

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1368

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1368

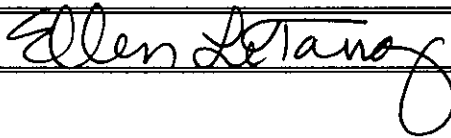
### House Industry, Business and Labor Committee

☐ Check here for Conference Committee

**Hearing Date:** January 19, 2009

**Recorder Job Number:** 7167

Committee Clerk Signature



**Chairman Keiser:** Opened the hearing on HB 1368 relating to reduced ignition propensity standards for cigarettes, to provide a penalty & effective date.

**Joe Kroeber~Representative from District 12 which includes 5/6 of Jamestown.** See testimony attachment 1.

Representative N Johnson: Will it increase the cost of the product?

Kroeber: It is my information it has not increased the cost.

Representative Boe: Do you have any information on the health effects?

Kroeber: I doesn't make one bit of difference.

Representative Boe: I noticed that the penalties are for selling in the state, does this prohibit our reservation?

Kroeber: To my knowledge, this has no effect on the reservations.

Chairman Keiser: On page two line 5, reference is made to test trials from a single laboratory will follow within 95 days. What if three labs do test and one falls within 95 consistently and the others fall below or above?

Kroeber: I don't have any direct knowledge.

Chairman Keiser: We are creating a special fund with a fiscal note with a plus \$200,000, what are we going to do with that money?

Kroeber: The AG office is in charge. No increase cost to the state because of the tax.

Chairman Keiser: You are on appropriations, how well do you like these kinds creations of funds?

Kroeber: Moderate expense.

Vice Chairman Kasper: Is this mandatory and the health effects.

Kroeber: I have no information on that.

Kroeber: With your permission I would like to pass out a testimony from Nancy Thoem who is from the Tobacco Free North Dakota who couldn't be here. See testimony attachment 2.

Dave Nuess~National Fire Protection Association & Coalition for Fire Safe Cigarettes. See testimony attachment 3.

Representative Amerman: This just covers cigarette but not zig zags.

Dave: Correct.

Representative Clark: Does this bill do what it is suppose to do?

Dave: Yes, in New York state say an 84% reduction in these types of fires.

Representative Schneider: How is this different from the model act?

Dave: There was a clause to make sure that states were consistent. The other big issue clause, if the Federal Government took action.

Representative Ruby: The picture of the bands, if you got through the first band and then set it down. There would be a considerable amount of time that the cigarette perhaps something on fire before it reached the second band.

Dave: That is all scientifically designed. It's not long enough to ignite.

Jerry Vein~Fire Professional from Grand Forks. In support of HB 1368.

Jim Reuther~Career Firefighter from Jamestown. See testimony attachment 4.

John Olson~Altrie Client Services. Presented testimony for amendment see attachment 5.

Vice Chairman Kasper: Has the cigarette industry seen a reduction in sales of these sales?

John: I don't think so.

Chairman Keiser: Can we have someone from the previous speakers respond to the amendments?

Dave: We are in support of Mr Olson's amendments.

Mike Rud~North Dakota Retail Association. We stand in support of HB 1368. Our concern is the effective date for time to move out the stock.

Representative Ruby: Do you have any concern for this not applying to the reservations.

Mike: We feel, talking with cigarette manufacturing company that there will be no cost. So I don't think it will be that big of an impact.

Representative Gruchalla: Has New York adopted this standard?

Mike: I do not know that.

Representative Nottestad: I'm playing the devil's advocate, is there a danger of wholesalers dumping the old cigarette into our market if we do not pass.

Mike: I don't know, but that would be ethically wrong.

Anyone in opposition, neutral?

Ray Lambert~North Dakota State Fire Marshall. Number of fires from cigarette has not gone up but the cost has. The concern is that this will fall in my office and that will cost. Another concern is manufacturers from different countries.

Representative Amerman: The money made payable for penalties to your office will the money go to state fire prevention.

Ray: Already in place.

Representative N Johnson: Would this apply to sales in North Dakota for manufacturers outside the country and internet sales.

Ray: I defer to Dave.

Dave: Terms of international sales will have to comply with the law including internet sales.

Representative Clark: When you mentioned cost of certifying, would it be easier to certify manufacturers rather than all those brands?

Ray: The issue is the expense of certification of manufactures. We will do spot checks for inspecting brands.

Kathleen Mangskau~Chairman of the Tobacco Prevention & Control Advisory Committee. We are also neutral. See testimony attachment 6.

