



**STATE OF MAINE  
126<sup>th</sup> LEGISLATURE  
FIRST REGULAR SESSION**

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

**Joint Standing Committee on Criminal Justice and Public Safety**

**JULY 3, 2013**

**Staff:**

Anna Broome, Curtis Bentley, Policy Analysts  
Suzanne Armstrong, Committee Clerk

Committee on Criminal Justice and Public Safety  
c/o Legislative Information  
100 State House Station  
Augusta, Maine 04333

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**Prepared by Richard E. Taylor, Senior Research and Planning Analyst  
Office of the Maine State Fire Marshal**

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## **EXECUTIVE SUMMARY**

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

Prior to Maine's passage of Chapter 253, the states of Vermont, New Hampshire, California, Oregon and New York had passed similar legislation. In addition, Canada had passed national legislation. In 2007 therefore Maine was surrounded by states and Canada who had enacted legislation requiring cigarettes sold within their boundaries be reduced ignition propensity (RIP) cigarettes. At the time this report was written all 50 states had implemented RIP laws. The most distinguishing element of Maine's law is that Maine's State Fire Marshal's Office does not charge a fee for the certification of fire safe cigarettes. Most states charge a fee ranging from \$100 to \$1,500 per brand style and up.

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

## **INTRODUCTION**

Fires started by smoking materials, primarily cigarettes constitute a leading cause of residential fire deaths in Maine and across the nation. According to analyses by the United States Fire Administration (USFA) and the National Fire Protection Association (NFPA) smoking related fire deaths are almost three times as likely as residential fire deaths due to others causes. This higher level of lethality is due to the fact that smoking related fire deaths frequently involve an individual close to the point of ignition. The majority of home smoking related fire deaths involve mattresses, bedding and upholstered furniture in addition to the trash. The close proximity to ignition worsens burn and smoke inhalation injury because mitigation technologies such as smoke detectors, sprinklers or escape planning strategies don't go off soon enough to avert these injuries.

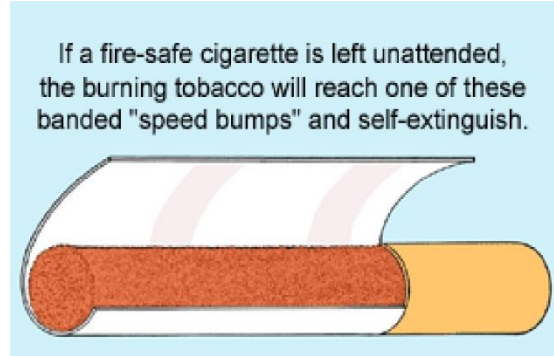
Though the number of individuals smoking as a percentage of the total population is declining due to cessation programming and other efforts, there is still a segment of the population that still smoke. Older Americans in general, already at high risk in terms of fire fatality, continue to smoke more.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

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

## REDUCED IGNITION PROPENSITY CIGARETTES

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

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



### STATISTICS ON SMOKING RELATED FIRES AND DEATHS IN MAINE

Cigarettes were reported as the heat source in 672 fire reports filed by Maine Fire Departments between 2006 and 2011. Of these 672 fires, 214 occurred in structures<sup>1</sup> and 184 in residential structures. There were an additional 34 cigarette related fires in residential occupancies that did not turn into a residential structure fire. Because the impetus of the Fire Safe Cigarette effort was to reduce deaths due to smoking fires which occur almost always in a residential structure, we focused on structures alone. As Table 1 below indicates, smoking fires as a cause of *all* structure fires is not as frequently reported by Maine Fire Departments as other causes. They only comprise between one to two percent of fires in contrast to other causes such as *cooking, heating, and other* fires that cause twenty percent or more of the fires in Maine.

