

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Kroeber

1 A BILL for an Act to create and enact chapter 18-13 of the North Dakota Century Code, relating
2 to reduced ignition propensity standards for cigarettes; to provide a penalty, and to provide an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 **SECTION 1.** Section 18-13 of the North Dakota Century Code is created and enacted
6 as follows:

7 **18-13-01. Definitions.** In this chapter, unless the context otherwise requires:

- 8 1. "Agent" means any person authorized by the state tax commissioner to purchase
9 and affix stamps on packages of cigarettes.
- 10 2. "Cigarette" means any roll for smoking made wholly or in part of tobacco and
11 encased in any material except tobacco.
- 12 3. "Manufacturer" means:
- 13 a. Any entity which manufactures or otherwise produces cigarettes or causes
14 cigarettes to be manufactured or produced anywhere that the entity intends to
15 be sold in this state, including cigarettes intended to be sold in the United
16 States through an importer; or
- 17 b. The first purchaser anywhere that intends to resell in the United States
18 cigarettes manufactured anywhere that the original manufacturer or make
19 does not intend to be sold in the United States; or
- 20 c. Any entity that becomes a successor of an entity described in subdivision a or
21 b.
- 22 4. "Quality control and quality assurance program" means the laboratory procedures
23 implemented to ensure that operator bias, systematic and nonsystematic
24 methodological errors, and equipment related problems do not affect the results of

the testing. This program ensures that the testing repeatability remains within the required repeatability value stated in subdivision f of subsection 1 of section 18-13-02 for all tests trials used to certify cigarettes in accordance with this chapter.

5. "Repeatability" means the range of value within which the repeat results of cigarette test trials from single laboratory will fall ninety five percent of the time.

6. "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

7. "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means or any agreement to to the same. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts, and the exchanging of cigarettes for nay consideration other than money, is considered sales.

8. "Sell" means to sell, or to offer or agree to do the same.

9. "Wholesale dealer" means any person who sells cigarettes or tobacco produces to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

18-13-02. Test method and performance standard.

1. Except as provided in subsection 7, a cigarette may not be sold or offered for sale in this state or offered for sale or sold to person located in this state unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the state fire marshal in accordance with section 18-13-03, and the cigarettes have been marked in accordance with section 18-13-04.

a. Testing of cigarettes must be conducted in accordance with the american society of testing and materials ("ASTM") standards E2187-04, "standard test method for measuring the ignition strength of cigarettes."

b. Testing must be conducted on ten layers of filter paper.

- 1 c. No more than twenty-five percent of the cigarettes tested in a test trial in
2 accordance with this section must exhibit full-length burns. Forty replicate
3 testes must comprise a complete test trial for each cigarette tested.
- 4 d. The performance standard required by this section must only be applied to a
5 complete test trial.
- 6 e. Written certifications must be based upon testing conducted by a laboratory
7 that has been accredited pursuant to standard ISO/IEC 17025 of the
8 International Organization for Standardization ("ISO"), or other comparable
9 accreditation standard required by the state fire marshal.
- 10 f. Laboratories conducting testing in accordance with the section shall
11 implement a quality control and quality assurance program that includes a
12 procedure that will determine the repeatability of the testing results. The
13 repeatability value must be no greater than 0.19.
- 14 g. This section does not require additional testing of cigarettes are tested
15 consistent with this chapter for any other purpose.
- 16 h. Testing performed or sponsored by the state fire marshal to determine a
17 cigarette's compliance with the performance standard required shall be
18 conducted in accordance with this section.

- 19 2. Each cigarette listed in a certification submitted pursuant to section 18-13-03 that
20 uses lowered permeability bands in the cigarette paper to achieve compliance with
21 the performance standard set forth in this section must have at least two nominally
22 identical band on the paper surrounding the tobacco column. At least one
23 complete band must be located at least fifteen millimeters from the lighting end of
24 the cigarette. For cigarettes on which the bands are positioned by design, there
25 must be at least two bands fully located at least fifteen millimeters from the lighting
26 end and ten millimeters from the filter end of the tobacco column, or ten
27 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.
- 28 3. A manufacturer of a cigarette that the state fire marshal determines cannot be
29 tested in accordance with the test method prescribed in subdivision a of
30 subsection 1 shall propose a test method and performance standard for the
31 cigarette to the state fire marshal. Upon approval of the proposed test method and

1 a determination by the state fire marshal that the performance standard proposed
2 by the manufacturer is equivalent to the performance standard prescribed in
3 subdivision c of subsection 1, the manufacturer may employ the test method and
4 performance standard to certify the cigarette pursuant to section 18-13-03. If the
5 state fire marshal determines that another state has enacted reduced cigarette
6 ignition propensity standard that include a test method and performance standard
7 that are the same as those contained in this chapter, and the state fire marshal
8 finds that the officials responsible for implementing those requirements have
9 approved the proposed alternative test method and performance standard for a
10 particular cigarette proposed by a manufacturer as meeting the fire safety
11 standards of that state's law or regulation under a legal provision comparable to
12 this section, then the state fire marshal shall authorize that manufacturer to
13 employ the alternative test method and performance standards to certify that
14 cigarette for sale in this state, unless the state fire marshall demonstrates a
15 reasonable basis why the alternative test should not be accepted under this
16 chapter. All other applicable requirements of this section apply to the
17 manufacturer.

