July 1, 1979, to replace the State Fire Marshall's Office, a fully funded state agency. However, the statute does not allow for the SFC to hire staff. For 27 years since its inception, the Honolulu Fire Department (HFD), as the largest fire department in the state, assumed a major portion of the expenses incurred to perform the activities and functions of the SFC. A full-time Chief Officer of the HFD served temporarily as its Administrator. Unfortunately, in July 1996, burdened by not meeting the goals and expectations of the HFD, the Chief Officer returned to his assigned position and the responsibilities of the SFC were delegated to and shared by the HFD's Fire Prevention Bureau (FPB), the Training and Research Bureau, and the Fire Communications Center. The Battalion Chief of the FPB assumed the responsibilities as administrator of SFC.

#### Current Staffing

The current SFC Administrator is funded through the City and County of Honolulu. He is the Battalion Chief of the FPB and an ex-officio member of the SFC. His duties are divided between managing a bureau comprised of 38 personnel and those of the SFC Administrator. A part-time Administrative Assistant funded by the State through the Department of Labor and Industrial Relations (DLIR) via a Memorandum of Agreement on a fee-for-service basis assists him. Repeated attempts to fund positions legislatively or administratively have failed.

#### SFC Workload

In performing their duties and responsibilities, the workload of the Administrator and the Administrative Assistant has been extensive. . . .

#### Resources Available

The HFD receives \$47,000 to support SFC activities: \$35,000 to staff the SFC on a part-time basis and \$12,000 for operating costs.

## Conclusion

The SFC is comprised of the four county fire chiefs, a part-time staff person, and minimal funding to accomplish the duties and responsibilities of what most states would delineate as a State Fire Marshall.

To administer and implement laws to require reduced ignition propensity cigarettes in Hawaii, the SFC would need funding to employ at least two full-time personnel one to two years prior to its enactment

Under the present organization and minimal state funding, the SFC has had difficulty in executing its present mandated requirements, as the work is performed by county fire department personnel, thus depriving the county fire department of the services of its members. The SFC cannot assume additional duties without adequate staffing.

As the proposed RIP cigarette statute has not been passed at this time, the Legislature can, and should, provide the SFC specific authority and resources to conduct statewide inspections to ensure RIP cigarette statutory compliance. The two additional positions necessary for SFC to effectively administer the RIP cigarette program would include the Administrator (EM-05) and the Administrative Assistant. The estimated salaries (\$80,000 + \$68,000) and fringe and benefits (\$75,420) total \$223,420. The estimated cost for equipment and supplies total \$19,200. The aggregate cost of personnel and supplies totals \$242,620<sup>16</sup>. We note that the Texas State Fire Marshall is taking proactive steps to administer and implement the Texas RIP cigarette program, which it plans to phase in through January 2010. The Texas Fire Marshal has taken affirmative steps to create positions to deal with the RIP cigarette issues.<sup>17</sup> The Texas legislature was presented with assumptions that the Texas State Fire Marshall would incur costs as a result of the passage of an RIP cigarette bill. These costs included salaries, benefits, and other operating expenses for two full time equivalent positions in fiscal year 2007-2008 to include two program specialist positions. The program specialists' responsibilities would include writing rules and reports, interacting with the cigarette manufacturers, and providing approval of labs and standards. It is assumed that costs in subsequent fiscal years would include salaries, benefits, and other operating expenses for an additional seven full time equivalent positions, two administrative staff positions and five fire inspector positions. The additional seven positions would perform fee collection and accounting and conduct field inspections and investigations. In Texas, general revenue funds have been appropriated to fund the start-up of the RIP program in the amount of \$98,390 for fiscal year 2007-2008 and \$380,557 for fiscal year 2008-2009 to administer and implement a proactive RIP cigarette program.

Delegating the implementation, administration, and enforcement of the RIP cigarette programs to the Department of the Attorney General, the Department of

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<sup>16</sup> Per email response dated November 23, 2007 from Administrator Lloyd Rogers.

<sup>17</sup> Texas Legislative Budget Board, Fiscal Note, 80<sup>th</sup> Legislative Regular Session, In Re: HB 2935, April 25, 2007.



Taxation, or the Department of Public Safety as the SFC recommends is not practical for the simple reason that these agencies lack the particular expertise needed to properly effectuate the purpose of the legislation. For instance, the Department of the Attorney General does not have the fire prevention expertise to implement and administer a fire safety or fire prevention program. However, the Department of the Attorney General does have litigation expertise and would assist in the enforcement efforts by taking the lead role in the litigation of any RIP cigarette statute violations. Further, the Department of the Attorney General may be of assistance in the enforcement aspect of an RIP cigarette program in the inspection process to the extent that the RIP cigarette program meshes with the existing duties and responsibilities of the Department of the Attorney General related to tobacco tax enforcement under chapter 245, Hawaii Revised Statutes, and Master Settlement Agreement enforcement under chapters 486P and 675, Hawaii Revised Statutes.

Similarly, the Department of Taxation should devote its personnel, resources, and expertise to addressing all tax implications of RIP cigarette legislation, not to determining ASTM Standard E2187-04 compliance. One of the largest components of a new stamping or marking program is the tax considerations of both old and new inventory. Upon passage of any new RIP cigarette legislation, the Department of Taxation would have to determine whether it would require all other unapplied tax stamps to be returned for a refund or credit toward the purchase of the new tax stamp. Moreover, for enforcement purposes, the Department of Taxation will have to monitor stampers who may attempt to accumulate stamped inventory of lower taxed cigarettes in order to take advantage of the lower tax rate and stamp noncompliant cigarettes prior to the effective date. Accordingly, the Department of Taxation does not appear to be the proper agency to implement or administer an RIP cigarette program. Finally, it is not clear what the role the SFC is recommending for the Department of Public Safety to take with respect to implementing and administering the RIP cigarette program, but until such role is clarified and the technical expertise necessary to implement and administer an RIP cigarette program is identified, it is not recommended that the Department of Public Safety be assigned primary responsibility for RIP cigarette programs.