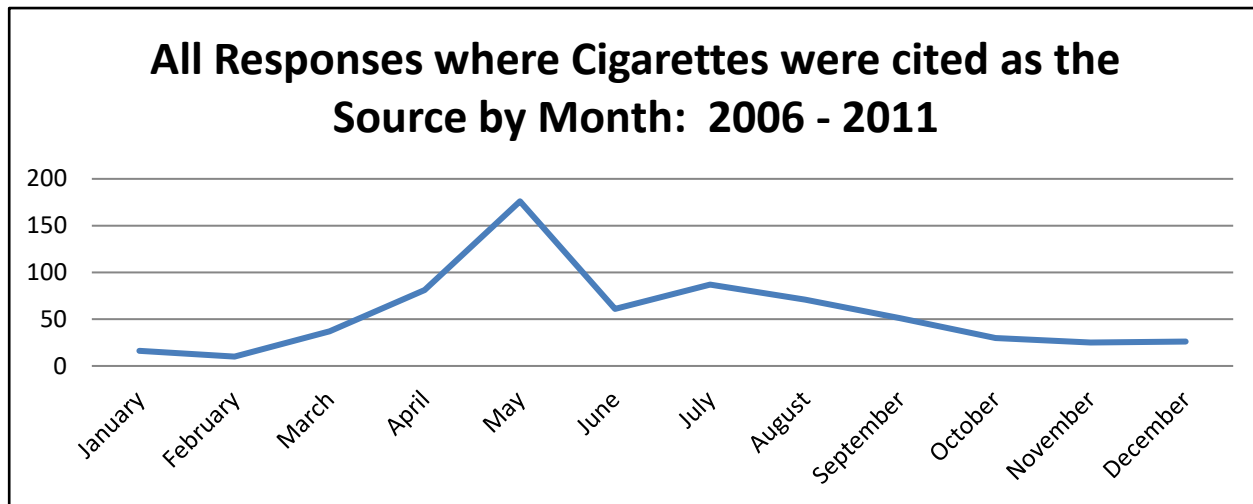
**Table 1**

Maine Fire Incident Reporting System - Structure Fire Causes 2006 - 2011												
	2006		2007		2008		2009		2010		2011	
	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL
Incendiary/supicious	96	4.6%	95	4.7%	79	4.1%	78	3.8%	92	5.4%	79	4.4%
Smoking	35	1.7%	39	1.9%	31	1.6%	33	1.6%	35	2.0%	41	2.3%
Heating	685	33.1%	738	36.3%	752	38.9%	734	36.2%	597	34.8%	608	34.0%
Cooking	550	26.6%	487	24.0%	461	23.8%	494	24.3%	445	25.9%	520	29.1%
Electrical	18	0.9%	14	0.7%	10	0.5%	25	1.2%	18	1.0%	14	0.8%
Other	687	33.2%	660	32.5%	600	31.0%	666	32.8%	528	30.8%	527	29.5%
<b>Total</b>	<b>2071</b>	<b>100.0%</b>	<b>2033</b>	<b>100.0%</b>	<b>1933</b>	<b>100.0%</b>	<b>2030</b>	<b>100.0%</b>	<b>1715</b>	<b>100.0%</b>	<b>1789</b>	<b>100.0%</b>
<b>Average % of structure fires caused by smoking for this period was 1.86%</b>												

It should also be noted that though cigarette related fires show little if any significant seasonality, all responses where cigarettes are the identified heat source are very seasonal and show a considerable jump beginning in April, peaking in May then going down. Most of the spring fires are outdoors with a considerable number occurring in vehicle parking areas (see Graph 1 on the following page).

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

Graph 1



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

Table 2

Maine Fire Incident Reporting System - Residential Structure Fire Causes 2006 - 2011												
	2006		2007		2008		2009		2010		2011	
	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL	# Fires	% of TL
Incendiary/supicious	59	3.5%	63	3.9%	58	4.2%	52	3.1%	59	4.3%	60	4.0%
Smoking	31	1.9%	36	2.2%	24	1.8%	30	1.8%	27	2.0%	36	2.4%
Heating	629	37.6%	679	41.8%	564	41.3%	687	41.3%	550	40.0%	563	37.7%
Cooking	468	28.0%	399	24.5%	354	25.9%	417	25.1%	373	27.1%	452	30.2%
Electrical	16	1.0%	10	0.6%	5	0.4%	20	1.2%	8	0.6%	10	0.7%
Other	469	28.1%	439	27.0%	361	26.4%	457	27.5%	358	26.0%	374	25.0%
Total	1672	100.0%	1626	100.0%	1366	100.0%	1663	100.0%	1375	100.0%	1495	100.0%
Average % of structure fires caused by smoking for this period was 1.73%												

When we look at fire fatality we use the Fire Marshal’s Office Investigations files since the bureau is charged with investigating all fires resulting in the death of an individual. In reviewing that data for the years 2002 – 2011 below in Table 3, a ten year period, you can see that in contrast to other identified fire causes, fatalities due to smoking are particularly lethal given they only comprise around 2% of all residential structure fires..

