

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 198**

FINAL READING

Introduced by Stuthman, 22; Cornett, 45.

Read first time January 12, 2009

Committee: General Affairs

A BILL

- 1 FOR AN ACT relating to cigarettes; to adopt the Reduced Cigarette
- 2 Ignition Propensity Act; and to provide operative dates.
- 3 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 purposes of the Reduced Cigarette Ignition  
4 Propensity Act:

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

9           (2) Cigarette has the same meaning as in section 77-2601;

10           (3) Consumer testing means an assessment of cigarettes  
11 that is conducted by a manufacturer, or under the control or  
12 direction of a manufacturer, for the purpose of evaluating consumer  
13 acceptance of the cigarettes;

14           (4) Manufacturer means:

15           (a) Any entity which manufactures or otherwise produces  
16 cigarettes or causes cigarettes to be manufactured or produced  
17 anywhere that such manufacturer intends to sell in this state,  
18 including cigarettes intended to be sold in the United States  
19 through an importer;

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

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

1           (5) Quality control and quality assurance program means  
2 the laboratory procedures implemented to ensure that operator  
3 bias, systematic and nonsystematic methodological errors, and  
4 equipment-related problems do not affect the results of the  
5 testing. Such a program ensures that the testing repeatability  
6 remains within the required repeatability values stated in section  
7 3 of this act for all test trials used to certify cigarettes in  
8 accordance with the act;

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

12           (7) Retail dealer means any person, other than a  
13 manufacturer or wholesale dealer, engaged in selling cigarettes  
14 or tobacco products;

15           (8) Sale means any transfer for consideration, exchange,  
16 barter, gift, offer for sale, or distribution in any manner or by  
17 any means whatsoever;

18           (9) Sell means to sell or to offer or agree to do the  
19 same; and

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

1           Sec. 3. (1) Except as provided in subsection (7) of this  
2 section, no cigarettes may be sold or offered for sale in this  
3 state or offered for sale or sold to persons located in this  
4 state unless the cigarettes have been tested in accordance with the  
5 following test method and meet the performance standard specified  
6 in this section, a written certification has been filed by the  
7 manufacturer with the State Fire Marshal in accordance with section  
8 4 of this act, and the cigarettes have been marked in accordance  
9 with section 5 of this act. Testing shall be as follows:

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

14           (b) Testing shall be conducted on ten layers of filter  
15 paper;

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

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

22           (e) Written certifications shall be based upon testing  
23 conducted by a laboratory that has been accredited pursuant  
24 to standard ISO/IEC 17025 of the International Organization for  
25 Standardization or other comparable accreditation standard required

1 by the State Fire Marshal;

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

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

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

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

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

21           (4) Each manufacturer shall maintain copies of the  
22 reports of all tests conducted on all cigarettes offered for  
23 sale for a period of three years and shall make copies of these  
24 reports available to the State Fire Marshal and the Attorney  
25 General upon written request. Any manufacturer who fails to make

1 copies of these reports available within sixty days after receiving  
2 a written request shall be subject to a civil penalty not to exceed  
3 ten thousand dollars for each day after the sixtieth day that the  
4 manufacturer does not make such copies available.

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

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

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

1 inventory was purchased prior to such date in comparable quantity  
2 to the inventory purchased during the same period of the prior  
3 year.

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

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

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

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

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

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

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

18 (c) Length in millimeters;

19 (d) Circumference in millimeters;

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

21 (f) Filter or nonfilter;

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

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

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

1 test; and

2 (j) The date that the testing occurred.

3 (3) The State Fire Marshal shall make the certifications  
4 available to the Attorney General for purposes consistent with the  
5 Reduced Cigarette Ignition Propensity Act and the Department of  
6 Revenue for the purposes of ensuring compliance with this section.

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

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

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

25 (7) If a manufacturer has certified a cigarette pursuant

1 to this section and thereafter makes any change to such cigarette  
2 that is likely to alter its compliance with the reduced cigarette  
3 ignition propensity standards required by the Reduced Cigarette  
4 Ignition Propensity Act, such cigarette shall not be sold or  
5 offered for sale in this state until the manufacturer retests the  
6 cigarette in accordance with the testing standards set forth in  
7 section 3 of this act and maintains records of that retesting as  
8 required by section 3 of this act. Any altered cigarette which does  
9 not meet the performance standard set forth in section 3 of this  
10 act shall not be sold in this state.

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

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

18           (b) The letters "FSC" which signifies Fire Standards  
19 Compliant.

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

23           (3) A manufacturer shall use only one marking and shall  
24 apply this marking uniformly for all packages, including, but not  
25 limited to, packs, cartons, and cases, and brands marketed by that

1 manufacturer.

2 (4) Manufacturers certifying cigarettes in accordance  
3 with section 4 of this act shall provide a copy of the  
4 certifications to all wholesale dealers and agents to which they  
5 sell cigarettes and shall also provide sufficient copies of an  
6 illustration of the package marking utilized by the manufacturer  
7 pursuant to this section for each retail dealer to which the  
8 wholesale dealers or agents sell cigarettes. Wholesale dealers and  
9 agents shall provide a copy of these package markings received from  
10 manufacturers to all retail dealers to which they sell cigarettes.  
11 Wholesale dealers, agents, and retail dealers shall permit the  
12 State Fire Marshal, the Department of Revenue, and their employees  
13 or peace officers of this state to inspect markings of cigarette  
14 packaging marked in accordance with this section.