**Closes the hearing on HB 1368.**

**What are the wishes of the committee?**

**Representative Schneider: Moves the amendment.**

**Representative Ruby: Second**

**All in favor all aye's.**

**Representative Gruchalla: Move a do pass as amended.**

**Representative Nottestad: Seconded.**

**Committee Roll Call with motion carries 13 yea's, 0 no's, 0 absent and Representative Schneider is the carrier.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
04/29/2009

Amendment to: Reengrossed  
HB 1368

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$225,000	\$0	\$225,000
Expenditures	\$0	\$0	\$0	\$225,000	\$0	\$225,000
Appropriations	\$0	\$0	\$0	\$225,000	\$0	\$225,000

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to the sale of reduced ignition propensity standards for cigarettes in North Dakota. It requires the Fire Marshal in the Office of Attorney General to assure testing is performed on each cigarette brand to determine the cigarettes comply with the specified performance standards.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund is created by this bill, into which the cigarette brand certification fees are deposited and spent pursuant to legislative appropriation to fund the processing, testing, enforcement, and oversight activities required by the bill. The initial fee is \$250 per cigarette brand. The Fire Marshal can adjust this fee annually to assure it funds the cost of the performing the compliance testing. Each cigarette must be recertified every 3 years. The bill also includes monetary penalties for violation of NDCC Section 18-13-02, created by this bill, which are to be deposited into the Fire Prevention and Public Safety Fund to support fire safety and prevention programs.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

For each brand to be certified the manufacturer must pay \$250 per year to the Fire Marshal. Monetary penalties for violations of NDCC Section 18-13-02 are deposited into the Fire Prevention and Public Safety Fund to support fire safety and prevention programs.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Fire Marshal is responsible for processing, testing, enforcement, and oversight of the reduced ignition propensity standards for cigarettes program. Expenditures include inspection travel and IT contractual costs to carry out these responsibilities.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a*

*continuing appropriation.*

The Executive Recommendation did not include an appropriation for this program. These monies need to be appropriated to the Office of Attorney General for the Fire Marshal to complete its duties as provided for in this bill.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	04/29/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/20/2009

Amendment to: Reengrossed  
HB 1368

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$80,000	\$0	\$0
Expenditures	\$0	\$0	\$0	\$80,000	\$0	\$0
Appropriations	\$0	\$0	\$0	\$80,000	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to the sale of reduced ignition propensity standards for cigarettes in North Dakota. It requires the Fire Marshal in the Office of Attorney General to assure testing is performed on each cigarette brand to determine the cigarettes comply with the specified performance standards.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement fund is created by this bill, into which the initial certification fees are deposited and spent pursuant to legislative appropriation to complete the processing, testing, enforcement, and oversight activities required by the bill. The fee is \$100 per cigarette brand. Each cigarette must be recertified every 3 years.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

For each brand to be certified the manufacturer must pay \$100 to the Fire Marshal.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Fire Marshal is responsible for processing, testing, enforcement, and oversight of the reduced ignition propensity standards for cigarettes program. Expenditures include inspection travel and IT contractual costs to carry out these responsibilities.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation did not include an appropriation for this program. These monies need to be appropriated to the Office of Attorney General for the Fire Marshal to complete its duties as provided for in this bill.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	03/24/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/11/2009

Amendment to: Engrossed  
HB 1368

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$200,000	\$0	
<b>Expenditures</b>	\$0	\$0	\$0	\$200,000	\$0	
<b>Appropriations</b>	\$0	\$0	\$0	\$200,000	\$0	

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to the sale of reduced ignition propensity standards for cigarettes in North Dakota. It requires the Fire Marshal in the Office of Attorney General to assure testing is performed on each cigarette brand to determine the cigarettes comply with the specified performance standards.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill creates two funds:

The Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement fund, into which the certification fees are deposited and spent pursuant to legislative appropriation to complete the processing, testing, enforcement, and oversight activities required by the bill, and

The Fire Prevention and Public Safety fund, into which all assessed penalties collected under NDCC Section 18-13-05 are deposited, and spent pursuant to legislative appropriation to support fire safety and prevention programs.

The amendments adopted do not change the estimated fiscal impact of the original fiscal note.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

For each brand to be certified the manufacturer must pay at least \$250 every three years to the Fire Marshal. The Fire Marshal may adjust the fee annually to cover the costs of processing, testing, enforcement, and oversight for this purpose. Estimated revenues for the 2011 -13 biennium are unknown at this time since the bill provides for a three year recertification and is effective August 1, 2010.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Fire Marshal is responsible for processing, testing, enforcement, and oversight of the reduced ignition propensity standards for cigarettes program. Expenditures include inspection travel, IT contractual costs and professional services costs to carry out these responsibilities. The expenditures are funded by the manufacturer when submitting testing certifications meeting the established standards.