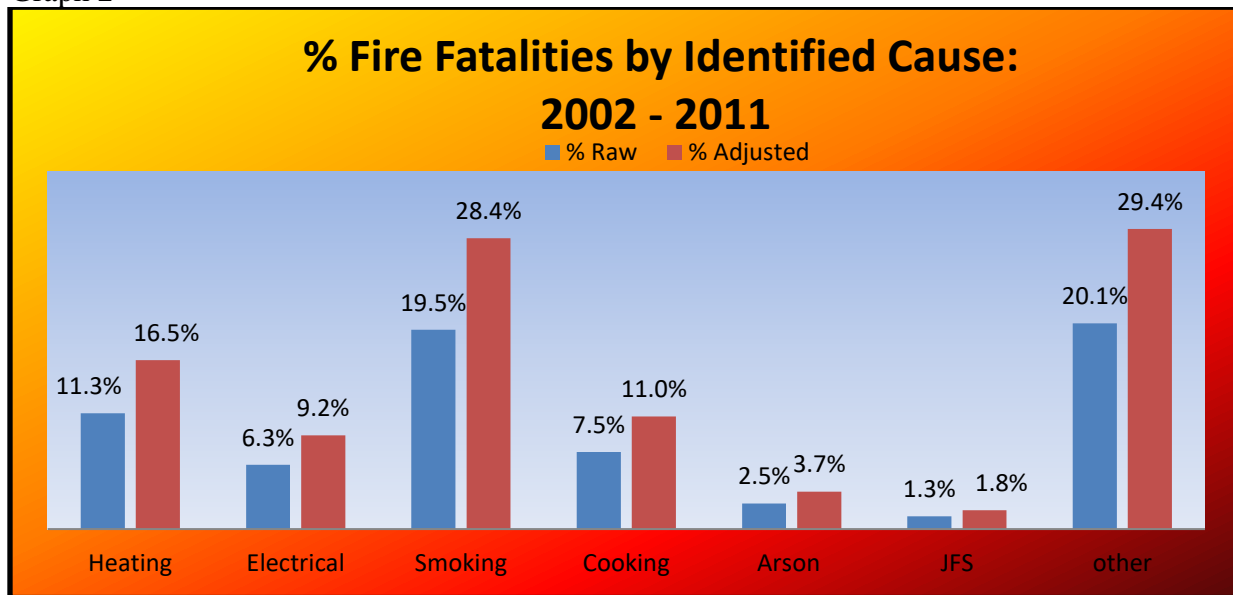
Table 3

Estimated Fire Fatalities by Cause 2002 - 2011											
	Heating	Electrical	Smoking	Cooking	Arson	JFS	other	Undetermined	Total		
2002	2	0	3	2	0	0	5	2	14		
2003	3	0	6	1	0	0	4	9	23		
2004	1	1	5	2	0	0	2	6	17		
2005	4	2	1	1	0	0	6	8	22		
2006	5	0	3	1	0	2	4	0	15		
2007	0	0	1	0	1	0	3	6	11		
2008	1	1	3	1	0	0	2	6	14		
2009	0	4	1	1	3	0	1	4	14		
2010	0	0	3	2	0	0	2	2	9		
2011	2	2	5	1	0	0	3	7	20		
Total	18	10	31	12	4	2	32	50	159		

Graph 2 below illustrates the lethality of smoking related fires in terms of the

percentage of all fire deaths they comprise both in raw numbers and then adjusted for undetermined fires.<sup>2</sup> The drop below 20 percent in the raw count for smoking related fatalities is a first in Maine for a measured ten year time frame. Historically, smoking related fire fatalities would always comprise over 20 percent of fatalities and when adjusted would climb even higher. This downward trend is due to smoking cessation programs, taxes on cigarettes, and other variables. We are seeing similar trends nationally.

Graph 2



Because Fire Safe Cigarettes are designed to extinguish prior to igniting other materials they are placed upon or in, the Fire Marshal’s Office decided to look closer at the data we have on cigarette fires by occupancy, area of origin, materials first ignited, type of materials ignited. Historically, smoking related fire fatalities occur in residential dwellings where an individual is most often in close proximity to ignition by dropping it into furniture or has carelessly disposed of smoking materials in the trash. The fire safe cigarette is designed to work in the close proximity scenario as opposed to the trash scenario where the cigarette may have been damaged prior to being emptied into the trash. The damage would render the speed bumps in the cigarette inoperable.

With this in mind we looked at the following residential occupancies in which we have seen smoking related fatalities most frequently to get a distribution of items first ignited in these historically vulnerable occupancies. It should be noted that we do see most fatalities in one and two family dwellings followed by apartments. Other residential occupancies, where this historical frequency of smoking related fires and deaths have been lower are becoming mostly smoke free occupancies. Hence the home is, in this sense single family and multiple family dwellings apartments, , the most dangerous place for smoking related fire deaths.

