

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 584

Introduced by Preister, 5

Read first time January 17, 2007

Committee: Health and Human Services

A BILL

- 1 FOR AN ACT relating to cigarettes; to adopt the Reduced Cigarette
- 2 Ignition Propensity Act; to create funds; and to provide
- 3 an operative date.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known
2 and may be cited as the Reduced Cigarette Ignition Propensity Act.

3 Sec. 2. For the purposes of the Reduced Cigarette
4 Ignition Propensity Act:

5 (1) Agent means any person authorized by the Tax
6 Commissioner to purchase and affix stamps on packages of
7 cigarettes;

8 (2) Cigarette means any roll for smoking made wholly or
9 in part of tobacco, irrespective of size or shape and whether or
10 not such tobacco is flavored, adulterated, or mixed with any other
11 ingredient, the wrapper or cover of which is made of paper or any
12 other material, excepting tobacco;

13 (3) Manufacturer means:

14 (a) Any entity which manufactures or otherwise produces
15 cigarettes or causes cigarettes to be manufactured or produced
16 anywhere and the manufacturer intends the cigarettes to be sold in
17 the United States through an importer;

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

22 (c) Any entity that becomes a successor of an entity
23 described in subdivision (3) (a) or (b) of this section;

24 (4) Quality control and quality assurance program means
25 the laboratory procedures implemented to ensure that operator bias,

1 systematic and nonsystematic methodological errors, and equipment
2 related problems do not affect the results of the testing. Such a
3 program ensures that the testing repeatability remains within the
4 required repeatability values stated in section 3 of this act for
5 all test trials used to certify cigarettes in accordance with the
6 act;

7 (5) Repeatability means the range of values within
8 which the repeat results of cigarette test trials from a single
9 laboratory will fall ninety-five percent of the time;

10 (6) Retail dealer means any person, other than a
11 manufacturer or wholesale dealer, engaged in selling cigarettes
12 or tobacco products;

13 (7) Sale means any transfer for consideration, exchange,
14 barter, gift, offer for sale, or distribution in any manner or by
15 any means whatsoever;

16 (8) Sell means to sell or to offer or agree to do the
17 same; and

18 (9) Wholesale dealer means any person who sells
19 cigarettes or tobacco products to retail dealers or other persons
20 for purposes of resale and any person who owns, operates, or
21 maintains one or more cigarette or tobacco product vending machines
22 in, at, or upon premises owned or occupied by any other person.

23 Sec. 3. (1) Except as provided in subsection (7) of this
24 section, no cigarettes may be sold or offered for sale in this
25 state or offered for sale or sold to persons located in this

1 state unless the cigarettes have been tested in accordance with the
2 following test method and meet the performance standard specified
3 in this section, a written certification has been filed by the
4 manufacturer with the State Fire Marshal in accordance with section
5 4 of this act, and the cigarettes have been marked in accordance
6 with section 5 of this act. Testing shall be as follows:

7 (a) Testing of cigarettes shall be conducted in
8 accordance with the American Society of Testing and Materials
9 Standard E2187-04, Standard Test Method for Measuring the Ignition
10 Strength of Cigarettes;

11 (b) Testing shall be conducted on ten layers of filter
12 paper;

13 (c) No more than twenty-five percent of the cigarettes
14 tested in a test trial in accordance with this subsection shall
15 exhibit full-length burns. Forty replicate tests shall comprise a
16 complete test trial for each cigarette tested;

17 (d) The performance standard required by this subsection
18 shall only be applied to a complete test trial;

19 (e) Written certifications shall be based upon testing
20 conducted by a laboratory that has been accredited pursuant
21 to standard ISO/IEC 17025 of the International Organization
22 for Standardization, or other comparable accreditation standard
23 required by the State Fire Marshal;

24 (f) Laboratories conducting testing in accordance with
25 this subsection shall implement a quality control and quality

1 assurance program that includes a procedure that will determine the
2 repeatability of the testing results. The repeatability value shall
3 be no greater than 0.19;

4 (g) This subsection does not require additional testing
5 if cigarettes are tested consistent with the Reduced Cigarette
6 Ignition Propensity Act for any other purpose; and

7 (h) Testing performed or sponsored by the State Fire
8 Marshal to determine a cigarette's compliance with the performance
9 standard required shall be conducted in accordance with this
10 subsection.

11 (2) Each cigarette listed in a certification submitted
12 pursuant to section 4 of this act that uses lowered permeability
13 bands in the cigarette paper to achieve compliance with the
14 performance standard set forth in this section shall have at least
15 two nominally identical bands on the paper surrounding the tobacco
16 column. At least one complete band shall be located at least
17 fifteen millimeters from the lighting end of the cigarette. For
18 cigarettes on which the bands are positioned by design, there shall
19 be at least two bands fully located at least fifteen millimeters
20 from the lighting end and ten millimeters from the filter end of
21 the tobacco column, or ten millimeters from the labeled end of the
22 tobacco column for non-filtered cigarettes.

