

AMENDMENTS TO LB 198

Introduced by General Affairs.

1 1. Strike the original sections and insert the following
2 new sections:

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

5 Sec. 2. For purposes of the Reduced Cigarette Ignition
6 Propensity Act:

7 (1) Agent means any person authorized by the Tax
8 Commissioner to purchase and affix stamps or cigarette tax meter
9 impressions on packages of cigarettes under sections 77-2601 to
10 77-2615;

11 (2) Cigarette means:

12 (a) Any roll of tobacco wrapped in paper or in any
13 substance not containing tobacco; or

14 (b) Any roll of tobacco wrapped in any substance
15 containing tobacco which, because of its appearance, the type
16 of tobacco used in the filler, or its packaging and labeling, is
17 likely to be offered to, or purchased by, consumers as a cigarette
18 as described in subdivision (2)(a) of this section;

19 (3) Consumer testing means an assessment of cigarettes
20 that is conducted by a manufacturer, or under the control or
21 direction of a manufacturer, for the purpose of evaluating consumer
22 acceptance of the cigarettes;

23 (4) Manufacturer means:

1 (a) Any entity which manufactures or otherwise produces
2 cigarettes or causes cigarettes to be manufactured or produced
3 anywhere that such manufacturer intends to sell in this state,
4 including cigarettes intended to be sold in the United States
5 through an importer;

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

10 (c) Any entity that becomes a successor of an entity
11 described in subdivision (4) (a) or (b) of this section;

12 (5) Quality control and quality assurance program means
13 the laboratory procedures implemented to ensure that operator bias,
14 systematic and nonsystematic methodological errors, and equipment
15 related problems do not affect the results of the testing. Such a
16 program ensures that the testing repeatability remains within the
17 required repeatability values stated in section 3 of this act for
18 all test trials used to certify cigarettes in accordance with the
19 act;

20 (6) Repeatability means the range of values within
21 which the repeat results of cigarette test trials from a single
22 laboratory will fall ninety-five percent of the time;

23 (7) Retail dealer means any person, other than a
24 manufacturer or wholesale dealer, engaged in selling cigarettes
25 or tobacco products;

26 (8) Sale means any transfer for consideration, exchange,
27 barter, gift, offer for sale, or distribution in any manner or by

1 any means whatsoever;

2 (9) Sell means to sell or to offer or agree to do the
3 same; and

4 (10) Wholesale dealer means any person, other than a
5 manufacturer, who sells cigarettes or tobacco products to retail
6 dealers or other persons for purposes of resale and any person
7 who owns, operates, or maintains one or more cigarette or tobacco
8 product vending machines in, at, or upon premises owned or occupied
9 by any other person.

10 Sec. 3. (1) Except as provided in subsection (5) of this
11 section, no cigarettes may be sold or offered for sale in this
12 state or offered for sale or sold to persons located in this
13 state unless the cigarettes have been tested in accordance with the
14 following test method and meet the performance standard specified
15 in this section, a written certification has been filed by the
16 manufacturer with the State Fire Marshal in accordance with section
17 4 of this act, and the cigarettes have been marked in accordance
18 with section 5 of this act. Testing shall be as follows:

19 (a) Testing of cigarettes shall be conducted in
20 accordance with the American Society of Testing and Materials
21 Standard E2187-04, Standard Test Method for Measuring the Ignition
22 Strength of Cigarettes;

23 (b) Testing shall be conducted on ten layers of filter
24 paper;

25 (c) No more than twenty-five percent of the cigarettes
26 tested in a test trial in accordance with this subsection shall
27 exhibit full-length burns. Forty replicate tests shall comprise a

1 complete test trial for each cigarette tested;

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

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

9 (f) Laboratories conducting testing in accordance with
10 this subsection shall implement a quality control and quality
11 assurance program that includes a procedure that will determine the
12 repeatability of the testing results. The repeatability value shall
13 be no greater than 0.19;

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

17 (h) Testing performed or sponsored by the State Fire
18 Marshal to determine a cigarette's compliance with the performance
19 standard required by this section shall be conducted in accordance
20 with this subsection.

21 (2) Each cigarette listed in a certification submitted
22 pursuant to section 4 of this act that uses lowered permeability
23 bands in the cigarette paper to achieve compliance with the
24 performance standard set forth in this section shall have at least
25 two nominally identical bands on the paper surrounding the tobacco
26 column. At least one complete band shall be located at least
27 fifteen millimeters from the lighting end of the cigarette. For

1 cigarettes on which the bands are positioned by design, there shall
2 be at least two bands fully located at least fifteen millimeters
3 from the lighting end and ten millimeters from the filter end of
4 the tobacco column, or ten millimeters from the labeled end of the
5 tobacco column for non-filtered cigarettes.