- One and two family dwellings
- Multifamily dwellings

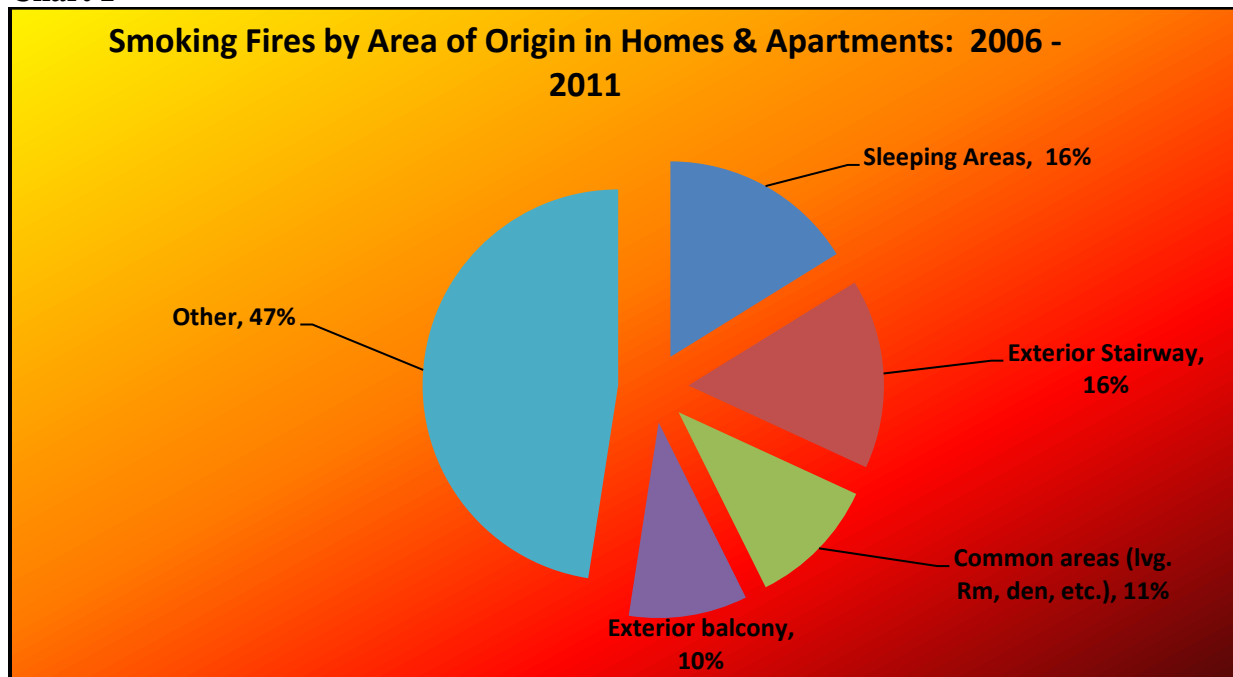
The first thing we discovered is that the distribution of smoking related fires between one and two family dwellings and apartments is narrower than we assumed with 107 incidents

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

taking place in single family dwellings and 97 in apartments.<sup>3</sup> Giving the history of “never smoke in bed” it is somewhat of a surprise to see the sleeping area as tied with exterior stairway for the number one identified area of origin (Chart 1) followed by the common areas such as living rooms, dens, which we anticipated. Again we assume there would be more cigarette related fires in the common areas. The remaining distribution (other) is all around the interior and exterior of the home or apartment.

Fires on exterior balconies may be careless disposal fires that reflect a growing trend on the part of many to smoke outdoors on the porch. The 47% other, which can include areas immediately exterior to the dwelling may also be a reflection of this trend to smoke outdoors. Though this is a good trend for indoor air quality and health it does have a down side from a fire perspective.

**Chart 1**



A closer look at items first ignited, Chart 2, suggests that we’re still seeing fires of the type the fire safe cigarette was meant to avert. When you combine upholstered furniture with mattress/pillow and bedding those three types of materials combine to comprise 23.9% of fires by items first ignited and ranks first followed by what would be exterior fires (20.2%) and lastly fires due to the careless disposal of cigarette materials (14.2%).