23 (3) A manufacturer of a cigarette that the State Fire
24 Marshal determines cannot be tested in accordance with the test
25 method prescribed in subdivision (1)(a) of this section shall

1 propose a test method and performance standard for the cigarette
2 to the State Fire Marshal. Upon approval of the proposed test
3 method and a determination by the State Fire Marshal that the
4 performance standard proposed by the manufacturer is equivalent
5 to the performance standard prescribed in subdivision (1)(c) of
6 this section, the manufacturer may employ such test method and
7 performance standard to certify such cigarette pursuant to section
8 4 of this act. If the State Fire Marshal determines that another
9 state has enacted reduced cigarette ignition propensity standards
10 that include a test method and performance standard that are
11 the same as those contained in the Reduced Cigarette Ignition
12 Propensity Act and the State Fire Marshal finds that the officials
13 responsible for implementing those requirements have approved the
14 proposed alternative test method and performance standard for a
15 particular cigarette proposed by a manufacturer as meeting the
16 fire safety standards of that state's law or regulation under a
17 legal provision comparable to this section, then the State Fire
18 Marshal shall authorize that manufacturer to employ the alternative
19 test method and performance standard to certify that cigarette for
20 sale in this state, unless the State Fire Marshal demonstrates a
21 reasonable basis why the alternative test should not be accepted
22 under the act. All other applicable requirements of this section
23 shall apply to the manufacturer.

24 (4) Each manufacturer shall maintain copies of the
25 reports of all tests conducted on all cigarettes offered for

1 sale for a period of three years, and shall make copies of these
2 reports available to the State Fire Marshal and the Attorney
3 General upon written request. Any manufacturer who fails to make
4 copies of these reports available within sixty days after receiving
5 a written request shall be subject to a civil penalty not to exceed
6 ten thousand dollars for each day after the sixtieth day that the
7 manufacturer does not make such copies available.

8 (5) The State Fire Marshal may adopt a subsequent
9 American Society of Testing and Materials Standard Test Method
10 for Measuring the Ignition Strength of Cigarettes upon a finding
11 that such subsequent method does not result in a change in
12 the percentage of full-length burns exhibited by any tested
13 cigarette when compared to the percentage of full-length burns
14 the same cigarette would exhibit when tested in accordance with the
15 American Society of Testing and Materials Standard E2187-04 and the
16 performance standard in subdivision (1)(c) of this section.

17 (6) The State Fire Marshal shall review the effectiveness
18 of this section and report every three years to the Legislature the
19 State Fire Marshal's findings and, if appropriate, recommendations
20 for legislation to improve the effectiveness of this section. The
21 report and legislative recommendations shall be submitted no later
22 than November 15 of each three-year period.

23 (7) The requirements of subsection (1) of this section
24 shall not prohibit wholesale or retail dealers from selling their
25 existing inventory of cigarettes on or after the operative date of

1 this act if the wholesale or retailer dealer can establish that
2 state tax stamps were affixed to the cigarettes prior to such date,
3 and if the wholesale or retailer dealer can establish that the
4 inventory was purchased prior to such date in comparable quantity
5 to the inventory purchased during the same period of the prior
6 year.

7 (8) The Reduced Cigarette Ignition Propensity Act shall
8 be implemented in accordance with the implementation and substance
9 of the New York Fire Safety Standards for Cigarettes, as such
10 standards existed on the operative date of this act.

11 Sec. 4. (1) Each manufacturer shall submit to the State
12 Fire Marshal a written certification attesting that:

13 (a) Each cigarette listed in the certification has been
14 tested in accordance with section 3 of this act; and

15 (b) Each cigarette listed in the certification meets the
16 performance standard set forth in subdivision (1)(c) of section (3)
17 of this act.

18 (2) Each cigarette listed in the certification shall be
19 described with the following information:

20 (a) Brand or trade name on the package;

21 (b) Style, such as light or ultra light;

22 (c) Length in millimeters;

23 (d) Circumference in millimeters;

24 (e) Flavor, such as menthol or chocolate, if applicable;

25 (f) Filter or non-filter;

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

2 (h) Marking approved in accordance with section 5 of this
3 act;

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

7 (j) The date that the testing occurred.

8 (3) The certifications shall be made available to the
9 Attorney General for purposes consistent with the Reduced Cigarette
10 Ignition Propensity Act and the Department of Revenue for the
11 purposes of ensuring compliance with this section.

12 (4) Each cigarette certified under this section shall be
13 recertified every three years.