6 (3) Each manufacturer shall maintain copies of the
7 reports of all tests conducted on all cigarettes offered for
8 sale for a period of three years, and shall make copies of these
9 reports available to the State Fire Marshal and the Attorney
10 General upon written request. Any manufacturer who fails to make
11 copies of these reports available within sixty days after receiving
12 a written request shall be subject to a civil penalty not to exceed
13 ten thousand dollars for each day after the sixtieth day that the
14 manufacturer does not make such copies available.

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

21 (5) The requirements of subsection (1) of this section
22 shall not prohibit wholesale or retail dealers from selling their
23 existing inventory of cigarettes on or after the operative date
24 of this section if the wholesale or retail dealer can establish
25 that state tax stamps were affixed to the cigarettes prior to such
26 date, and if the wholesale or retail dealer can establish that the
27 inventory was purchased prior to such date in comparable quantity

1 to the inventory purchased during the same period of the prior
2 year.

3 (6) The Reduced Cigarette Ignition Propensity Act shall
4 be implemented in accordance with the implementation and substance
5 of the New York Fire Safety Standards for Cigarettes, as such
6 standards existed on January 1, 2009.

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

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

11 (b) Each cigarette listed in the certification meets the
12 performance standard set forth in section 3 of this act.

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

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

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

17 (c) Length in millimeters;

18 (d) Circumference in millimeters;

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

20 (f) Filter or non-filter;

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

22 (h) Marking pursuant to section 5 of this act;

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

26 (j) The date that the testing occurred.

27 (3) The State Fire Marshal shall make the certifications

1 available to the Attorney General for purposes consistent with the
2 Reduced Cigarette Ignition Propensity Act and the Department of
3 Revenue for the purposes of ensuring compliance with this section.

4 (4) Each cigarette certified under this section shall be
5 recertified every four years.

6 (5) At the time a manufacturer submits a written
7 certification under this section, the manufacturer shall pay to
8 the State Fire Marshal a fee of one thousand dollars for each brand
9 family of cigarettes identified in the certification. The fee paid
10 shall apply to all cigarettes listed in the brand family identified
11 in the certification and shall include any new cigarette certified
12 within the brand family during the four-year certification period.

13 (6) The Reduced Cigarette Ignition Propensity Fund is
14 created. The fund shall consist of all certification fees submitted
15 by manufacturers in addition to any other funds made available for
16 such purpose. The State Fire Marshal shall use the fund to carry
17 out the act. Fees collected pursuant to this section shall be
18 remitted to the State Treasurer for credit to the fund. Any money
19 in the fund available for investment shall be invested by the state
20 investment officer pursuant to the Nebraska Capital Expansion Act
21 and the Nebraska State Funds Investment Act.

22 (7) If a manufacturer has certified a cigarette pursuant
23 to this section and thereafter makes any change to such cigarette
24 that is likely to alter its compliance with the reduced cigarette
25 ignition propensity standards required by the Reduced Cigarette
26 Ignition Propensity Act, such cigarette shall not be sold or
27 offered for sale in this state until the manufacturer retests the

1 cigarette in accordance with the testing standards set forth in
2 section 3 of this act and maintains records of that retesting as
3 required by section 3 of this act. Any altered cigarette which does
4 not meet the performance standard set forth in section 3 of this
5 act shall not be sold in this state.

6 Sec. 5. (1) Cigarettes that are certified by a
7 manufacturer in accordance with section 4 of this act shall be
8 marked to indicate compliance with the requirements of section 3 of
9 this act. The marking shall be either:

10 (a) Any marking in use and approved for sale in New York
11 pursuant to the New York Fire Safety Standards for Cigarettes as
12 such standards existed on January 1, 2009; or

13 (b) The letters "FSC", which signifies Fire Standards
14 Compliant.

15 (2) The marking shall appear in eight point type or
16 larger and be permanently printed, stamped, engraved, or embossed
17 on the package at or near the Universal Product Code.

18 (3) A manufacturer shall use only one marking and shall
19 apply this marking uniformly for all packages, including, but not
20 limited to, packs, cartons, and cases, and brands marketed by that
21 manufacturer.

22 (4) Manufacturers certifying cigarettes in accordance
23 with section 4 of this act shall provide a copy of the
24 certifications to all wholesale dealers and agents to which they
25 sell cigarettes and shall also provide sufficient copies of an
26 illustration of the package marking utilized by the manufacturer
27 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 or peace officers of this state to inspect markings of cigarette
7 packaging marked in accordance 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 any subsequent offense per each
15 sale of such cigarettes, except that this penalty against any such
16 person or entity shall not exceed one hundred thousand dollars
17 during any thirty-day period.