#### **PARTICULARIZED EXPERTISE IN ADMINISTRATION AND IMPLEMENTATION WITH REGARD TO RIP CIGARETTE ALTERNATIVE STANDARDS**

The model statute proposed by the Coalition for Fire-Safe Cigarettes contains provisions for providing the administrating state agency the authority to determine what alternative RIP cigarette testing standards are acceptable should the manufacture of cigarettes claim it is unable to comply with ASTM Standard E2187-04. The model statute calls for specific technical expertise as it relates to alternative RIP cigarette testing standards. The RIP cigarette expertise must come either from those trained in fire safety or a qualified laboratory with whom the State of Hawaii would need to contract to provide such expertise in RIP cigarette testing and RIP cigarette standards. The relevant provision from the model statute is set forth below:

**4. Test Method and Performance Standard.**

....

(c) A manufacturer of a cigarette that the [state entity responsible for administering the provisions of this Act] determines cannot be tested in accordance with the test method prescribed in paragraph (1) of subsection (a) of this section shall propose a test method and performance standard for the cigarette to the [state entity responsible for administering the provisions of this Act]. Upon approval of the proposed test method and a determination by the [state entity responsible for administering the provisions of this Act] that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (a) (3) of this section, the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to section 5 of this Act.

If the [state entity responsible for administering the provisions of this Act] determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this Act, and the [state entity responsible for administering the provisions of this Act] finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the [state entity responsible for administering the provisions of this Act] shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this State, unless the [state entity responsible for administering the provisions of this Act] demonstrates a reasonable basis why the alternative test should not be accepted under this Act. All other applicable requirements of this section shall apply to the manufacturer.

....

(e) The [state entity responsible for administering the provisions of this Act] may adopt a subsequent ASTM Standard Test Method for measuring the Ignition Strength of Cigarettes upon a finding that such 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 subsection (a)(3) of this section.

(f) The [state entity responsible for administering the provisions of this Act] shall review the effectiveness of this section and report every three years to the Legislature [the state entity's] findings and, if appropriate, recommendations for legislation to improve the effectiveness of this Act. The report and legislative recommendations shall be submitted no later than June thirtieth following the conclusion of each three-year period.

There is no identifiable entity within the Department of the Attorney General, the Department of Taxation, or the Department of Health that has the expertise to deal with alternative RIP cigarette standards and RIP cigarette testing modalities or to make recommendations for legislation to improve the effectiveness of RIP cigarette test standards or alternative RIP cigarette requirements.

## **ENFORCEMENT OF RIP CIGARETTE STANDARDS IN HAWAII**

The SFC reports that county fire departments enforce the adopted fire code of each county and conduct all fire inspections. State statutes mandate annual public school inspections; however, other buildings and premises, except the interior of private dwellings and state-owned airport facilities, are inspected at least once every two years.

The HFD assigns 12 full-time inspectors to conduct the inspections of buildings with higher occupancies because the higher risk requires more technical expertise. Conversely, inspections at lower risk buildings, including retail establishments, public elementary and middle schools, and the exterior of private dwellings, are conducted by fire station personnel (totaling 885 or 295 per day). These inspections of lower risk buildings are not conducted by full-time inspectors but by full-time first responders to emergency incidents. The remaining counties have full-time personnel who conduct inspections of all buildings and facilities within their jurisdiction: four at the Hawaii County's Fire Department, three at the Kauai County's Fire Department, and three at the Maui County's Department of Fire and Public Safety

The Department of the Attorney General is currently responsible for the inspection of cigarette packages for compliance with the tobacco tax and cigarette directory laws set forth in chapter 245, Hawaii Revised Statutes, chapter 486P, Hawaii Revised Statutes, and chapter 675, Hawaii Revised Statutes. The State of Hawaii Department of the Attorney General's Investigations Division has six Special Agents who are assigned to the Tobacco Enforcement Unit. These investigators inspect the approximately 1386 retail outlets throughout the State that have acquired a retail tobacco permit and the approximately 81 licensed tobacco wholesalers and dealers who are licensed by the State of Hawaii Department of Taxation for tobacco tax and directory compliance. The Special Agents have been trained in the identification of counterfeit tax stamps<sup>18</sup> and counterfeit cigarettes. Additionally, the Department of the Attorney

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<sup>18</sup> The Special Agents are trained in identifying and detecting the security features that are imbedded in the tax stamps.

General has attorneys who are actively engaged in the civil and criminal prosecution for violations of chapter 245, Hawaii Revised Statutes, chapter 486P, Hawaii Revised Statutes, and chapter 675, Hawaii Revised Statutes. Funding for this program comes from tax stamp fees and moneys from the Tobacco Master Settlement Agreement. Restrictions on the use of these funds are set forth in section 28-15, Hawaii Revised Statutes,<sup>19</sup> and encompass enforcement of the provisions of chapters 245, 486P, and 675, Hawaii Revised Statutes, related to tax stamp enforcement, gray market cigarette enforcement, and compliance with the requirements of the Tobacco Master Settlement Agreement and related statutes or programs.

Currently, no cigarettes may be stamped, sold, imported, or distributed in the civilian sector unless the cigarettes are compliant with the relevant requirements of chapters 245 and 486P, Hawaii Revised Statutes. Distributors, wholesalers, and retailers are provided notice by way of a Tobacco Directory<sup>20</sup> (hereinafter Hawaii's Tobacco Directory) maintained on the Department of the Attorney General's website of those cigarettes that are compliant with chapter 486P, Hawaii Revised Statutes. Non-compliant cigarettes are subject to seizure and forfeiture and violators are subject to criminal sanctions. Should an RIP cigarette program be implemented, RIP cigarettes would also have to comply with all of the relevant requirements of chapters 245 and 486P, Hawaii Revised Statutes. Like New York and Vermont, Hawaii's wholesalers, distributors, and retailers would benefit from a website listing compliant RIP product. This information may be made available in a manner similar to the State of Vermont where the information is available from the Department of Public Safety Division of Fire Safety website as well as the Vermont Attorney General's website.

