

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 404

Introduced by Cornett, 45.

Read first time January 16, 2009

Committee: General Affairs

A BILL

- 1 FOR AN ACT relating to cigarettes; to adopt the Reduced Cigarette
- 2 Ignition Propensity Act; to create a fund; 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 retail dealer can establish that state
3 tax stamps were affixed to the cigarettes prior to such date, and
4 if the wholesale or retail dealer can establish that the inventory
5 was purchased prior to such date in comparable quantity to the
6 inventory purchased during the same period of the prior 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 January 1, 2009.

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 listed in the brand family of
13 cigarettes which is certified under this section shall be
14 recertified every three years.

15 (5) At the time a manufacturer submits a written
16 certification under this section, the manufacturer shall pay to
17 the State Fire Marshal a fee of one thousand dollars for each brand
18 family of cigarettes identified in the certification. The State
19 Fire Marshal may annually adjust the fee to ensure it defrays the
20 actual costs of the processing, testing, enforcement, and oversight
21 activities required by the Reduced Cigarette Ignition Propensity
22 Act. The fee paid shall apply to all cigarettes listed in the brand
23 family identified in the certification and shall include any new
24 cigarette certified within the brand family during the three-year
25 certification period.

1 (6) The Reduced Cigarette Ignition Propensity Fund is
2 created. The fund shall consist of all certification fees submitted
3 by manufacturers in addition to any other funds made available for
4 such purpose. The State Fire Marshal shall use the fund to carry
5 out the act. Fees collected pursuant to this section shall be
6 remitted to the State Treasurer for credit to the fund. Any money
7 in the fund available for investment shall be invested by the state
8 investment officer pursuant to the Nebraska Capital Expansion Act
9 and the Nebraska State Funds Investment Act.

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

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

25 (a) Any marking in use and approved for sale in New York

1 pursuant to the New York Fire Safety Standards for Cigarettes as
2 such standards existed on January 1, 2009; or

3 (b) The letters "FSC", which signifies Fire Standards
4 Compliant.

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

8 (3) A manufacturer shall use only one marking and shall
9 apply this marking uniformly for all packages, including, but not
10 limited to, packs, cartons, and cases, and brands marketed by that
11 manufacturer.

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

25 Sec. 6. (1) A manufacturer, wholesale dealer, agent, or

1 any other person or entity who knowingly sells or offers to sell
2 cigarettes, other than through retail sale, in violation of section
3 3 of this act, shall be liable to a civil penalty not to exceed
4 ten thousand dollars per each sale of such cigarettes for a first
5 offense and shall be liable to a civil penalty not to exceed
6 twenty-five thousand dollars for any subsequent offense per each
7 sale of such cigarettes, except that this penalty against any such
8 person or entity shall not exceed one hundred thousand dollars
9 during any thirty-day period.

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

12 (a) Be liable to a civil penalty not to exceed five
13 hundred fifty dollars for a first offense and be liable to a
14 civil penalty not to exceed two thousand dollars for any subsequent
15 offense per each such sale or offer for sale of such cigarettes,
16 if the total number of cigarettes sold or offered for sale in such
17 sale does not exceed one thousand cigarettes; or

18 (b) Be liable to a civil penalty not to exceed one
19 thousand dollars for a first offense and be liable to a civil
20 penalty not to exceed five thousand dollars for any subsequent
21 offense per each such sale or offer of sale of such cigarettes,
22 if the total number of cigarettes sold or offered for sale in
23 such sale exceeds one thousand cigarettes, except that this penalty
24 against any retail dealer shall not exceed twenty-five thousand
25 dollars during any thirty-day period.

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

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

15 (5) Any cigarettes that have been sold or offered for
16 sale that do not comply with the performance standard required by
17 section 3 of this act shall be subject to seizure and forfeiture
18 under section 59-1523, except that prior to the destruction of any
19 cigarette seized and forfeited pursuant to such section the true
20 holder of the trademark rights in the cigarette brand shall be
21 permitted to inspect the cigarette.

22 (6) In addition to any other remedy provided by law,
23 the State Fire Marshal or Attorney General may file an action
24 in a court of competent jurisdiction for a violation of the
25 Reduced Cigarette Ignition Propensity Act, including petitioning

1 for injunctive relief or to recover any costs or damages suffered
2 by the state because of a violation of the act, including
3 enforcement costs relating to the specific violation and attorney's
4 fees. Each violation of the act or of rules or regulations
5 adopted and promulgated under the act constitutes a separate civil
6 violation for which the State Fire Marshal or Attorney General may
7 obtain relief.

8 Sec. 7. (1) The State Fire Marshal may adopt and
9 promulgate rules and regulations necessary to carry out the
10 Reduced Cigarette Ignition Propensity Act in accordance with the
11 Administrative Procedure Act.

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

18 Sec. 8. To enforce the provisions of the Reduced
19 Cigarette Ignition Propensity Act, the Attorney General and the
20 State Fire Marshal may examine the books, papers, invoices, and
21 other records of any person in possession, control, or occupancy of
22 any premises where cigarettes are placed, stored, sold, or offered
23 for sale, as well as the stock of cigarettes on the premises. Every
24 person in the possession, control, or occupancy of any premises
25 where cigarettes are placed, sold, or offered for sale, shall

1 give the Attorney General and the State Fire Marshal the means,
2 facilities, and opportunity for the examinations authorized by the
3 act.

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

6 (1) Any person or entity from manufacturing or selling
7 cigarettes that do not meet the requirements of section 3 of this
8 act if the cigarettes are or will be stamped for sale in another
9 state or are packaged for sale outside the United States and that
10 person or entity has taken reasonable steps to ensure that such
11 cigarettes will not be sold or offered for sale to persons located
12 in this state; or

13 (2) The use of cigarettes solely for the purpose of
14 consumer testing utilizing only the quantity of cigarettes that is
15 reasonably necessary for the assessment.

16 Sec. 10. (1) The Reduced Cigarette Ignition Propensity
17 Act shall be void if a federal reduced cigarette ignition
18 propensity standard that preempts the act is adopted and becomes
19 effective.

20 (2) The Reduced Cigarette Ignition Propensity Act
21 preempts any local law on the subject and no political subdivision
22 shall enact or enforce any ordinance or other local law or
23 regulation conflicting with any provision of the act or with any
24 policy of this state expressed by the act, whether the policy is
25 expressed by inclusion of a provision in the act or by exclusion of

1 that subject from the act.

2 Sec. 11. This act becomes operative on July 1, 2010.