- 18 4. Each manufacturer shall maintain copies of the reports of all tests conducted on all
19 cigarettes offered for sale for a period of thee years, and shall make copies of
20 these reports available to the state fire marshall and the attorney general upon
21 written request. Any manufacturer who fails to make copies of these reports
22 available within sixty days of receiving a written request is subject to a civil penalty
23 not to exceed \$10,000 for each day after the sixtieth day that the manufacturer
24 does not make those copies available.
- 25 5. The state fire marshal may adopt a subsequent ASTM standard test method for
26 measuring the ignition strength of Cigarettes upon a finding that the subsequent
27 method does not result in a change in the percentage of full-length burns exhibited
28 by any tested cigarette when compared to the percentage of full-length burns the
29 same cigarette would exhibit when tested in accordance with ASTM standard
30 E2187-04 and the performance standard in subdivision c of subsection 1.

6. The state fire marshal shall review the effectiveness of this section and report each biennium to the Legislative Council the state fire marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this chapter.

7. The requirements of subsection 1 of this section any not prohibit wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this chapter if the wholesale or retailer dealer can establish that state tax stamps were affixed to the cigarettes prior to the effective date, and if the wholesale or retailer dealer can establish that the inventory was purchased before the effective date in comparable quantity to the inventory purchased during the same period of the prior year.

18-13-03. Certification and product change.

1. Each manufacturer shall submit to the state fire marshal a written certification attesting that each cigarette listed in the certification has been tested in accordance with section 18-13-02 and each cigarette listed in the certification meets the performance standard set forth in subdivision c of subsection 1 of section 18-13-02.

2. Each cigarette listed in the certification must be described with the following information:

- a. Brand or trade name on the package;
- b. Style, such as light or ultra light;
- c. Length in millimeters;
- d. Circumference in millimeters;
- e. Flavor, such as menthol or chocolate, if applicable;
- f. Filter or non-filter;
- g. Package description, such as soft pack or box;
- h. Marking approved in accordance with section 18-13-04;
- i. The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
- j. The date that the testing occurred.

- 1 3. The certifications must be made available to the attorney general for purposes
2 consistent with he chapter and the state tax commissioner for the purposes of
3 ensuring compliance with this section.
- 4 4. Each cigarette certified under this section must be re-certified every three years.
- 5 5. For each cigarette listed in the certification, a manufacturer shall pay to the state
6 fire marshall a fee of at least two hundred fifty dollars. The state fire marshal is
7 authorized to annually adjust this fee to ensure it defrays the actual costs of the
8 processing ,testing ,enforcement and oversight activities required by this chapter.
- 9 6. There is established in the state treasury a special fund to be known as the
10 "reduced cigarette ignition propensity and firefighter protection act enforcement
11 fund." The fund must consist of all certification fees submitted by manufacturers,
12 and must, in addition to any other monies made available, be available within
13 legislative appropriations, to the state fire marshal solely to support processing,
14 testing, enforcement and oversight activities under this chapter.
- 15 7. If a manufacturer has certified a cigarette under this section, and makes any
16 change to the cigarette that is likely to alter its compliance with the reduced
17 cigarette ignition propensity standards required by this chapter, that cigarette may
18 not be sold or offered for sale in this state until the manufacture retests the
19 cigarette in accordance with the testing standards set forth in section 18-13-02 and
20 maintains records of that retention as required by section 18-13-02. Any
21 cigarette which does not meeting the performance standards set forth in section
22 18-13-02 may not be sold in this state.

23 **18-13-04. Marking of cigarettes packaging.**

- 24 1. Cigarettes that are certified by a manufacturer in accordance with section 18-13-03
25 must be marked to indicate compliance with the requirements of section 18-13-02.
26 The marking must be in eight point type or large and consist of:
 - 27 a. Modification of the product uniform product code to include a visible mark
28 printed at or around the area of the uniform product code, may consist of
29 alphanumeric of symbolic characters permanently stamped, engraved,
30 embossed or printed in conjunction with the uniform product code.

b. Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the cigarette package or cellophane wrap; or

c. Printed, stamped, engraved or embossed test that indicates that the cigarettes meet the standards of this chapter.

2. A manufacturer shall use only one marking, and shall apply this marking uniformly for all packages, including packs, cartons, and cases, and brands marked by that manufacturer.

3. The state fire marshal shall be notified as to the marking that is selected.

4. Before the certification of any cigarette, a manufacturer shall present its proposed marking to the state fire marshal for approval. Upon receipt of the request, the state fire marshal shall approved or disapprove the marking offered, except that the state fire marshall shall approve any marking in use and approved for sale in New York pursuant to the New York fire safety standards for cigarettes. Proposed marking are approved if the state fire marshall fails to act within ten business days of receiving a request for approval.

