

**COMPARISON OF SELECTED PROVISIONS -
CIGARETTE MANUFACTURER LIABILITY LEGISLATION**

**ILLINOIS S.B. 692
"Cigarette
Accountability Act"**

**WISCONSIN
S.B. 320**

**RHODE ISLAND
H 8573
"Cigarette and Tobacco
Product Accountability Act"**

**Legislative
Objectives/Purposes**

1. "[M]ake cigarette industry accountable for part of the economic losses their product causes."
2. "To protect families...by permitting family members to recover lost pecuniary support and extra expenses incurred due to...[a relative's] cigarette induced lung cancer."
3. "To protect the taxpayers...by permitting the State to recover funds expended in the care and treatment of Medicaid patients with cigarette induced lung cancer or emphysema."

1. Same as Illinois
2. "Protect families by permitting family members to bring wrongful death actions where death resulted from "cigarette-induced lung cancer or emphysema."
3. "Protect the taxpayers...by permitting the state and local governments to bring or become a party in a wrongful death action to recover funds expended for public assistance for persons with cigarette-induced lung cancer or emphysema."

1. "Make cigarette and other tobacco product industry accountable for part of the economic losses their products cause."
2. "To protect families...by permitting victims and/or family member to recover lost pecuniary support and extra expenses incurred due to...cigarette or other tobacco product induced disease."
3. "To protect the taxpayers...by permitting the state to recover funds expended in the care and treatment of medicaid patients with cigarette or other tobacco product induced disease..."

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Selected Definitions

1. Cigarette producer

"[A]ny one who fabricates, manufactures or produces cigarettes. Wholesalers, retailers or distributors of cigarettes are not included in this definition and nothing in the [bill] is intended to create a cause of action against such wholesaler, retailers or distributor."

2. Smoking

"[T]he inhalation of all or part of the smoke from at least 1,825 cigarettes per year."

1. Cigarette producer

"[A]ny person who produces, manufactures or fabricates cigarettes. The term does not include a person on the basis of his or her acting as a wholesaler, retailer or distributor of cigarettes."

2. Smoking

"[T]he inhalation of all or part of the smoke from a cigarette."

1. Cigarette or other tobacco product producer

Same as Illinois ["or other tobacco product" inserted after "cigarette"]

2. Smoking

"[T]he inhalation of all or part of the smoke from at least...(1,825) cigarettes or other equivalent tobacco products per year. Each cigar is equivalent to one cigarette. Each ounce of pipe tobacco is equivalent to...(20) cigarettes."

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**Elements Required for the
Establishment of Liability**

1. Smoker has or had lung cancer.
2. Smoked cigarettes for cumulative total of at least 10 years before detection of lung cancer or emphysema.
3. At least 10 percent of cigarettes smoked by the smoker were produced by the defendant.

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1. Person having lung cancer or emphysema smoked at least 5,475 cigarettes annually for a total of at least 10 years before detection of lung cancer or emphysema.
2. Cigarette producer produced at least 10 percent of the cigarettes smoked by person in #1.

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1. "[V]ictim of cigarettes or other tobacco product had or has cigarette or other tobacco product induced disease" (bronchial mucosa, or oral pharynx, or larynx or lung; or adeno or alveolar cell cancer of the lung).
2. At least 10 percent of the cigarette or other tobacco products used were produced by the defendant producer.

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Defenses

1. Plaintiff fails to prove elements under "Liability".
2. Defendant proves that smoker's lung cancer was not caused by the smoking of defendant's cigarettes.
3. "All personal defenses" (e.g., assumption of risk; comparative negligence) are abolished in suits brought under this act.

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1. Defendant may rebut presumptions under "Establishment of Liability."

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1. Defendant proves that smoker's "cigarette or other tobacco product induced disease" was not caused by the use of defendant's product.
2. "All personal defenses" (e.g., assumption of risk; comparative negligence) are abolished in suits brought under this chapter.

Proof

Preponderance of the evidence

Same

Same

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Contribution

Defendant "may seek contribution from other cigarette producers or third parties upon proving...that the activities or products of third parties also participated in causing the smoker's lung cancer or emphysema."

Defendant "may seek contribution from other cigarette or other tobacco product producers or third parties upon proving...that the activities or products of third parties also participated in causing the smoker's cigarette or other tobacco product induced diseases."

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Damages

1. Family
 - a. Pecuniary support lost.
 - b. Expenses incurred due to disability, illness or death.
2. Attorney

20 percent of total amount recovered.
3. State
 - a. Court costs.
 - b. Funds expended under Medicaid.

1. Similar to Illinois. Damages come under Wisconsin Wrongful Death Statute which provides broad spectrum of remedies for affected families, the state and court system.

1. "Victim"/Family member
 - a. Pecuniary support lost.
 - b. Expenses incurred due to disability, illness or death.
 - c. Court costs.
 - d. Punitive damages.
2. State
 - a. Court costs.
 - b. "Reasonable" litigating costs.
 - c. Funds expended under Medicaid or other state funded program in treatment of "victim's" disease.