15 Sec. 6. (1) A manufacturer, wholesale dealer, agent, or  
16 any other person or entity who knowingly sells or offers to sell  
17 cigarettes, other than through retail sale, in violation of section  
18 3 of this act, shall be liable to a civil penalty not to exceed  
19 ten thousand dollars per each sale of such cigarettes for a first  
20 offense and shall be liable to a civil penalty not to exceed  
21 twenty-five thousand dollars for any subsequent offense per each  
22 sale of such cigarettes, except that this penalty against any such  
23 person or entity shall not exceed one hundred thousand dollars  
24 during any thirty-day period.

25 (2) A retail dealer who knowingly sells or offers to

1 sell fewer than one thousand cigarettes in violation of section  
2 3 of this act shall be liable to a civil penalty not to exceed  
3 five hundred dollars for a first offense and shall be liable to a  
4 civil penalty not to exceed two thousand dollars for any subsequent  
5 offense for each such sale or offer for sale of such cigarettes.  
6 A retail dealer who knowingly sells or offers to sell one thousand  
7 or more cigarettes in violation of section 3 of this act shall be  
8 liable to a civil penalty not to exceed one thousand dollars for a  
9 first offense and shall be liable to a civil penalty not to exceed  
10 five thousand dollars for any subsequent offense per each such sale  
11 or offer of sale of such cigarettes. The penalty against any retail  
12 dealer under this subsection shall not exceed twenty-five thousand  
13 dollars during any thirty-day period.

14 (3) In addition to any civil penalty, any corporation,  
15 partnership, sole proprietor, limited partnership, limited  
16 liability company, limited liability partnership, or association  
17 engaged in the manufacture of cigarettes that knowingly makes a  
18 false certification pursuant to section 4 of this act shall be  
19 liable to a civil penalty of seventy-five thousand dollars for  
20 the first false certification and shall be liable to a civil  
21 penalty not to exceed one hundred fifty thousand dollars for each  
22 subsequent false certification.

23 (4) Any person violating any other provision of the  
24 Reduced Cigarette Ignition Propensity Act shall be liable to a  
25 civil penalty not to exceed one thousand dollars for a first

1 offense and shall be liable to a civil penalty not to exceed five  
2 thousand dollars for any subsequent offense.

3 (5) Whenever any peace officer of this state or  
4 duly authorized representative of the State Fire Marshal or  
5 Tax Commissioner discovers any cigarettes (a) for which no  
6 certification has been filed as required by section 4 of this act  
7 or (b) that have not been marked as required by section 5 of  
8 this act, such peace officer or representative may seize and take  
9 possession of such cigarettes. Cigarettes seized pursuant to this  
10 subsection shall be destroyed, except that prior to the destruction  
11 of any cigarette seized pursuant to this subsection the true holder  
12 of the trademark rights in the cigarette brand shall be permitted  
13 to inspect the cigarette.

14 (6) In addition to any other remedy provided by law,  
15 the Attorney General may file an action in a court of competent  
16 jurisdiction for a violation of the Reduced Cigarette Ignition  
17 Propensity Act, including petitioning (a) for preliminary or  
18 permanent injunctive relief against any manufacturer, importer,  
19 wholesale dealer, retail dealer, agent, or other person or entity  
20 to enjoin such entity from selling, offering to sell, or affixing  
21 tax stamps or cigarette tax meter impressions to any cigarette  
22 that does not comply with the requirements of the Reduced Cigarette  
23 Ignition Propensity Act or (b) to recover any costs or damages  
24 suffered by the state because of a violation of the act, including  
25 enforcement costs relating to the specific violation and attorney's

1 fees. Each violation of the act or of rules or regulations  
2 adopted and promulgated under the act constitutes a separate civil  
3 violation for which the Attorney General may obtain relief. Upon  
4 obtaining judgment for injunctive relief under this subsection,  
5 the Attorney General shall provide a copy of the judgment to all  
6 wholesale dealers and agents to which the cigarette has been sold.

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

13       Sec. 8. To enforce the provisions of the Reduced  
14 Cigarette Ignition Propensity Act, the Attorney General may examine  
15 the books, papers, invoices, and other records of any person in  
16 possession, control, or occupancy of any premises where cigarettes  
17 are placed, stored, sold, or offered for sale, as well as the stock  
18 of cigarettes on the premises. Every person in the possession,  
19 control, or occupancy of any premises where cigarettes are placed,  
20 sold, or offered for sale shall give the Attorney General the  
21 means, facilities, and opportunity for the examinations authorized  
22 by the act.

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

25       (1) Any person or entity from manufacturing or selling

1 cigarettes that do not meet the requirements of section 3 of this  
2 act if the cigarettes are or will be stamped for sale in another  
3 state or are packaged for sale outside the United States and that  
4 person or entity has taken reasonable steps to ensure that such  
5 cigarettes will not be sold or offered for sale to persons located  
6 in this state; or

7 (2) The use of cigarettes solely for the purpose of  
8 consumer testing utilizing only the quantity of cigarettes that is  
9 reasonably necessary for the assessment.

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

14 (2) The Reduced Cigarette Ignition Propensity Act  
15 preempts any local law on the subject and no political subdivision  
16 shall enact or enforce any ordinance or other local law or  
17 regulation conflicting with any provision of the act or with any  
18 policy of this state expressed by the act, whether the policy is  
19 expressed by inclusion of a provision in the act or by exclusion of  
20 that subject from the act.

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

25 Sec. 12. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of

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- 1 this act become operative on January 1, 2010. The other sections of
- 2 this act become operative on their effective date.