5. A manufacturer may not modify its approved marking unless the modification has been approved by the state fire marshal in accordance with this section.

6. Manufacturers certifying cigarettes in accordance with section 18-13-03 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes, and shall provide sufficient copies of an illustration of package marking utilized by the manufacturer under this section for each retail dealer to which the wholesale dealers of agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents and retail dealers shall permit the state fire marshal, the tax commissioner, the attorney general and their employees to inspect markings of cigarette packaging marked under this section.

18-13-05. Penalties

1. A manufacturer, wholesale dealer, agent or any other person who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section

18-13-02, for a first offense is subject to a civil penalty not to exceed \$10,000 per each sale of such cigarettes, and for a subsequent offense is subject to a civil penalty not to exceed twenty-five thousand dollars per each sale in on case may the penalty against any person exceed one-hundred thousand dollars during any thirty-day period.

2. A retailer dealer who knowingly sells cigarettes in violation of section 18-13-02:

- a. For a first offense, subject to a civil penalty not to exceed five-hundred dollars and or a subsequent offense, subject to a civil penalty not to exceed two-thousand dollars, per each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale in the sale does not exceed one-thousand cigarettes; or
- b. For a first offense is subject to a civil penalty not to exceed one-thousand dollars and for a subsequent offense is subject to a civil penalty not to exceed five-thousand dollars, per each sale offer for sale of such cigarettes, if the total number of cigarettes sold or offered for sale in the sale exceeds one-thousand cigarettes provided that this penalty against nay retail dealer may not exceed twenty-five thousand dollars during a thirty-day period.

3. In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacturer of cigarettes that knowingly makes a false certification pursuant to section 18-13-03 shall, for a first offense, be liable to a civil penalty of at least seventy-five dollars, and for a subsequent offense a civil penalty not to exceed two-hundred fifty thousand dollars for each false certification.

4. Any person violating any other provision in this chapter shall be liable to a civil penalty for a first offense not to exceed one-thousand dollars, and for a subsequent offense liable to a civil penalty not to exceed five-thousand dollars, for each violation.

5. Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by section 18-13-02 are subject to forfeiture under chapter 29-31.1 and, upon a judgement of forfeiture, destroyed. Before the

1 destruction of any cigarette pursuant to these sections, the true holder of the
2 trademark rights in the cigarette brand must be permitted to inspect the cigarette.

- 3 6. In addition to any other remedy provided by law, the state fire marshal or attorney
4 general may file an action in district court for a violation of this chapter, including
5 petitioning for injunctive relief or to recover any costs or damages suffered by the
6 state because of a violation of this chapter, including enforcement costs relating to
7 the specific violation and attorney's fees. Each violation of this chapter or of rules
8 or regulations adopted under this chapter constitutes a separate civil violation for
9 which the state fire marshal or attorney general may obtain relief.

10 **18-13-06. Implementation.**

- 11 1. The state fire marshal may promulgate rules and regulations, pursuant to chapter
12 28-32, necessary to effectuate the purposes of this chapter.
13 2. The state tax commissioner in the regulation course of conducting inspections of
14 wholesale dealers, agents and retail dealers, as authorized under chapter 57-36,
15 may inspect such cigarettes to determine if the cigarettes are marked as required
16 by section 18-13-04. If the cigarettes are not marked as required, the state tax
17 commissioner shall notify the state fire marshal.

18 **18-13-07. Inspection.**

19 To enforce the provisions of this chapter, the attorney general and the state fire marshal
20 are authorized to examine the books, papers, invoices and other records of any person in
21 possession, control, or occupancy of any premises where cigarettes are placed, stored, sold or
22 offered for sale, as well as the stock of cigarettes on the premises. Every person in the
23 possession, control or occupancy of any premises where cigarettes are placed, sold or offered
24 for sale, is directed and required to give the attorney general and the state fire marshal the
25 means, facilities and opportunity for the examinations authorized by this section.

26 **18-13-08. Fire prevention and public safety fund.**

27 There is established in the state treasury a special fund to be known as the "fire
28 prevention and public safety fund." The fund shall consist of all monies recovered as penalties
29 under section 18-13-05. The monies must be deposited to the credit of the fund and must be
30 subject to legislative appropriation be made available to the state fire marshal to support fire
31 safety and prevention programs.

1 **18-13-09. Sale outside of North Dakota**

2 Nothing in this chapter shall be construed to prohibit any person from manufacturing or
3 selling cigarettes that do not meet the requirements of 18-13-02 if the cigarettes are or will be
4 stamped for sale in another state or are packaged for sale outside the United States and that
5 person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or
6 offered for sale to persons located in this state.

7 **18-13-10. Local regulation.**

8 Notwithstanding any other provision of law, home rule charter or ordinance made under
9 a home rule charter, may not enact or enforce any ordinance or regulation conflicting with, or
10 preempted by, any provision of this chapter or with any policy of this state expressed by this
11 chapter, whether that policy be expressed by inclusion of a provision in this chapter or by
12 exclusion of the subject from this chapter.

13 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective August 1, 2010.