In conducting tobacco related inspections, the Department of the Attorney General is statutorily authorized to seek assistance from other law enforcement agencies. A similar accommodation may be reached in RIP cigarettes inspection programs to include fire personnel as a reasoned accommodation to effective enforcement of an RIP cigarette program. As in Oregon, the SFC could be statutorily empowered to enter into a cooperative agreement with any state or county agency (i.e., county fire departments) that would allow the agency (i.e., county fire department) to act as an authorized representative of the SFC for enforcement of a Hawaii RIP cigarette statute.

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<sup>19</sup> §28-15 Tobacco enforcement special fund. (a) There is established in the state treasury the tobacco enforcement special fund, into which shall be deposited the tobacco settlement moneys as provided by section 328L-2(a), the allocated portion of the stamp fee designated to pay for the cost of enforcing the cigarette tax stamp as provided by section 245-26, and fines as provided for by section 245-41.

(b) The tobacco enforcement special fund shall be administered by the department of the attorney general and shall be used for administering, operating, monitoring, and ensuring compliance with and enforcement of:

- (1) The Master Settlement Agreement as defined in chapter 675 and any other statutes or programs relating to that agreement;
- (2) Chapter 675;
- (3) Tobacco prevention programs;
- (4) The cigarette tax stamp as defined in chapter 245 and any other statutes or programs relating to that chapter;
- (5) Chapter 245;
- (6) Chapter 486P and any other statutes or programs relating to that chapter; and
- (7) Any other requirement deemed necessary to carry out the purposes of the fund.

<sup>20</sup> A similar directory or website would be helpful as a means of providing notice to distributors, wholesalers, and retailers of compliant RIP cigarette product.

## COMPLIANCE TESTING

Should the State of Hawaii enact an RIP cigarette statute, it is not recommended that Hawaii simply rely on New York State's certification of compliance with the RIP cigarette standards. Instead, the State of Hawaii should test cigarettes for compliance with any RIP cigarette program enacted by the Legislature. Three laboratories have been identified as potential candidates to provide testing for the State of Hawaii. Those laboratories are:

- VGO Testing and Inspection Engineers of Portland, Oregon.;
- Kidde-Fenwal, Inc., Combustion Research Center, located in Massachusetts; and
- Arista Laboratories, Inc., of Richmond, Virginia.

The cost to test each cigarette brand style is not insignificant and ranges from approximately \$760 per brand style to \$2,000 per brand style. Currently Hawaii has 2,156 brand styles listed in the Hawaii Tobacco Directory. The State of New York's RIP cigarette directory lists approximately 1,216 brand styles of which 1,152 brand styles are also listed on Hawaii's Tobacco Directory. Assuming 1,152 of the brand styles of cigarettes listed on Hawaii's Tobacco Directory certifies as RIP cigarettes, testing costs for one test per year would be in the range of \$875,520 to \$2,304,000. Assuming the same number as RIP cigarettes certified in New York, the laboratory costs could range between \$924,160 and \$2,432,000. The laboratory testing costs do not include the cost of purchasing the cigarettes at retail at an estimated \$5.00 to \$6.00 per pack which ranges from \$23,040 to \$27,648 for four packs of the 1,152 brand styles currently listed on both New York's RIP cigarette directory and Hawaii's Tobacco Directory. The cost of purchasing cigarettes at retail increases to \$43,120 to \$51,744 for four packs needed to conduct one test of all 2,156 brand styles listed in the Hawaii's Tobacco Directory.

Aside from the cost involved in determining if cigarettes are compliant with RIP cigarette statutes, there are numerous collateral issues involved with compliance testing that need to be more fully examined. While the model statute calls for seizure of noncompliant cigarettes, it is not clear how this directive would be accomplished for certain noncompliant cigarettes. Clearly, commercially manufactured cigarettes that do not have the RIP labeling would be relatively easy to spot and seize. The difficulty arises when independent testing is done and a certain cigarette brand style fails the test protocols. Arguably, these cigarette brand styles would be noncompliant and therefore not eligible for retail sale. If that is the case, it is not clear if the cigarettes would be immediately subject to seizure, and under what authority the State would have to do so.

If the RIP cigarette legislation proposes to treat these noncompliant cigarettes similar to a product recall justifying seizure due to manufacturing defect, additional collateral issues will need to be considered. For instance, if noncompliant cigarettes are "recalled," it is plain that the retailers and distributors would be hard pressed to absorb those costs. Additionally, recall costs or refunds from the manufacturer are unlikely to be

forthcoming. Accordingly, retailers and distributors will be out the cost of any noncompliant cigarettes. This issue is not addressed simply by relying on the State to sue the manufacturers to enforce compliance standards. In any lawsuit to enforce compliance, the State will bear the extremely high burden of proving that more than the permissible 75 percent of the RIP cigarette product was “defective” and fell below the acceptable standard. Additionally, because the State does not represent retailers and distributors, these interested parties will have to file their own lawsuits.

Finally, the ramifications of noncompliant cigarettes on tax revenues will also have to be examined. It is unclear if the wholesaler or dealer will become eligible for a tax credit should certain brand families be found to be noncompliant. These important compliance issues have not been fully addressed or resolved in other states that have only recently passed RIP cigarette legislation.