Notice the considerable percentage of items first ignited as “other” usually indicating the fire department couldn’t really find a code to identify the item. This is a problem that can be worked out through additional training on using the National Fire Incident Reporting System’s available coding scheme. Coding is available for many fires deemed “other” but the fire service needs to work on using the system.

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<sup>3</sup> Boarding houses and hotels ranked lower than single family dwellings and apartments with 3 incidents per occupancy type.

Chart 2

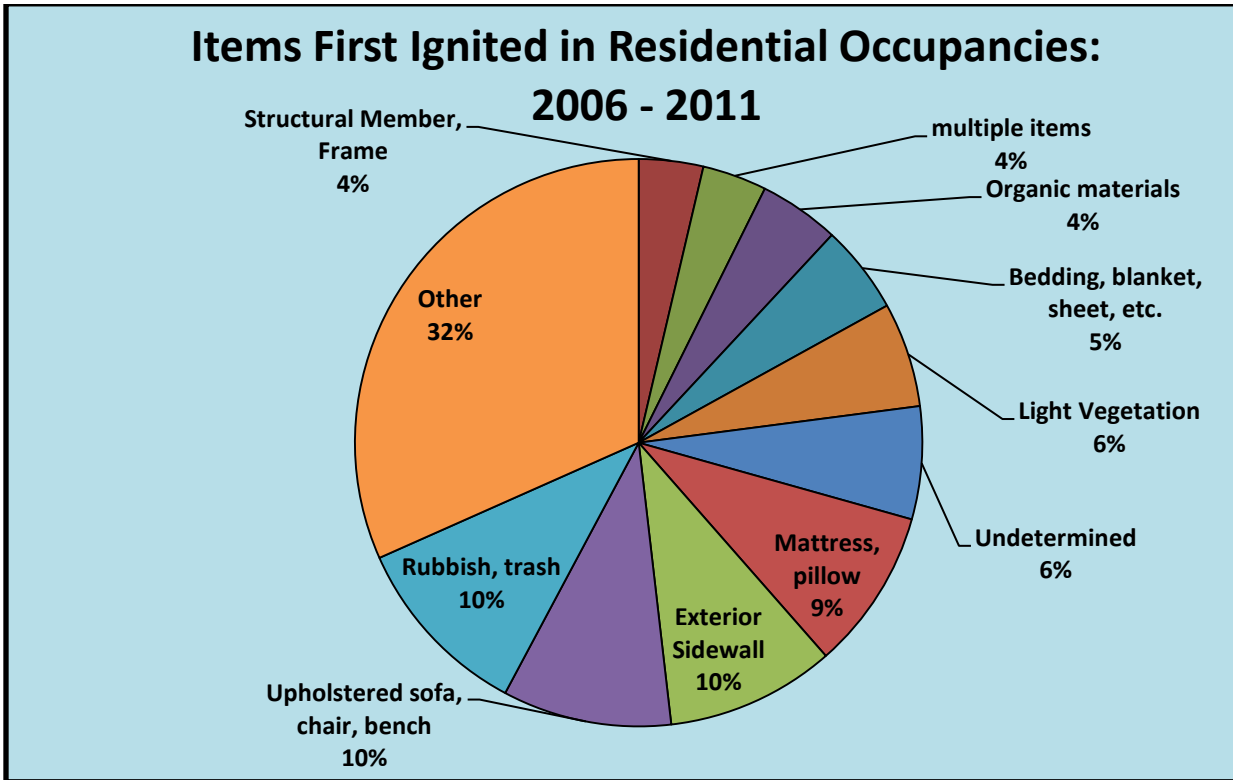
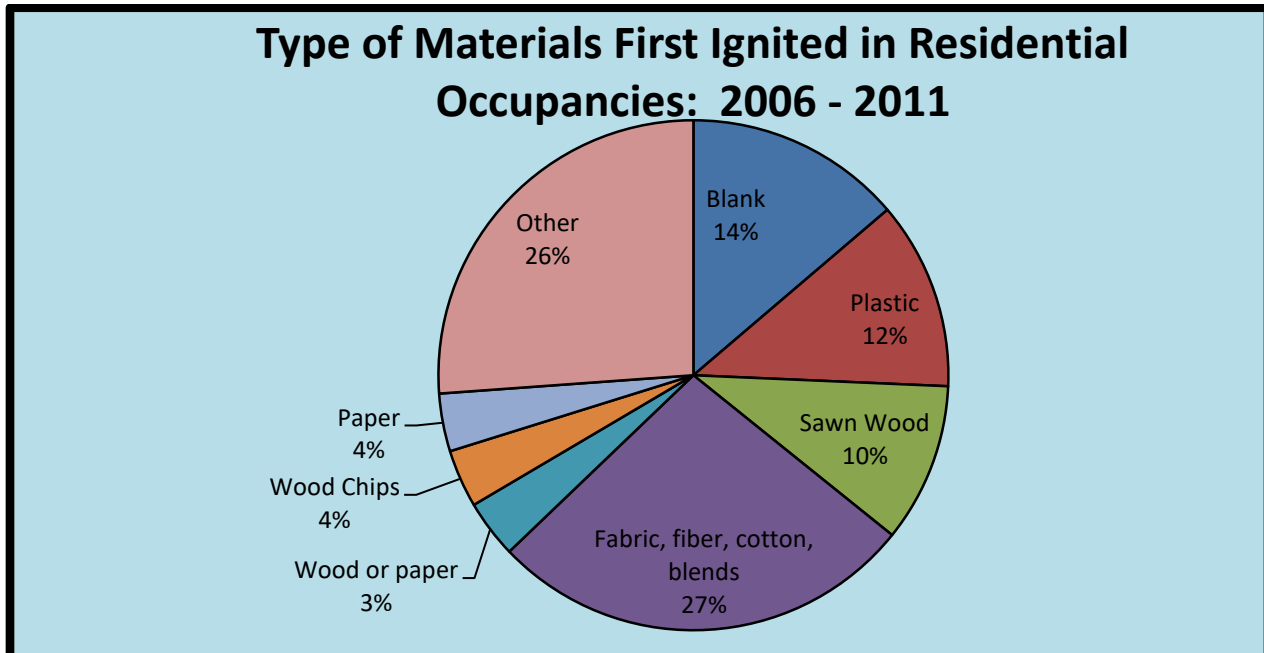


