

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL

Introduced by

Read first time

Committee:

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 purposes of the Reduced Cigarette Ignition
4 Propensity Act:

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

8 (2) Cigarette means a 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) Consumer testing means an assessment of cigarettes
14 that is conducted by a manufacturer, or under the control or
15 direction of a manufacturer, for the purpose of evaluating consumer
16 acceptance of the cigarettes;

17 (4) Manufacturer means:

18 (a) An entity which manufactures or otherwise produces
19 cigarettes or causes cigarettes to be manufactured or produced
20 anywhere in the world and intends the cigarettes to be sold in the
21 United States through an importer;

22 (b) The first purchaser of cigarettes manufactured
23 anywhere in the world that intends to resell such cigarettes in the
24 United States that the original manufacturer or producer does not
25 intend to be sold in the United States; or

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

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

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

12 (7) Retail dealer means a person, other than a
13 manufacturer or wholesale dealer, engaged in selling cigarettes or
14 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 (a) a person who sells
21 cigarettes or tobacco products to retail dealers or (b) a person
22 who owns, operates, or maintains one or more cigarette or tobacco
23 product vending machines in, at, or upon premises owned or occupied
24 by another person.

25 Sec. 3. (1) Except as provided in subsection (7) of this
26 section, no cigarettes shall be sold or offered for sale in this
27 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
26 assurance program that includes a procedure that will determine the
27 repeatability of the testing results. The repeatability value shall

1 be no greater than 0.19;

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

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

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

21 (3) A manufacturer of a cigarette that the State Fire
22 Marshal determines cannot be tested in accordance with the test
23 method prescribed in subdivision (1)(a) of this section shall
24 propose a test method and performance standard for the cigarette to
25 the State Fire Marshal for approval. Upon approval of the proposed
26 test method and a determination by the State Fire Marshal that
27 the performance standard proposed by the manufacturer is equivalent

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

20 (4) Each manufacturer shall maintain copies of the
21 reports of all tests conducted on all cigarettes offered for
22 sale for a period of three years, and shall make copies of these
23 reports available to the State Fire Marshal and the Attorney
24 General upon written request. Any manufacturer who fails to make
25 copies of these reports available within sixty days after receiving
26 a written request shall be subject to a civil penalty not to exceed
27 ten thousand dollars for each day after the sixtieth day that the

1 manufacturer does not make such copies available.

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

11 (6) The State Fire Marshal shall review the effectiveness
12 of this section and report every three years to the Legislature
13 his or her findings and, if appropriate, recommendations for
14 legislation to improve the effectiveness of this section. The
15 report and legislative recommendations shall be submitted no later
16 than November 15 of each three-year period, with the first report
17 due no later than November 15, 2013.

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

26 (8) The Reduced Cigarette Ignition Propensity Act shall
27 be implemented in accordance with the implementation and substance

1 of the New York Fire Safety Standards for Cigarettes, as such
2 standards existed on the operative date of this act.

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

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

7 (b) Each cigarette listed in the certification meets the
8 performance standard set forth in subdivision (1)(c) of section (3)
9 of this act.

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

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

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

14 (c) Length in millimeters;

15 (d) Circumference in millimeters;

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

17 (f) Filter or non-filter;

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

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

20 (i) The name, address, and telephone number of the
21 laboratory, if different than the manufacturer, that conducted the
22 test; and

23 (j) The date that the testing occurred.

24 (3) The certifications shall be made available to the
25 Attorney General for purposes consistent with the Reduced Cigarette
26 Ignition Propensity Act and the Department of Revenue for the
27 purposes of ensuring compliance with this section.

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

3 (5) For each cigarette listed in a certification, a
4 manufacturer shall pay to the State Fire Marshal a fee of two
5 hundred fifty dollars. The State Fire Marshal may adjust this fee
6 annually to ensure it defrays the actual costs of the processing,
7 testing, enforcement, and oversight activities required by the act.

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

17 (7) If a manufacturer has certified a cigarette pursuant
18 to this section and thereafter makes any change to such cigarette
19 that is likely to alter its compliance with the reduced cigarette
20 ignition propensity standards required by the act, that cigarette
21 shall not be sold or offered for sale in this state until the
22 manufacturer retests the cigarette in accordance with the testing
23 standards set forth in section 3 of this act and maintains records
24 of that retesting as required by section 3 of this act. Any altered
25 cigarette which does not meet the performance standard set forth in
26 section 3 of this act shall not be sold in this state.

27 Sec. 5. (1) Cigarettes that are certified by a

1 manufacturer in accordance with section 4 of this act shall be
2 marked to indicate compliance with the requirements of section 3 of
3 this act. The marking shall be either:

4 (a) Any marking in use and approved for sale in New York
5 pursuant to the New York Fire Safety Standards for Cigarettes, as
6 such standards existed on the operative date of this act; or

7 (b) The letters "FSC", which signifies Fire Standards
8 Compliant.

9 (2) The marking shall appear in eight point type or
10 larger and be permanently printed, stamped, engraved, or embossed
11 on the package at or near the Universal Product Code, also known as
12 the UPC code.

13 (3) A manufacturer shall use only one marking and shall
14 apply this marking uniformly for all packages, including, but not
15 limited to, packs, cartons, and cases, and brands marketed by that
16 manufacturer.

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

1 to inspect markings of cigarette packaging marked in accordance
2 with this section.

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

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

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

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

1 dollars during any thirty-day period.

2 (3) In addition to any civil penalty, any corporation,
3 partnership, sole proprietor, limited partnership, limited
4 liability company, limited liability partnership, or association
5 engaged in the manufacture of cigarettes that knowingly makes a
6 false certification pursuant to section 4 of this act shall be
7 liable to a civil penalty of at least seventy-five thousand dollars
8 and not to exceed two hundred fifty thousand dollars for each such
9 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 a 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 as contraband goods under section 59-1523, except that prior to the
19 destruction of any cigarette seized and forfeited pursuant to such
20 section the true holder of the trademark rights in the cigarette
21 brand shall be 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
26 for injunctive relief or to recover any costs or damages suffered
27 by the state because of a violation of the act, including

1 enforcement costs relating to the specific violation and attorney's
2 fees. Each violation of the act or of rules or regulations
3 adopted and promulgated under the act constitutes a separate civil
4 violation for which the State Fire Marshal or Attorney General may
5 obtain relief.

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

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

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

27 Sec. 9. (1) All civil penalties collected pursuant to

1 section 6 of this act shall be remitted to the State Treasurer
2 for distribution in accordance with Article VII, section 5, of the
3 Constitution of Nebraska.

4 (2) The Fire Prevention and Public Safety Fund is
5 created. The fund shall consist of costs and damages recovered
6 pursuant to section 6 of this act which shall be remitted to the
7 State Treasurer for credit to the fund. The State Fire Marshal
8 shall use the fund to support fire safety and prevention programs.
9 Any money in the fund available for investment shall be invested
10 by the state investment officer pursuant to the Nebraska Capital
11 Expansion Act and the Nebraska State Funds Investment Act.

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

1 (2) A political subdivision shall not enact an ordinance
2 or resolution conflicting with or within the scope of the act or
3 a policy expressed by the act, whether the policy is expressed by
4 inclusion of a provision in the act or by exclusion of that subject
5 from the act.

6 Sec. 12. This act becomes operative on July 1, 2010.