## **COSTS OF AN RIP CIGARETTE PROGRAM**

Information on the cost to implement an effective RIP cigarette program is not readily determinable. The SFC reports that the costs of administration, implementation, and enforcement are minimal in all states except New York. New York has an ongoing enforcement program that is vested in the State Office of Fire Prevention and Control. New York has indicated that its budget is between \$1,200,000 and \$1,300,000, which includes \$400,000 for compliance testing of approximately 300 brand styles per year. Alaska’s expected costs range from \$41,600 to \$35,800 per year.<sup>21</sup> Utah’s appropriation for RIP cigarette enforcement is estimated to start at \$66,400 per year.<sup>22</sup> Minnesota expects costs of \$100,173 per year.<sup>23</sup> If the Hawaii RIP cigarette program is to be modeled after the New York program, which includes testing of cigarettes for RIP cigarette compliance, program costs may well be in the area of \$1,200,000 to \$1,300,000 per year.

## **PERSONNEL REQUIREMENTS**

The SFC, the Department of Attorney General, the Department of Health, and the Department of Taxation all are not certain of the costs and personnel requirements to implement, administer, and enforce an RIP cigarette program in Hawaii. We note that the SFC has indicated a need to have at least two permanent full time equivalent positions to administer and implement the program with estimated costs of personnel and equipment in the amount of \$242,620. The SFC has indicated that in New York, the operational cost to administer the RIP cigarette law includes two full-time staff, including the administrative time of the department chief and an agency counsel. Personnel requirements for other states are minimal at this point in time. However, because the RIP cigarette statutes have all been recently passed, it is too soon to make a determination of

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<sup>21</sup> Fiscal Note, State of Alaska 2007 Legislative Session, prepared by Alaska’s Department of Revenue Tax Division.

<sup>22</sup> Fiscal Note, Utah State Legislature 2007, Office of Legislative Fiscal Analyst.

<sup>23</sup> Fiscal Note 2007-08 Session, Minnesota Public Safety Department.

whether the use of existing personnel is adequate to properly administer and enforce the statute. Nevertheless, should the State of Hawaii implement an RIP cigarette program, the New York or Vermont models may be utilized as a starting point to sort out personnel requirements based on expertise, funding, and resources.

## **SOURCE OF FUNDING**

Possible funding sources for an RIP cigarette program in Hawaii include a certification fee for each brand style of cigarette or legislative appropriations. The model statute calls for a certification period of three years, which results in the fee being collected once every three years and not on an annual basis. The amount of the fee varies from no fee to \$1,000 per brand style. The most common fee being \$250 per brand style. Currently there are 2,156 brand styles listed on the State of Hawaii's Tobacco Directory, which lists cigarettes that may be stamped and sold because the manufacturers are in compliance with the requirement of chapters 675 and 486P, Hawaii Revised Statutes. The State of New York lists 1,216 RIP certified cigarette brand styles listed on the New York RIP cigarette compliant directory. There are 148 brands listed on the New York RIP cigarette list that are not listed on Hawaii's Tobacco Directory, leaving approximately 1,068 brand styles, which may seek RIP cigarette certification in Hawaii. Using 1,068 as a possible number of RIP cigarette brand styles to be certified at a fee of \$250 per brand style would yield a total of \$267,000 to fund an RIP cigarette program. It should be noted that the model statute calls for a certification period of once every three years, which yields an annual fund of approximately \$89,000 per year based on fees of \$267,000 divided by three years. Extrapolating the projected Hawaii RIP cigarette list of 1,068 certified brands to a fee of \$1,000 per brand style yields \$1,068,000, or \$356,000 allocated between three years, to fund the administration, implementation, and enforcement of an RIP cigarette program. Depending on the funding mechanism and costs attendant to the administration, implementation, and enforcement of an RIP cigarette program, it may be necessary to adopt either an annual or biennial certification period or increase the amount of the three-year certification fee in order to adequately fund an RIP cigarette program.

Alternative funding for an RIP cigarette program includes the following sources: appropriation from general funds, a specific allotment from moneys taken in from tobacco taxes, moneys received from the tobacco industry as payment from the Tobacco Master Settlement Agreement, or a combination of any of the above. The SFC notes that some states have funded the implementation phase of their law with a one-time allocation. SFC provides as reference the \$50,000 allocation by California's state legislature to implement the law. However, in discussions with representatives of the California State Fire Marshal and Board of Equalization, we are left with the impression that SFC is mistaken about the \$50,000 appropriation. In addition, reviews of a number of California legislative documents indicate no appropriation was made, which is consistent with the information we received from the respective California agencies. SFC also points to provisions in the adopted RIP cigarette statutes that include civil penalties for noncompliance and other issues, which can potentially generate significant

revenue for the state to pursue civil action against non-complying parties for remediation. As most RIP cigarette statutes in other states have only recently been enacted, it is not clear which source of funding would be best suited for Hawaii's RIP cigarette program.

## REVENUE IMPACT

Research conducted at the Harvard School of Public Health<sup>24</sup> indicates that the introduction of RIP cigarettes has had no effect on consumer purchases of cigarettes in New York. The Harvard School of Public Health report also found that New York cigarette tax revenues did decrease slightly, however, the decrease was not found to be statistically significant. Similar results are expected in Delaware<sup>25</sup> and Massachusetts.<sup>26</sup> The State of New Hampshire commissioned a study of the fiscal impact of RIP cigarette legislation in New Hampshire in 2005 with an addendum in 2006. The study and addendum was conducted by Matthew Magnusson, MBA, advised by Professor Ross Gittel, PhD, of the University of New Hampshire.<sup>27</sup> The studies looked at the experience in New York and came to the conclusion that RIP cigarette regulation would not have a significant impact on cigarette consumption and New Hampshire tobacco tax revenues. To date, an economic study has not been commissioned to determine the economic impact of RIP cigarette legislation in the State of Hawaii. However, the State of Hawaii Department of Taxation reviewed the Harvard School of Public Health's report of the effect of RIP cigarette legislation on cigarette tax revenues in New York and extrapolated those findings to determine the impact on cigarette tax revenues in Hawaii. Based on its review, the Department of Taxation estimates that the adoption of an RIP cigarette standard in Hawaii would result in a cigarette tax revenue loss of approximately two percent or \$1,760,000. Although the Department of Taxation failed to indicate how much of an impact this two percent decrease in cigarette tax revenues would have on Hawaii, it did note the Harvard School of Public Health's conclusion that New York's 2.5 percent drop in cigarette tax revenues was insignificant.