The amendments adopted do not change the estimated fiscal impact of the original fiscal note.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation did not include an appropriation for this program. These monies need to be appropriated to the Office of Attorney General for the Fire Marshal to complete its duties as provided for in this bill.

The amendments adopted do not change the estimated fiscal impact of the original fiscal note.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	02/11/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/22/2009

Amendment to: HB 1368

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$200,000	\$0	
Expenditures	\$0	\$0	\$0	\$200,000	\$0	
Appropriations	\$0	\$0	\$0	\$200,000	\$0	

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

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**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill creates two funds:

The Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement fund, into which the certification fees are deposited and spent pursuant to legislative appropriation to complete the processing, testing, enforcement, and oversight activities required by the bill, and

The Fire Prevention and Public Safety fund, into which all assessed penalties collected under NDCC Section 18-13-05 are deposited, and spent pursuant to legislative appropriation to support fire safety and prevention programs.

The amendments adopted do not change the estimated fiscal impact of the original fiscal note.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

For each brand to be certified the manufacturer must pay at least \$250 every three years to the Fire Marshal. The Fire Marshal may adjust the fee annually to cover the costs of processing, testing, enforcement, and oversight for this purpose. Estimated revenues for the 2011 -13 biennium are unknown at this time since the bill provides for a three year recertification and is effective August 1, 2010.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Fire Marshal is responsible for processing, testing, enforcement, and oversight of the reduced ignition propensity standards for cigarettes program. Expenditures include inspection travel, IT contractual costs and professional services costs to carry out these responsibilities. The expenditures are funded by the manufacturer when submitting testing certifications meeting the established standards.

The amendments adopted do not change the estimated fiscal impact of the original fiscal note.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation did not include an appropriation for this program. These monies need to be appropriated to the Office of Attorney General for the Fire Marshal to complete its duties as provided for in this bill.

The amendments adopted do not change the estimated fiscal impact of the original fiscal note.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	01/22/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/15/2009

Bill/Resolution No.: HB 1368

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$200,000	\$0	
<b>Expenditures</b>	\$0	\$0	\$0	\$200,000	\$0	
<b>Appropriations</b>	\$0	\$0	\$0	\$200,000	\$0	

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to the sale of reduced ignition propensity standards for cigarettes in North Dakota. It requires the Fire Marshal in the Office of Attorney General to assure testing is performed on each cigarette brand to determine the cigarettes comply with the specified performance standards.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill creates two funds:

The Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement fund, into which the certification fees are deposited and spent pursuant to legislative appropriation to complete the processing, testing, enforcement, and oversight activities required by the bill, and

The Fire Prevention and Public Safety fund, into which all assessed penalties collected under NDCC Section 18-13-05 are deposited, and spent pursuant to legislative appropriation to support fire safety and prevention programs.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

For each brand to be certified the manufacturer must pay at least \$250 every three years to the Fire Marshal. The Fire Marshal may adjust the fee annually to cover the costs of processing, testing, enforcement, and oversight for this purpose. Estimated revenues for the 2011 -13 biennium are unknown at this time since the bill provides for a three year recertification and is effective August 1, 2010.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Fire Marshal is responsible for processing, testing, enforcement, and oversight of the reduced ignition propensity standards for cigarettes program. Expenditures include inspection travel, IT contractual costs and professional services costs to carry out these responsibilities. The expenditures are funded by the manufacturer when submitting testing certifications meeting the established standards.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency*

*and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation did not include an appropriation for this program. These monies need to be appropriated to the Office of Attorney General for the Fire Marshal to complete its duties as provided for in this bill.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	01/16/2009

January 19, 2009

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1/19/09  
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1368

Page 1, line 2, remove "and"

Page 1, line 3, after "date" insert "; and to provide an expiration date"

Page 5, line 1, replace "wholesale" with ":

a. Wholesale"

Page 5, line 6, after "year" insert "; or

b. The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, "consumer testing" means an assessment of cigarettes which is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of those cigarettes, utilizing only the quantity of cigarettes which is reasonably necessary for the assessment.