14 (5) For each cigarette listed in a certification, a
15 manufacturer shall pay to the State Fire Marshal a fee of two
16 hundred fifty dollars. The State Fire Marshal is authorized to
17 annually adjust this fee to ensure it defrays the actual costs
18 of the processing, testing, enforcement, and oversight activities
19 required by the act.

20 (6) The Reduced Cigarette Ignition Propensity Fund is
21 created. The fund shall consist of all certification fees submitted
22 by manufacturers in addition to any other funds made available for
23 such purpose. The State Fire Marshal shall use the fund to carry
24 out the act. Fees collected pursuant to this section shall be
25 remitted to the State Treasurer for credit to the fund. All money

1 in such fund available for investment shall be invested by the
2 state investment officer pursuant to the Nebraska Capital Expansion
3 Act and the Nebraska State Funds Investment Act.

4 (7) If a manufacturer has certified a cigarette pursuant
5 to this section and thereafter makes any change to such cigarette
6 that is likely to alter its compliance with the reduced cigarette
7 ignition propensity standards required by the act, that cigarette
8 shall not be sold or offered for sale in this state until the
9 manufacturer retests the cigarette in accordance with the testing
10 standards set forth in section 3 of this act and maintains records
11 of that retesting as required by section 3 of this act. Any altered
12 cigarette which does not meet the performance standard set forth in
13 section 3 of this act shall not be sold in this state.

14 Sec. 5. (1) Cigarettes that are certified by a
15 manufacturer in accordance with section 4 of this act shall be
16 marked to indicate compliance with the requirements of section 3 of
17 this act. The marking shall be in eight point type or larger and
18 consist of:

19 (a) Modification of the product Universal Product Code to
20 include a visible mark printed at or around the area of the Uniform
21 Product Code. The mark may consist of alphanumeric or symbolic
22 characters permanently stamped, engraved, embossed, or printed in
23 conjunction with the Uniform Product Code;

24 (b) Any visible combination of alphanumeric or symbolic
25 characters permanently stamped, engraved, or embossed upon the

1 cigarette package or cellophane wrap; or

2 (c) Printed, stamped, engraved, or embossed text that
3 indicates that the cigarettes meet the standards of the Reduced
4 Cigarette Ignition Propensity Act.

5 (2) A manufacturer shall use only one marking and shall
6 apply this marking uniformly for all packages, including, but not
7 limited to, packs, cartons, and cases, and brands marketed by that
8 manufacturer.

9 (3) Prior to the certification of any cigarette, a
10 manufacturer shall present its proposed marking to the State Fire
11 Marshal for approval. Upon receipt of the request, the State Fire
12 Marshal shall approve or disapprove the marking offered, except
13 that the State Fire Marshal shall approve any marking in use and
14 approved for sale in Nebraska pursuant to the act. Proposed marking
15 shall be deemed approved if the State Fire Marshal fails to act
16 within ten business days after receiving a request for approval.

17 (4) No manufacturer shall modify its approved marking
18 unless the modification has been approved by the State Fire Marshal
19 in accordance with this section.

20 (5) Manufacturers certifying cigarettes in accordance
21 with section 4 of this act shall provide a copy of the
22 certifications to all wholesale dealers and agents to which they
23 sell cigarettes and shall also provide sufficient copies of an
24 illustration of the package marking utilized by the manufacturer
25 pursuant to this section for each retail dealer to which the

1 wholesale dealers or agents sell cigarettes. Wholesale dealers and
2 agents shall provide a copy of these package markings received from
3 manufacturers to all retail dealers to which they sell cigarettes.
4 Wholesale dealers, agents, and retail dealers shall permit the
5 State Fire Marshal, the Department of Revenue, and their employees
6 to inspect markings of cigarette packaging marked in accordance
7 with this section.

8 Sec. 6. (1) A manufacturer, wholesale dealer, agent, or
9 any other person or entity who knowingly sells or offers to sell
10 cigarettes, other than through retail sale, in violation of section
11 3 of this act, shall be liable to a civil penalty not to exceed
12 ten thousand dollars per each sale of such cigarettes for a first
13 offense and shall be liable to a civil penalty not to exceed
14 twenty-five thousand dollars for a subsequent offense per each
15 sale of such cigarettes, except that in no case shall the penalty
16 against any such person or entity exceed one hundred thousand
17 dollars during any thirty-day period.

18 (2) A retail dealer who knowingly sells cigarettes in
19 violation of section 3 of this act shall:

20 (a) Be liable to a civil penalty not to exceed five
21 hundred dollars for a first offense and be liable to a civil
22 penalty not to exceed two thousand dollars for a subsequent offense
23 per each such sale or offer for sale of cigarettes, if the total
24 number of cigarettes sold or offered for sale in such sale does not
25 exceed one thousand cigarettes; or

1 (b) Be liable to a civil penalty not to exceed one
2 thousand dollars for a first offense and be liable to a civil
3 penalty not to exceed five thousand dollars for a subsequent
4 offense per each such sale or offer for sale of such cigarettes,
5 if the total number of cigarettes sold or offered for sale in
6 such sale exceeds one thousand cigarettes, except that this penalty
7 against any retail dealer shall not exceed twenty-five thousand
8 dollars during any thirty-day period.