## TIMETABLE FOR IMPLEMENTATION

Any RIP cigarette program implemented in the State of Hawaii must allow for ample time for distributors and retailers to cycle existing cigarettes through the stream of commerce. Most manufacturers' policies do not allow for return of product, so without an adequate time frame to sell off existing product, distributors and retailers will be left with cigarettes which will be illegal to sell in the state and will be unreturnable. Similarly, most distributors have already paid the tax on large inventories of cigarettes and have had tax stamps affixed on large quantities of product.

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<sup>24</sup> "Fire Safer" Cigarettes, The Effect of The New York State Cigarette Fire Safety Standard On Ignition Propensity, Smoke Toxicity, and the Consumer Market, A Preliminary Report January 24, 2005.

<sup>25</sup> State Fire Marshal's Report Addressing the Impact of Lower Ignition Strength (Fire Safe Cigarettes), Delaware State Fire Marshall, January 17, 2006.

<sup>26</sup> An Overview of the Life Safety and Fiscal Impact of the Proposed "Safe Cigarette" Law in Massachusetts (Department of Fire Services, Office of the General Counsel).

<sup>27</sup> Fiscal Impact of Lower Ignition Strength Cigarettes on New Hampshire State Tobacco Tax Revenues (2005). Fiscal Impact of Lower Ignition Strength Cigarettes on New Hampshire State Tobacco Tax Revenues Addendum (2006).



One solution may be to time the effective date for implementation of the RIP cigarette standards with a date that coincides with a cigarette tax increase. Cigarette tax increases in Hawaii are scheduled for the end of September in 2008, 2009, 2010, and 2011. As a practical matter, with the advent of a new cigarette tax rate there is a change in the color of the tax stamp. If the effective date of the RIP cigarette statute coincides with the effective date of the new tax increase, then only RIP certified cigarettes could be stamped with the latest tax stamp. Most distributors and retailers are already familiar with the annual cigarette tax stamp increases and can plan the sale of existing cigarette inventory accordingly.

## **LEAST COST TO THE STATE**

The request from the legislature was to review the RIP cigarette statutes adopted in other states and Canada and determine how an RIP cigarette program could be adopted in Hawaii with minimum cost to the State and with minimal burden to cigarette manufacturers, distributors, and retail sellers. Any effective RIP cigarette legislation in Hawaii will require its own testing and certification of cigarettes intended for sale in Hawaii. Hawaii's testing and certification procedures can be modeled after New York, and the same laboratory should be utilized to minimize costs. While it may appear redundant to require testing of cigarette brand families already certified by New York, the list of cigarettes tested and certified as RIP cigarette compliant in New York, may not be the same cigarette brand families currently listed on Hawaii's directory. Some states have encountered this issue already, and have resolved it by simply permitting cigarettes that have been certified in *any* state to be listed on their directories. However, since most states do not require actual testing before certification, it may be possible to be certified as RIP cigarette compliant in a state without doing anything more than simply filling in an application and paying a certification fee. If the intent of the RIP cigarette legislation is to save lives, then the most cost effective RIP cigarette program for Hawaii is one where the State administers its own testing and certification program.

However, from a purely financial perspective, a viable alternative to adopting RIP cigarette standards for the State of Hawaii is to maintain the status quo and wait to see what happens in other jurisdictions. There are currently 22 states, which according to the Coalition of Fire Safe Cigarettes comprise 52 percent of the U.S. population, that have adopted RIP cigarette programs. As more states adopt RIP cigarette programs, it may become more cost effective for cigarette manufacturers who wish to sell in the U.S. markets to adopt RIP cigarette standards for all of their products. We note that Nat Sherman, a world-wide tobacco company, announced in February of 2007 that all of its cigarette brands sold nationwide now meet the Low-Ignition Propensity standards adopted by a number of states, including New York, Vermont, and California. Nat Sherman management's reasons for adopting its RIP cigarette policy appear to center around a desire to simplify inventory management and eliminate the risk of shipment violations for its customers who distribute their brands. Similarly, on October 25, 2007, the Executive Vice President of Public Affairs for Reynolds American Inc. notified the

National Fire Protection Association that R.J. Reynolds Tobacco Company intends to convert to fire-standards complaint paper on all of its cigarettes brands by the end of 2009. Further, the model statute includes a provision in anticipation of federal legislation. If the Federal Government does in fact pass legislation, all conflicting state regulation of RIP cigarettes would be preempted.

## **POTENTIAL CONFLICT WITH CURRENT REGULATORY ENVIRONMENT**

Cigarettes come into Hawaii for sale and distribution from all over the world. Under the current regulatory environment, all cigarettes that are stamped and sold in Hawaii must be compliant with section 245-22.5, Hawaii Revised Statutes, which precludes the stamping or sale of cigarettes that are not listed in the State Tobacco Directory, in accordance with the requirements of chapter 675 and section 486P-6, Hawaii Revised Statutes. There are currently 2,156 brand styles listed on Hawaii's tobacco directory that may be stamped and sold in the state. Wholesalers, dealers, stampers, and retailers are instructed to cross check their cigarette inventory with the Tobacco Directory in order to ensure that their current cigarette inventories remain in compliance. Noncompliant cigarettes are subject to seizure. Further, a violation of section 245-22.5, Hawaii Revised Statutes, is a class C felony offense.