8. This chapter must be interpreted and construed to effectuate its general purpose to make uniform this chapter with the laws of those states that have enacted reduced cigarette ignition propensity laws as of the date this chapter is enacted"

Page 5, line 31, replace "a fee of at least" with "an initial fee of"

Page 8, line 15, replace "for a first offense, and for a subsequent" with ", but"

Page 8, line 16, remove "offense a civil penalty"

Page 8, replace lines 21 through 25 with:

"5. If any law enforcement personnel or duly authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by section 18-13-03, or which have not been marked as required by section 18-13-04, that personnel or representative may seize and take possession of the cigarettes. Cigarettes seized under this subsection must be destroyed; provided, however, that before the destruction of the cigarettes, the true holder of the trademark rights in the cigarette brand is permitted to inspect the cigarette."

Page 8, line 28, replace "injunctive relief or to" with ":

a. Preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or any other person to enjoin the person from selling, offering to sell, or affixing tax stamps to any cigarette that does not comply with the requirements of this chapter; or

b. To"

Page 8, line 30, after the underscored period insert:

"7."

Page 9, line 31, after "**DATE**" insert " - **EXPIRATION DATE**" and after "2010" insert ", however, this Act becomes ineffective on the date the state fire marshal certifies to the legislative council that a federal reduced cigarette ignition propensity standard has been adopted and has become effective"

Renumber accordingly

Date: Jan 19, 2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1368

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Amerman	x	
Vice Chairman	x		Representative Boe	x	
Representative Clark	x		Representative Gruchalla	x	
Representative N Johnson	x		Representative Schneider	x	
Representative Nottestad	x		Representative Thorpe	x	
Representative Ruby	x				
Representative Sukut	x				
Representative Vigesaa	x				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Schneider

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1368: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1368 was placed  
on the Sixth order on the calendar.

Page 1, line 2, remove "and"

Page 1, line 3, after "date" insert "; and to provide an expiration date"

Page 5, line 1, replace "wholesale" with ":

a. Wholesale"

Page 5, line 6, after "year" insert ";

b. The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, "consumer testing" means an assessment of cigarettes which is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of those cigarettes, utilizing only the quantity of cigarettes which is reasonably necessary for the assessment.

8. This chapter must be interpreted and construed to effectuate its general purpose to make uniform this chapter with the laws of those states that have enacted reduced cigarette ignition propensity laws as of the date this chapter is enacted"

Page 5, line 31, replace "a fee of at least" with "an initial fee of"

Page 8, line 15, replace "for a first offense, and for a subsequent" with ", but"

Page 8, line 16, remove "offense a civil penalty"

Page 8, replace lines 21 through 25 with:

"5. If any law enforcement personnel or duly authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by section 18-13-03, or which have not been marked as required by section 18-13-04, that personnel or representative may seize and take possession of the cigarettes. Cigarettes seized under this subsection must be destroyed; provided, however, that before the destruction of the cigarettes, the true holder of the trademark rights in the cigarette brand is permitted to inspect the cigarette."

Page 8, line 28, replace "injunctive relief or to" with ":

a. Preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or any other person to enjoin the person from selling, offering to sell, or affixing tax stamps to any cigarette that does not comply with the requirements of this chapter; or

b. To"

Page 8, line 30, after the underscored period insert:

"Z."

Page 9, line 31, after "**DATE**" insert " - **EXPIRATION DATE**" and after "2010" insert ",  
however, this Act becomes ineffective on the date the state fire marshal certifies to the  
legislative council that a federal reduced cigarette ignition propensity standard has  
been adopted and has become effective"

Renumber accordingly

2009 HOUSE APPROPRIATIONS

HB 1368

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1368

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8741

Committee Clerk Signature

*Vicky Crabtree*

Minutes:

Chairman Svedjan: We did agree to amend it here.

Rep. Kroeber: We did amend it. Will you carry it?

Rep. Kroeber: I would have to carry it.

Chairman Svedjan: Ok, Rep. Kroeber.

Rep. Skarphol: This is the first one up, so let's talk about that briefly. I would think that it would be appropriate for Rep. Schneider to carry the bill to explain the essence of the bill and Rep. Kroeber to address what we did in Appropriations in this particular case.

Chairman Svedjan: I think that in affect will happen.

Rep. Skarphol: Ok.

Chairman Svedjan: We will have you carry the bill and you can talk to Rep. Schneider to provide whatever is necessary from IBL.

Rep. Kroeber: Was that your intention Rep. Skarphol? Or were you talking about that I would be responsible for the amendment once on the 12<sup>th</sup> order and then he would be responsible for the bill?