Chart 3 below essentially reaffirms what we see in Chart 2 above. Materials associated with cloths or furniture lead the way at 27% of identified materials followed by materials that might be related to exterior fires then materials associated with trash. We can conclude that based on area of origin, items first ignited and type of materials first ignited that Maine's Reduced Ignition Propensity law certainly has not changed these distributions but rather, hopefully, might be reducing the frequency of such events. Having only four years of data we still can't determine that impact on fire in Maine however.

Chart 3





The total property and contents dollar loss attributed to smoking for the four years prior to and after the law took effect, in addition to civilian and firefighter related injuries and deaths are shown below. This is perhaps the best indicator of the direction we are moving in at this time. As the reader can see, the results are mixed with gains in property dollar loss and injury but deaths actually increased along with firefighter injury. Again, five years of data do not comprise a true picture of the end outcome of this legislation. We will know more in 2015.

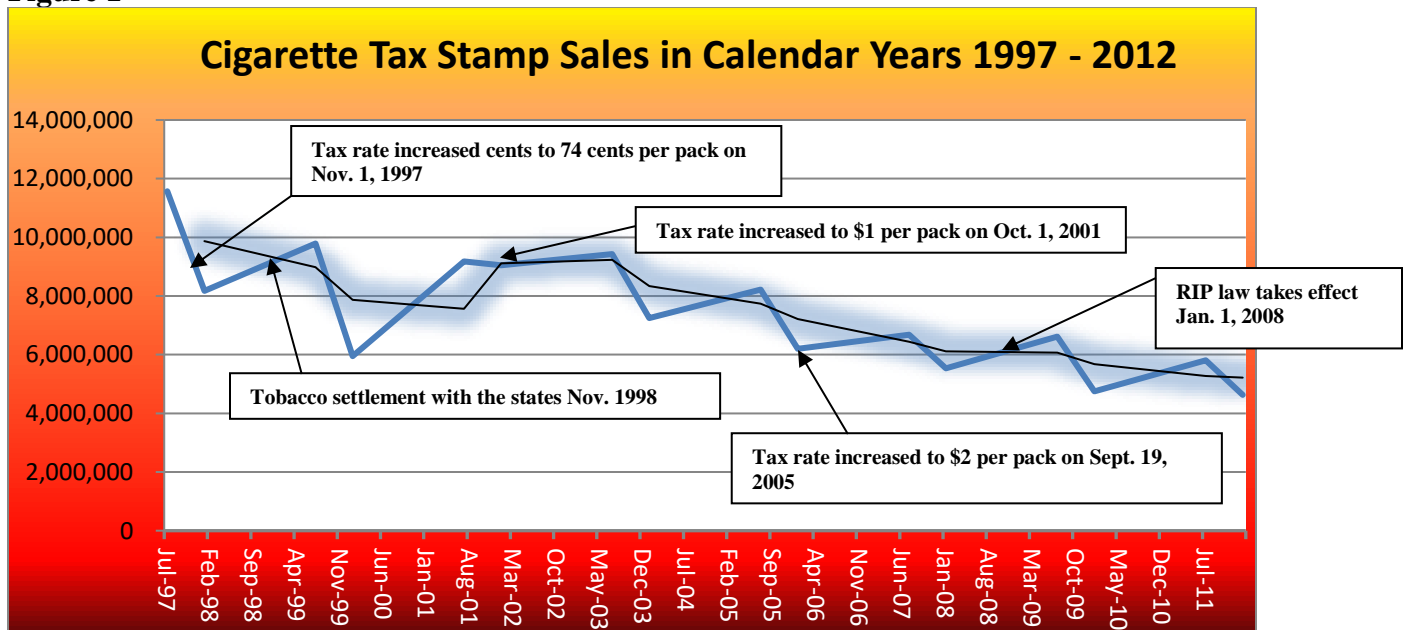
	TOTAL Dollar Loss	Civilian Deaths	Injuries	Firefighter Death	Firefighter Injury
2004-07	\$2,037,070	10	12	0	3
2008-11	\$1,733,237	12	2	0	5
<b>Change</b>	<b>-\$303,833</b>	<b>2</b>	<b>-10</b>	<b>0</b>	<b>2</b>