Any proposed RIP cigarette program will put in place a second tier of regulation that would impose a restriction on the stamping, sale, and distribution of cigarettes that are not RIP cigarette complaint and may conflict with the current regulatory regime. There is a possibility that certain cigarettes may be RIP compliant but not compliant with the requirements of chapters 486P and 675, Hawaii Revised Statutes. This may lead to confusion in the marketplace as to what cigarettes may or may not be stamped and sold in Hawaii. It should be noted that New York state, whose RIP cigarette program serves as a model for other RIP cigarette programs around the country does not face this dilemma because the New York law does not require a posting of a directory of Master Settlement Agreement compliant cigarettes. In order to avoid confusion for the dealers, wholesalers, stampers, and retailers, Hawaii's RIP cigarette program should be limited to only those cigarettes that are compliant with the requirements of chapters 486P and 675, Hawaii Revised Statutes. A possible remedy to this potential problem is to change the language in the model statute as noted below:

Except as provided in subsection \_\_\_\_, no cigarettes may be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless the cigarettes comply with all applicable federal, state, county, and local laws, ordinances, rules, and regulations pertaining to cigarettes and have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the [state entity responsible for administering the provisions of this Act] in accordance with section 5 of this Act, and the cigarettes have been marked in accordance with section 6 of this Act.

## **BURDEN ON THE INDUSTRY IMPACT AND CONCERNS**

Cigarette manufacturers, distributors, and retailers were provided an opportunity to comment on the burden or impact that a Hawaii RIP cigarette statute would have on their business. All cigarette manufacturers who are currently listed in the Department of the Attorney General's Tobacco Directory were asked to detail their comments and concerns for inclusion in this report. The same request was made of those wholesalers and distributors who are authorized to stamp cigarettes for sale in the state. Finally, retail organizations were also asked to comment on the proposed RIP cigarette program. The SFC has indicated a belief that only manufacturers would be burdened with a fee and thus there would be no fees on distributors, wholesalers, or retailers. However, there has been no solid commitment from the manufacturers that these fees or additional costs will not be passed on to distributors, wholesalers, or retailers. The primary concerns of manufacturers, distributors, wholesalers, and retailers are summarized as follows:

- Hawaii's RIP cigarette program would be consistent with the RIP cigarette program in other states.
- That ample time is allowed so that complying product will be readily available.
- Already stamped inventory be allowed to sell through.
- The transition is as seamless as possible.
- Credit is given for stamps on stamped products that could not be sold.
- Manufacturers will not accept returns of cigarettes that are not RIP compliant.
- Previously legitimate product is not treated as contraband and subject to seizure and forfeiture.

## **MANUFACTURERS**

Of the manufacturers contacted, only Philip Morris, RJ Reynolds Tobacco Company, Truth and Liberty, Japan Tobacco International U.S.A., Inc., Carolina Tobacco, KONCI MANAGEMENT GROUP (USA) INC., and Santa Fe Natural Tobacco Company responded to the inquiry and provided input. In short, the manufacturers who would be impacted by a RIP cigarette program in Hawaii were concerned with uniformity of the requirements and the ability of their customers to sell-off existing inventory prior to the effective date of the RIP cigarette program. The specific comments by each manufacturer is summarized as follows:

Philip Morris: Philip Morris supports federal legislation to establish RIP cigarette requirements equivalent to the standards and packaging requirements adopted in New York. If Hawaii is to adopt an RIP cigarette standard, Philip Morris is of the opinion that Hawaii should adopt the National Fire Protection Association's model legislation, which incorporates the New York requirements.

R.J. Reynolds Tobacco Company: R.J. Reynolds takes the position that there is no such thing as a fire-safe cigarette and that mandating cigarettes that meet low-ignition propensity or RIP cigarette standards and requirements is a matter for the respective state legislatures. R.J. Reynolds is of the opinion that if an RIP cigarette standard is adopted, it should be one that is uniform with regard to compliance, testing, methodologies, and parameters. Non-RIP compliant cigarettes should be allowed to sell through if they are tax stamped prior to the effective date of RIP cigarette compliance. R.J. Reynolds is concerned that an arbitrary cut off date that does not allow for the sell off of previously stamped product will lead to contraband subject to seizure of previously legitimate product and potential infringement on the taking of property without due process, compensation, or refund of paid excise taxes.

Truth and Liberty: Truth and Liberty is a nonparticipating manufacturer that does not sell cigarettes into Hawaii. It responded that it has not experienced any problems in states requiring RIP cigarettes. This manufacturer recommends a lead time of six months.

Japan Tobacco International U.S.A., Inc. (JTI): JTI encouraged the adoption of RIP cigarette standards and packaging requirements which mirror that of New York. JTI recommends a system in Hawaii that would merely accept any cigarette certified as New York as being Hawaii compliant and be automatically approved. It further recommend that a certification by the manufacturer, rather than a laboratory, should suffice and no fees should be assessed. JTI recommends a lead time of six months minimum.

KONCI Management Group (USA) Inc.: KONCI has indicated that it would not be affected by the adoption of an RIP statute because all of its cigarette products are already made with RIP paper.

Carolina Tobacco Company (CTC): CTC noted that it is certified as compliant with RIP cigarette regulations in New York, California, and Oregon. CTC cigarettes have not been sold in Hawaii since 2003. CTC noted that only one or two cigarette paper manufacturers provide the RIP paper. CTC incurs an additional cost to use the RIP paper of \$.05 per pack. CTC also incurs laboratory costs. To build test chambers the costs range from \$8,000 to \$12,000 for three test chambers. Actual testing costs ranged from \$1,500 to \$3,700 per brand style. CTC offers two brands of cigarettes ROGER and KINGSBORO. Each brand has eight brand styles, for a total of 16 brand styles that must be tested. CTC does not pass on the additional cost for the RIP paper and laboratory testing to its distributors or retail customers. CTC charges the same amount for RIP and non-RIP cigarettes. Additional, unquantifiable costs include markings printed on packs, cartons, and master cases indicating RIP compliance are not affixed by CTC's packaging printers, but are instead applied separately at the factory by CTC employees. CTC also bears the additional burden of manufacturing, shipping, and maintaining two separate inventories (non-RIP and RIP) for each brand style of each brand. With regard to implementation, since no CTC cigarettes are currently sold in Hawaii, there is no inventory to be replaced.