Rep. Skarphol: Somehow on the calendar it needs to be reflected who is going to explain the philosophy of the bill and who should explain the Appropriation's action on the bill.

Rep. Berg: It would seem appropriate that this bill is going to go on the 6<sup>th</sup> order. That if there are any questions on the amendments, Rep. Kroeber would address those questions. Then if they are automatically adopted it goes right to the 11<sup>th</sup> order. I think it is appropriate that the bill carrier whoever is on the standing committee takes the bill. Clearly no one had a question on the amendments so they were adopted. So, the bill carrier needs to know what amendments we adopted and why.

Rep. Kroeber: I'd be happy to provide that information to Rep. Schneider.

Chairman Svedjan: I'm assuming there is no discussion on the amendment

So, Rep. Berg you are saying the calendar then would show Rep. Kroeber.

Rep. Berg: On the 6<sup>th</sup> order it should be Rep. Kroeber whoever from this committee if an amendment was placed on it.

Chairman Svedjan: Ok.

Rep. Berg: Then if there is a question, one of the members on this committee better be prepared to get up and address it. If those amendments pass, then there shouldn't be questions on the amendment, the question should be targeted on the whole bill. I think on the calendar we put the Appropriations Committee vote as well as the Standing Committee's vote on the bill when it is on the 11<sup>th</sup> order.

Chairman Svedjan: We will work that out with the Speaker.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1368

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8751

Committee Clerk Signature

*Wicky Crabtree*

Minutes:

Chm. Svedjan: We have a number of bills that we want to take up and hopefully take final action on today. The first being HB 1368 and Rep. Kroeber is filling in for Rep. Kaiser. You should all have a copy of the fiscal note, but on the second page of that fiscal note it indicated that the executive recommendation did not include an appropriation for this program. These monies need to be appropriated to the Office of the Attorney General for the fire marshal to complete its duties as provided for in this bill. This bill generates revenue and based on the revenue the expenditures can only be to the extent of the revenues, but there was no authority to spend the money. That is why I requested this be brought down to this committee to ensure that's there. Maybe I pre-empted you on this, but Rep. Kroeber.

Rep. Kroeber approached the podium and distributed written testimony and amendment .0201 (Attachments A and B). Rep. Kroeber reviewed his written testimony.

Rep. Kroeber: Thank Rep. Delzer for recognizing that the bill contained the authority to collect the dollars, but needed this added language in order to use the dollars and that is amendment .0201 Kathy Roll is here from the AG's office who will be responsible for handling of the finances so she can help us also with any questions.

Chm. Svedjan: the two appropriations contained in your amendment differ from what was shown on the fiscal note. There is actually an additional \$25,000 in here. Would you address that please?

Rep. Kroeber: I'll ask Kathy to address that, I developed the amendment; I hadn't seen the fiscal note before.

Rep. Kaldor: How does the fire marshal do this? Do they randomly check cigarettes that are sold in order to determine or not they are in compliance?

Rep. Kroeber: This is actually handled with the AG's office and fire marshal which is in their division so Kathy will explain that.

Kathy Roll, Office of Attorney General: There will probably be a combination of things. There will be inspections, but also people who report cigarettes that don't have the designation.

Regarding the Fiscal Note, we did not estimate anything for the penalties and that's the reason for the difference.

Chm. Svedjan: So the \$25,000 is related to that?

Ms. Roll: That's correct.

Rep. Kempenich: Is this a continuing appropriation fund?

Ms. Roll: It is subject to legislative appropriation.

Rep. Kempenich: You don't have a fund set up for this right now?

Ms. Roll: That is correct.

Rep. Dosch: As far as this money is coming from, have you considered other than this new Tobacco Coalition rather than the Fire Prevention Fund?

Rep. Kroeber: No we did not consider that. At the time we drew up the bill, that had not been voted on yet, we have been working on this for about a year. The cigarette companies pay the

amount of money you need to take in and run the program and, we should not have to use those dollars to take and implement this change.

Rep. Delzer: What happens on the reservations?

Rep. Kroeber: The reservations are exempt. The testimony that we received when the AG's office at the last hearing is that not correct Kathy?

Ms. Roll: I did not attend that hearing so I am not certain, but I can find that out if you like.

Rep. Delzer: Is there any penalty for people that have cigarettes that are not like this?

Rep. Kroeber: No. It is not for the person, this is for the retail. There is no penalty on the individual.

Chm. Svedjan: Rep. Kroeber do you want to move the amendments?