### CIGARETTE CONSUMPTION AND THE RIP LAW

A concern that plagued the cigarette manufacturers for years and resulted in their opposing this law was the idea this would hurt them and small businesses because people wouldn't like the cigarettes, they might cost more, and this would result in a diminished market of buyers.

In Maine this is difficult to ascertain but when we look back over a decade we do observe that consumption of cigarettes in Maine as measured by the number of tax stamps issued was declining prior to the passage of the law and has continued to decline absent any observable significant spike downward. Figure 1 on the following page shows the number of cigarette stamp sales beginning in 1997 and ending in 2012. As you can see the decline in cigarette consumption is likely due to cessation programs, taxation and other variables as opposed to the RIP law.

**Figure 1**



## IMPLEMENTATION OF MAINE'S RIP CIGARETTE LAW

Implementation of Chapter 253 "An Act Concerning Reduced Ignition Propensity Cigarettes" began almost immediately upon passage of the legislation. Manufacturers began to send certification documents attesting to their compliance with the testing and marking requirements outlined in the law. The Fire Marshal's Office reviews the testing and marking documentation even though accompanied by a statement attesting to compliance with the law.

Certification documents include three essential elements:

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

Upon receiving the certification documents the Fire Marshal's Office reviews them for compliance with all aspects of the law. Particulars include all cigarettes being certified are listed on the testing documents with date of test as well as a check to see that the marking is the right font size and clearly visible in the area of the bar code. Upon verification of compliance, the Fire Marshal's Office issues a letter to the manufacturer and copies the Maine Attorney General's to notify them that the specified cigarettes are fire safe. If there is a problem the manufacturer is also notified. All correspondence is forwarded to the Attorney General's Office so they can make sure the cigarette brand is on that is listed in the directory of all tobacco manufactures required under Title 22 § 1580-L.

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

1. Brand or trade name on the package;
2. Style, such as light or ultra light; (these names are no longer used)
3. Length in millimeters;
4. Circumference in millimeters;
5. Flavor, such as menthol, if applicable
6. Filter or nonfilter;
7. Package description, such as soft pack or box;
8. Marking approved in accordance with the law;
9. The name, address and telephone number of the laboratory, if different than the manufacturer, that conducted the test; and
10. The date that the testing occurred.

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

Alaska	\$250	Maryland	\$250	RI	\$250
Connecticut	\$250	Massachusetts	\$3,000	Texas	\$250
Delaware	\$250	Minnesota	\$250	Utah	\$1,000
Iowa	\$100	Montana	\$250	Alabama	\$1,000
Arizona	\$250	Colorado	\$1,000	Georgia	\$250
Hawaii	\$375	Idaho	\$1,000	Indiana	\$800
Kansas	\$250	Kentucky	\$1,000	Louisiana	\$250
Michigan	\$1,250	Mississippi	\$1,000	Nebraska	\$1,000
New Jersey	\$250	New Hampshire	\$250	New Mexico	\$250
Ohio	\$1,000	North Carolina	\$250	North Dakota	\$250
Oklahoma	\$1,000	Pennsylvania	\$1,000	South Carolina	\$250
Tennessee	\$1,000	Virginia	\$250	Washington	\$250
Wisconsin	\$1,000	West Virginia	\$1,000	Wyoming	\$250

