

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 198

Introduced by Stuthman, 22.

Read first time January 12, 2009

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 10 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 and the manufacturer intends the cigarettes to be sold in
18 the United States through an importer;

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

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

25 (5) Quality control and quality assurance program means

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (f) Laboratories conducting testing in accordance with

1 this subsection shall implement a quality control and quality
2 assurance program that includes a procedure that will determine the
3 repeatability of the testing results. The repeatability value shall
4 be no greater than 0.19;

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

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

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

24 (3) A manufacturer of a cigarette that the State Fire
25 Marshal determines cannot be tested in accordance with the test

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

25 (4) Each manufacturer shall maintain copies of the

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

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

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

24 (7) The requirements of subsection (1) of this section
25 shall not prohibit wholesale or retail dealers from selling their

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

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

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

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

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

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

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

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

23 (c) Length in millimeters;

24 (d) Circumference in millimeters;

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

1 (f) Filter or non-filter;

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

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

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

8 (j) The date that the testing occurred.

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

13 (4) Each cigarette listed in the brand family of
14 cigarettes which is certified under this section shall be
15 recertified every five years.

16 (5) At the time a manufacturer submits a written
17 certification under this section, the manufacturer shall pay to
18 the State Fire Marshal a fee of one thousand dollars for each brand
19 family of cigarettes identified in the certification. The fee paid
20 shall apply to all cigarettes listed in the brand family identified
21 in the certification and shall include any new cigarette certified
22 within the brand family during the five-year certification period.

23 (6) The Reduced Cigarette Ignition Propensity Fund is
24 created. The fund shall consist of all certification fees submitted
25 by manufacturers in addition to any other funds made available for

1 such purpose. The State Fire Marshal shall use the fund to carry
2 out the act. Fees collected pursuant to this section shall be
3 remitted to the State Treasurer for credit to the fund. Any money
4 in the fund available for investment shall be invested by the state
5 investment officer pursuant to the Nebraska Capital Expansion Act
6 and the Nebraska State Funds Investment Act.

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

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

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

24 (b) The letters "FSC", which signifies Fire Standards
25 Compliant.

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

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

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

21 Sec. 6. (1) A manufacturer, wholesale dealer, agent,
22 or any other person or entity who knowingly sells or offers to
23 sell cigarettes, other than through retail sale, in violation of
24 section 3 of this act, shall be liable to a civil penalty not to
25 exceed one thousand dollars per each sale of such cigarettes for

1 a first offense and shall be liable to a civil penalty not to
2 exceed ten thousand dollars for any subsequent offense per each
3 sale of such cigarettes, except that this penalty against any such
4 person or entity shall not exceed fifty thousand dollars during any
5 thirty-day period.

6 (2) A retail dealer who knowingly sells cigarettes in
7 violation of section 3 of this act shall be liable to a civil
8 penalty not to exceed two hundred fifty dollars for a first offense
9 and shall be liable to a civil penalty not to exceed five hundred
10 dollars for any subsequent offense for each such sale or offer
11 for sale of such cigarettes, except that this penalty against any
12 retail dealer shall not exceed twenty-five thousand dollars during
13 any thirty-day period.

14 (3) In addition to any civil penalty, any corporation,
15 partnership, sole proprietor, limited partnership, or association
16 engaged in the manufacture of cigarettes that knowingly makes a
17 false certification pursuant to section 4 of this act shall be
18 liable to a civil penalty of seventy-five thousand dollars for such
19 false certification.

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

25 (5) Any cigarettes that have been sold or offered for

1 sale that do not comply with the performance standard required by
2 section 3 of this act shall be subject to seizure and forfeiture
3 under section 59-1523, except that prior to the destruction of any
4 cigarette seized and forfeited pursuant to such section the true
5 holder of the trademark rights in the cigarette brand shall be
6 permitted to inspect the cigarette.

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

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

22 (2) The Tax Commissioner, in the regular course of
23 conducting inspections of wholesale dealers, agents, and retail
24 dealers, as authorized under section 77-2605, may inspect such
25 cigarettes to determine if the cigarettes are marked as required

1 by section 5 of this act. If the cigarettes are not marked as
2 required, the Tax Commissioner shall notify the State Fire Marshal.

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

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

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

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

1 Sec. 10. (1) The Reduced Cigarette Ignition Propensity
2 Act shall be repealed if a federal reduced cigarette ignition
3 propensity standard that preempts the act is adopted and becomes
4 effective.

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

12 Sec. 11. This act becomes operative on July 1, 2011.