Santa Fe Natural Tobacco Company: Recommended a six-month period to draw down inventory and a 12-week lead time from date of passage to effective date in order to manage and change inventory, packaging, and manufacturing processes.

## **DISTRIBUTORS**

Of the distributors contacted, only Hawaiian Isles Enterprises, Inc., Hu's Trading, and McLane Northwest responded to the inquiry and provided input. In sum, for the distributors who responded, the primary concerns appeared to be the increase in manufacturer costs that would be passed along to the distributors and the ability to sell-off inventory prior to the effective date of the RIP cigarette program. The specific comments by each responding distributor are summarized as follows:

Hawaiian Isles Enterprises, Inc.: Hawaiian Isles Enterprises, Inc. is concerned about identification of inventory and computerized inventory controls that would need to be changed to identify new UPC coding. The new UPC coding would affect distributors and retailers. Hawaiian Isles is also concerned about product that would be noncompliant and having to absorb the cost if the manufacturers will not accept the product as a returnable item for full credit. The distributors and retailers should be able to return noncompliant product to the manufacturer for full credit and receive credit for the state taxes paid on the returned cigarettes. Hawaiian Isles recommends one year as a reasonable time to implement the program. Hawaiian Isles concern is heightened by the no return policy by the cigarette manufacturers.

Hu's Trading: Hu's Trading is concerned that the additional cost to the manufacturers will be added to their cost. It believes that a time period of six months is necessary to clear inventory at the distributor level and one year at the retail level.

McLane Northwest: McLane Northwest indicated that it already carries RIP cigarettes for the State of Oregon. It requested early notification and a couple of months lead time.

## **RETAILERS**

Input from the retailer section was sought from the following associations: Retail Merchants of Hawaii and the Hawaii Food Industry Association. Their comments are summarized below as follows:

Retail Merchants of Hawaii: The Retail Merchants Association is primarily concerned with having sufficient time to phase in new merchandise and sell through old stock. It recommend that this sell-through period be at a minimum six to nine months. There is a concern that different store locations have different rates of sell-through and having to move inventory from one store to another to meet compliance deadlines would be cumbersome and costly.

Hawaii Food Industry Association: The representative of the Hawaii Food Industry Association expressed concern that its clients be able to deplete nonconforming inventory prior to an RIP cigarette program taking effect, or in the alternative, that the client base be able to return the noncompliant product to the distributor for full credit or exchange.

## CONCLUSION

It is clear that the concern for fire safety and fire protection was the impetus for RIP cigarette legislation. However, issues surrounding primary responsibility, funding, expertise, costs, personnel requirements, and testing remain uncertain. Because RIP cigarette legislation is relatively new, the complexities of the issues and the practical realities of running an effective program have not been realized, even in states that have already passed RIP cigarette legislation. Accordingly, the true impact of RIP cigarette legislation in other states will not be evident for several years, and extrapolating anything learned from those states to Hawaii is premature. Therefore, the RIP cigarette program option that should be adopted in Hawaii with a minimum cost to the State would be to take no action on RIP cigarettes at this time, and await further developments in the industry, other states, and possibly federal RIP cigarette regulation.

Any RIP cigarette legislation that proposes creating a program with the stated legislative purpose of improving fire safety standards to reduce fires that may result in deaths, injuries and property damage should not be undertaken lightly. Careful thought must be given to the legislation to ensure that the agency entrusted with administering the RIP cigarette program has the proper expertise in fire safety to not only properly monitor compliance with fire safety standards, but to determine acceptable alternative standards if necessary. Should the Legislature decide that RIP cigarette legislation is appropriate for Hawaii at this time, it should be adopted, implemented, and administered within the existing statutory authority. In Hawaii, pursuant to chapter 132, Hawaii Revised Statutes, issues of fire safety and fire protection are delegated to the SFC and county fire chiefs.

It would be impractical to assign the implementation, administration, and enforcement of an RIP cigarette program to a state agency other than the SFC and county fire chiefs. Because the underlying issues are fire safety, and preventing deaths and injuries from cigarette ignited fires, fire professionals must be involved in scrutinizing certifications and maintaining information on acceptable RIP product. Neither the Department of Taxation nor the Department of the Attorney General is statutorily tasked with the responsibility to prevent and secure life from the ravages of fire and should not be responsible for the implementation, administration, and enforcement of an RIP cigarette program for which these agencies are ill-equipped. The model RIP statute calls for an administrative agency with personnel with the expertise to make informed and reasoned decisions on such issues as devising or accepting alternative testing methods and modalities to adequately address the certification and testing requirements of the model RIP cigarette statute. In Hawaii, it is clear that the agency with the necessary expertise is SFC. It is clear that SFC is concerned about the ability of county fire chiefs

to effectively manage a state-wide program because of the level of their authority. However, the SFC and county fire chiefs have demonstrated an ability to effectively manage all other current state-wide fire safety and fire prevention responsibilities that it appears their concerns about their ability to effectively implement and administer an RIP cigarette program are unfounded. In addition, the SFC has indicated that to administer and implement an RIP cigarette program in Hawaii, the SFC would need funding<sup>28</sup> to employ at least two full-time personnel (an Administrator and an Administrative Assistant) one to two years prior to the enactment of an RIP certification statute.