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

## FINDINGS

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

- Smoking related fires are the most lethal of fires in Maine due to the proximity of the victim to fire ignition
- The vast majority of these deaths take place in 1 & 2 Family dwellings (homes).
- The count of all structure fires where cigarettes were the source of ignition has risen slightly while remaining level in residential structure fires.
- The percentage of structure fires where cigarettes were the source of ignition has risen while remaining level in residential structure fires.
- The raw percentage of fire deaths due to smoking related fires, when looking at the 10 year period of 2002 – 2011 has dipped below 20%. This is a first for Maine.
- The distribution of cigarette related structure and residential structure fires by area of origin, items first ignited and materials first ignited suggests that careless disposal of smoking materials and misplacement of cigarette in furniture are close.
- Most fires caused by cigarettes take place outdoors.
- The Fire Marshal's Office will have a better understanding of the impact of the RIP law in Maine when this report is issued again in 2016.
- In the four after passage of the RIP law total property and contents dollar losses decreased 15% or \$303,833 while deaths increased by two.

- RIP cigarettes have had no noticeable impact on cigarette consumption in Maine.
- Maine is one of only a few states not charging a fee to cover the costs of this program.

## **SUMMARY AND RECOMENDATIONS**

This report has provided the legislature with a set of model indicators that can be used to measure the effectiveness of LD 70, “And Act Concerning Reduced Ignition Propensity Cigarettes” passed during the 123<sup>rd</sup> Maine legislature. We have examined fire deaths and fires caused by cigarettes over a seven year and eight year periods in structures, residential structures and even outdoors in addition to looking at property and contents dollar losses associated with cigarette related fires. Because the RIP cigarette is designed to reduce the frequency of fire deaths in homes and in particular on upholstered furniture, we also looked closely at the distribution these fires in terms of the area of origin, items first ignited, and type of material first ignited.

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

- Smoking related fires kill more people in Maine and across the nation than any other identified cause;
- The rate of fire deaths caused by cigarette fires is highest among identified fire causes;
- These deaths are due primarily to the proximity of the victim to the ignition of the fire;
- The type of items first ignited most frequently by cigarettes are also typically proximate to victims;
- These same items are items common in residential dwellings;
- RIP cigarettes seem to have no negative impact on cigarette consumption in Maine.

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

With this summary in mind the State Fire Marshal recommends:

- ✓ That the public education efforts focused on Maine’s older adult population currently underway remain in place;
- ✓ Continue to work toward obtaining more quality data from Maine’s fire service reporting fires so that a more quality analysis of the impact of fire safe cigarettes can be conducted;
- ✓ The legislature may wish to consider a fee for certification of cigarette brands as most

other states have implemented them. A nominal fee would cover the cost of reviewing test documents and processing the certification in addition to maintaining the database. A service both the Attorney General's Office and the cigarette manufacturers both appreciate;

- ✓ A fee could also cover additional public education efforts such as PSAs that target Maine's growing older adult population.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act Concerning Reduced Ignition Propensity Cigarettes**

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

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

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

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

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

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

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

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

E. "Manufacturer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Each cigarette listed in a certification submitted pursuant to subsection 3 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standards set forth in this subsection must have at least 2 nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least 2 bands located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

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

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

to subsection 3.

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

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

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

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

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

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

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

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

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

(1) Brand or trade name on the package;

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

(3) Length in millimeters;

(4) Circumference in millimeters;



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

(6) Filter or nonfilter;

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

(8) Marking approved in accordance with subsection 4;

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

(10) The date that the testing occurred.

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

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

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

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

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

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

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

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

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

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

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

A. A manufacturer, distributor, agent or any other person or entity who knowingly sells or

offers to sell cigarettes, other than through retail sale, in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than \$10,000 per each sale of cigarettes must be imposed.

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

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

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

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

F. A tobacco retailer who commits a violation as described in paragraph E and has previously been adjudicated of committing that violation commits a civil violation for which a fine of not more than \$5,000 per each sale or offer for sale of cigarettes must be imposed, except that this fine against any tobacco retailer may not exceed \$25,000 during a 30-day period.

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

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

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

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

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

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

constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief.

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

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

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

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

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

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

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

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

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

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

Effective January 1, 2008.