9 (3) In addition to any civil penalty, any corporation,
10 partnership, sole proprietor, limited partnership, or association
11 engaged in the manufacture of cigarettes that knowingly makes
12 a false certification pursuant to section 4 of this act shall,
13 for a first offense, be liable to a civil penalty of at least
14 seventy-five thousand dollars and, for a subsequent offense, be
15 liable to a civil penalty not to exceed two hundred fifty thousand
16 dollars for each such false certification.

17 (4) Any person violating any other provision of the
18 Reduced Cigarette Ignition Propensity Act shall be liable to a
19 civil penalty not to exceed one thousand dollars for a first
20 offense and to a civil penalty not to exceed five thousand dollars
21 for a subsequent offense.

22 (5) Any cigarettes that have been sold or offered for
23 sale that do not comply with the performance standard required by
24 section 3 of this act shall be subject to seizure and forfeiture
25 under section 59-1523, except that prior to the destruction of any

1 cigarette seized and forfeited pursuant to such section the true
2 holder of the trademark rights in the cigarette brand shall be
3 permitted to inspect the cigarette.

4 (6) In addition to any other remedy provided by law,
5 the State Fire Marshal or Attorney General may file an action
6 in a court of competent jurisdiction for a violation of the
7 Reduced Cigarette Ignition Propensity Act, including petitioning
8 for injunctive relief or to recover any costs or damages suffered
9 by the state because of a violation of the act, including
10 enforcement costs relating to the specific violation and attorney's
11 fees. Each violation of the act or of rules or regulations
12 adopted and promulgated under the act constitutes a separate civil
13 violation for which the State Fire Marshal or Attorney General may
14 obtain relief.

15 Sec. 7. (1) The State Fire Marshal may adopt and
16 promulgate rules and regulations necessary to carry out the
17 Reduced Cigarette Ignition Propensity Act in accordance with the
18 Administrative Procedure Act.

19 (2) The Tax Commissioner, in the regular course of
20 conducting inspections of wholesale dealers, agents, and retail
21 dealers, as authorized under section 77-2605, may inspect such
22 cigarettes to determine if the cigarettes are marked as required
23 by section 5 of this act. If the cigarettes are not marked as
24 required, the Tax Commissioner shall notify the State Fire Marshal.

25 Sec. 8. To enforce the provisions of the Reduced

1 Cigarette Ignition Propensity Act, the Attorney General and the
2 State Fire Marshal may examine the books, papers, invoices, and
3 other records of any person in possession, control, or occupancy of
4 any premises where cigarettes are placed, stored, sold, or offered
5 for sale, as well as the stock of cigarettes on the premises. Every
6 person in the possession, control, or occupancy of any premises
7 where cigarettes are placed, sold, or offered for sale, shall
8 give the Attorney General and the State Fire Marshal the means,
9 facilities, and opportunity for the examinations authorized by the
10 act.

11 Sec. 9. The Fire Prevention and Public Safety Fund is
12 created. The fund shall consist of all money collected as penalties
13 pursuant to section 6 of this act which shall be remitted to the
14 State Treasurer for credit to the fund. The State Fire Marshal
15 shall use the fund to support fire safety and prevention programs.
16 All money in the fund available for investment shall be invested
17 by the state investment officer pursuant to the Nebraska Capital
18 Expansion Act and the Nebraska State Funds Investment Act.

19 Sec. 10. Nothing in the Reduced Cigarette Ignition
20 Propensity Act shall be construed to prohibit any person or
21 entity from manufacturing or selling cigarettes that do not meet
22 the requirements of section 3 of this act if the cigarettes are
23 or will be stamped for sale in another state or are packaged for
24 sale outside the United States and that person or entity has taken
25 reasonable steps to ensure that such cigarettes will not be sold or

1 offered for sale to persons located in this state.

2 Sec. 11. (1) The Reduced Cigarette Ignition Propensity
3 Act shall be repealed if a federal reduced cigarette ignition
4 propensity standard that preempts the act is adopted and becomes
5 effective.

6 (2) Notwithstanding any other provision of law, the local
7 governmental units of this state shall not enact nor enforce any
8 ordinance or other local law or regulation conflicting with, or
9 preempted by, any provision of the act or with any policy of this
10 state expressed by the act, whether that policy be expressed by
11 inclusion of a provision in the act or by exclusion of that subject
12 from the act.

13 Sec. 12. This act becomes operative on July 1, 2008.