18 (2) A retail dealer who knowingly sells or offers to
19 sell fewer than one thousand cigarettes in violation of section
20 3 of this act shall be liable to a civil penalty not to exceed
21 five hundred dollars for a first offense and shall be liable to a
22 civil penalty not to exceed two thousand dollars for any subsequent
23 offense for each such sale or offer for sale of such cigarettes.
24 A retail dealer who knowingly sells or offers to sell one thousand
25 or more cigarettes in violation of section 3 of this act shall be
26 liable to a civil penalty not to exceed one thousand dollars for a
27 first offense and be liable to a civil penalty not to exceed five

1 thousand dollars for any subsequent offense per each such sale or
2 offer of sale of such cigarettes. The penalty against any retail
3 dealer under this subsection shall not exceed twenty-five thousand
4 dollars during any thirty-day period.

5 (3) In addition to any civil penalty, any corporation,
6 partnership, sole proprietor, limited partnership, limited
7 liability company, limited liability partnership, or association
8 engaged in the manufacture of cigarettes that knowingly makes a
9 false certification pursuant to section 4 of this act shall be
10 liable to a civil penalty of seventy-five thousand dollars for the
11 first false certification and be liable to a civil penalty not to
12 exceed one hundred fifty thousand dollars for each subsequent false
13 certification.

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

19 (5) Whenever any peace officer of this state or duly
20 authorized representative of the State Fire Marshal discovers
21 any cigarettes (a) for which no certification has been filed as
22 required by section 4 of this act or (b) that have not been
23 marked as required by section 5 of this act, such personnel or
24 representative may seize and take possession of such cigarettes.
25 Cigarettes seized pursuant to this subsection shall be destroyed,
26 except that prior to the destruction of any cigarette seized
27 pursuant to this subsection the true holder of the trademark rights

1 in the cigarette brand shall be permitted to inspect the cigarette.

2 (6) In addition to any other remedy provided by law,
3 the State Fire Marshal or Attorney General may file an action
4 in a court of competent jurisdiction for a violation of the
5 Reduced Cigarette Ignition Propensity Act, including petitioning
6 (a) for preliminary or permanent injunctive relief against any
7 manufacturer, importer, wholesale dealer, retail dealer, agent, or
8 other person or entity to enjoin such entity from selling, offering
9 to sell, or affixing tax stamps or cigarette tax meter impressions
10 to any cigarette that does not comply with the requirements of
11 the Reduced Cigarette Ignition Propensity Act or (b) to recover
12 any costs or damages suffered by the state because of a violation
13 of the act, including enforcement costs relating to the specific
14 violation and attorney's fees. Each violation of the act or
15 of rules or regulations adopted and promulgated under the act
16 constitutes a separate civil violation for which the State Fire
17 Marshal or Attorney General may obtain relief. Upon obtaining
18 judgment for injunctive relief under this subsection, the State
19 Fire Marshal or Attorney General shall provide a copy of the
20 judgment to all wholesale dealers and agents to which the cigarette
21 has been sold.

22 Sec. 7. The Tax Commissioner, in the regular course
23 of conducting inspections of wholesale dealers, agents, and
24 retail dealers, as authorized under section 77-2605, may inspect
25 cigarettes to determine if the cigarettes are marked as required
26 by section 5 of this act. If the cigarettes are not marked as
27 required, the Tax Commissioner shall notify the State Fire Marshal.

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

12 Sec. 9. Nothing in the Reduced Cigarette Ignition
13 Propensity Act shall be construed to prohibit:

14 (1) Any person or entity from manufacturing or selling
15 cigarettes that do not meet the requirements of section 3 of this
16 act if the cigarettes are or will be stamped for sale in another
17 state or are packaged for sale outside the United States and that
18 person or entity has taken reasonable steps to ensure that such
19 cigarettes will not be sold or offered for sale to persons located
20 in this state; or

21 (2) The use of cigarettes solely for the purpose of
22 consumer testing utilizing only the quantity of cigarettes that is
23 reasonably necessary for the assessment.

24 Sec. 10. (1) The Reduced Cigarette Ignition Propensity
25 Act shall terminate if a federal reduced cigarette ignition
26 propensity standard that preempts the act is adopted and becomes
27 effective.

1 (2) The Reduced Cigarette Ignition Propensity Act
2 preempts any local law on the subject and no political subdivision
3 shall enact or enforce any ordinance or other local law or
4 regulation conflicting with any provision of the act or with any
5 policy of this state expressed by the act, whether the policy is
6 expressed by inclusion of a provision in the act or by exclusion of
7 that subject from the act.

8 Sec. 11. The State Fire Marshal may adopt and promulgate
9 rules and regulations necessary to carry out the Reduced Cigarette
10 Ignition Propensity Act in accordance with the Administrative
11 Procedure Act.

12 Sec. 12. Sections 1 to 10 of this act become operative on
13 July 1, 2010. The other sections of this act become operative on
14 their effective date.