The Department of the Attorney General clearly has a legal role to play in RIP cigarette enforcement that requires litigation and in conducting compliance inspections that mesh with the Department of the Attorney General's mandate pursuant to chapters 245, 486P, and 675, Hawaii Revised Statutes. In conducting tobacco related inspections, the Department of the Attorney General is statutorily authorized to seek assistance from other law enforcement agencies. A similar accommodation may be reached in RIP cigarette inspection programs to include fire personnel as a reasoned approach to effective enforcement of an RIP cigarette program. The Department of Taxation's role in any RIP cigarette program may well depend upon the timing of the program and if it coincides with a scheduled tax increase. The Department of Taxation will be best able to determine what additional work may be required to address refunding of unused stamps which will have to occur if only RIP cigarettes may be stamped after a date certain.

The actual cost of implementing, administering, and enforcing an RIP cigarette program in the State of Hawaii is difficult to determine without a proper economic study. The costs of RIP cigarette programs in other states vary depending on the terms of the specific programs. Most of these states have attempted to minimize their costs by accepting New York's certification without requiring any further testing, assigning the RIP cigarette programs to agencies without appropriating additional personnel or funding, and requiring certification fees. As Hawaii is different in many respects from other states, it is not recommended that Hawaii follow the exact path most states have taken with RIP cigarette legislation.

It is not recommended that Hawaii simply certify cigarettes already certified in New York as RIP cigarettes without further inquiry and testing. While New York's list is extensive, there is the possibility that cigarettes sold in Hawaii will not be tested and certified in New York. Cigarettes sold in Hawaii are manufactured all over the world, therefore, it is recommended that Hawaii engage in active RIP cigarette testing to ensure compliance. Testing alone will clearly be costly and may possibly exceed \$400,000 a year.

To cut down on the costs, some states have assigned RIP cigarette programs to existing agencies without additional staff or funding. This is not recommended for the State of Hawaii. The SFC has made clear that they do not have the personnel or funds to properly implement and administer this program. Should SFC be assigned to implement, administer, and enforce this program, the legislature should appropriate the necessary

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<sup>28</sup> Personnel, fringe benefits, and equipment and supplies totaling \$242,620.

funds for personnel and costs. The additional revenue for these costs can be raised through the institution of a fee-based structure for certifications and other sources of tobacco related revenue.

Certifications should be on an annual basis rather than a three-year cycle in order to begin to address the funding issue. The certification fee recommended in the model statute is \$250 per cigarette listed in a certification. An annual certification period would provide a current funding mechanism and provide the most current information from the manufacturers. Start-up or supplemental funding for an RIP cigarette program includes the following sources: appropriation from general funds, an allotment from moneys taken in from tobacco taxes, moneys received from the tobacco industry as payment from the Tobacco Master Settlement Agreement, or a combination of any of the above.

In Hawaii, it appears that the loss to the State in tobacco tax revenue funds is not significant. The Department of Taxation has reported a potential loss of \$1,760,000 in tax revenue, which it deemed minimal. Most states have similarly reported that any tax revenue losses from RIP cigarette programs are not expected to be significant. A review of the information received from other states indicates that as the date of this report, New York has not suffered a great loss in cigarette tax revenues due to the implementation of RIP cigarette restrictions. Other states contacted did not report an expected loss of tobacco tax revenues.

Finally, those manufacturers, dealers, wholesalers, and retailers who responded to the inquiry noted no great financial or economic burden. Their main concern was consistent application and a reasonable transition period with accommodation for previously purchased product.



**STATUS OF RIP LEGISLATION  
BY STATE AND IN CANADA<sup>29</sup>**

- › New York  
Signed into law Dec. 31, 2003. Became effective June 28, 2004.
- › Vermont  
Signed into law June 17, 2005. Became effective May 1, 2006.
- › California  
Signed into law on Oct. 7, 2005. Became effective Jan. 1, 2007.
- › Illinois  
Signed into law on May 19, 2006. Will become effective on Jan. 1, 2008.
- › New Hampshire  
Signed into law May 31, 2006. Will become effective Oct. 1, 2007.
- › Massachusetts  
Signed into law July 8, 2006. Will become effective January 1, 2008.
- › Utah  
Signed into law March 2007. Will become effective July 1, 2008.
- › Kentucky  
Signed into law March 27, 2007. Will become effective April 2008.
- › Oregon  
Signed into law April 17, 2007. Became effective July 1, 2007.
- › New Jersey  
Signed into law May 4, 2007. Will become effective June 1, 2008.
- › Minnesota  
Signed into law May 7, 2007. Will become effective December 1, 2008.
- › Montana  
Signed into law May 11, 2007. Will become effective May 1, 2008.
- › Maryland  
Signed into law May 17, 2007. Will become effective July 2008.
- › Iowa  
Signed into law May 21, 2007. Will become effective January 1, 2009.
- › Maine  
Signed into law June 8, 2007. Will become effective January 1, 2008.
- › Texas  
Signed into law June 15, 2007. Will become effective January 1, 2009.
- › Rhode Island  
Signed into law July 3, 2007. Will become effective August 1, 2008.
- › Delaware  
Signed into law July 5, 2007. Will become effective January 1, 2009.
- › Connecticut  
Signed into law July 10, 2007. Will become effective July 1, 2008.
- › Louisiana  
Signed into law on July 10, 2007. Will become effective August 31, 2009.
- › Alaska  
Signed into law July 18th, 2007. Will become effective August 1, 2008.
- › North Carolina  
Signed into law August 24, 2007. Will become effective January 1, 2010.
- › Canada  
The standard went into effect across Canada on October 1, 2005.

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<sup>29</sup> Compilation of information found on Coalition for Fire-Safe Cigarettes web site, [www.firesafecigarettes.org](http://www.firesafecigarettes.org).