**Rep. Kroeber moved to adopt amendment .0201.**

**Rep. Ekstrom seconded the motion.**

Rep. Wald: Is there any absolute prohibition stating that we couldn't take this money if we were going to fund it out of the Tobacco Fund? It looks to me that this is a tobacco issue without question, so why shouldn't those funds be used for this?

Rep. Kroeber: In looking at the use of those funds, this would have to come through the committee and we should be able to handle without using any of those funds. This is basically legislation that is in place in 45-46 states plus all across Canada is an issue the tobacco companies have been dealing with for quite some time. I don't think that would be necessary.

Rep. Kaldor: The retailer is subject to the penalty or the manufacturer?

Rep. Kroeber: The manufacturer, but the retailer has some obligation to check stock. They will have plenty of time to get rid of existing stock before the date this will go into effect.

Chm. Svedjan: The manufacturer pays the \$250 that's what creates the fund for Section 2 of the bill, the \$200,000 estimated?

Rep. Kroeber: That's what I understand.

Rep. Hawken: Is this type of cigarette readily available?

Rep. Kroeber: Yes, it is already in effect in 22 states plus the District of Columbia and another 15 states have already passed the law. It is in effect all across Canada and has been for some time. They are readily available.

Rep. Dosch: I'm assuming the price of the cigarettes would be a little more expensive?

Rep. Kroeber: The cost would not be very different.

Rep. Dosch: If we're not certain that this ties in on the Indian Reservations, we are doing half a job. That would make the cigarettes they are already selling for no tax on the reservations even more prevalent and that is my concern.

Rep. Kroeber: That's the way all cigarettes sales are handled on the reservation so this doesn't change that. As two cigarette taxes, Minnesota has \$1.49 on each pack and South Dakota has \$1.53, Montana has a \$1.70 and we have 44 cents. Any increase that would occur would not be any significant increase for the smoker with this bill.

Rep. Nelson: In short order it appears all states will be going in that direction. Would you foresee that this testing in the future would no longer be needed?

Rep. Kroeber: It's hard to say because of the different sizes of the manufacturers.

Rep. Skarphol: What does this do to the person that rolls his own cigarettes?

Rep. Kroeber: Those who roll their own cigarettes would not have the safety part of smoking that this would take and give other people. So it would not affect it.

Rep. Skarphol: So it is not a product that is absorbed by the tobacco, but some other mechanism that (drops sentence).

Rep. Kroeber: The cigarette paper has two what they call speed bumps on it which are bands on the paper and as it runs in the band the cigarette is not being actively smoked at that point

and time. It has a high tendency to take and go out. It does not affect anything that is not wrapped in cigarette paper, like cigars for example are wrapped in leaf and they are not affected.

Rep. Thoreson: Because you have to actively smoke the cigarette to keep it lit, there is some concern that people rather than setting it down in the ash tray are more likely to keep smoking it and inhale more smoke into their lungs. Is has there been any studies that you know of, done to address the health concerns for the people who are using these type of cigarettes?

Rep. Kroeber: I do not know of any long term study.

Chm. Svedjan: We are not conducting another hearing. We are looking at the monetary aspects of this.

Rep. Berg: There is about \$12 million more that is going into tobacco prevention. I think that is the question we need to decide. We have a funding source here that can analyze these and decide whether or not they have merit. That is the question we need to know as a committee, is there another funding source?

Chm. Svedjan: The funding source comes from the manufacturers. That is what creates the revenue and then the authority would be for the fire marshal to spend from within the funds that are generated from the manufacturer.

Rep. Berg: Wherever that fund comes from it is paid for by the consumer by an indirect tax. We do have a group that is charged with reducing tobacco use and would like them to weigh in on these things as we move forward.

Rep. Kaldor: In either case, the funding is coming from the tobacco industry. It is not a measure to prevent tobacco usage.

Rep. Delzer: How did you come up with the civil penalties and who directs them? What are they used for? You supposedly have enough money to cover this fund with the fee to the manufacturers and yet these massive civil penalties are there. That is just from the model?

Rep. Kroeber: It came from the model legislation which was developed with the coalition and tobacco companies.

Rep. Delzer: I can see the one on the manufacturers, but when you look \$500 and \$2,000 for the retailers; I know it says knowingly, but who does this, just the attorney general? What are the appeal processes?

Rep. Kroeber: The key term is "knowingly." That they knowingly choose to take and sell the cigarettes.

Rep. Klein: We have the amendment before us, I move the question.

Rep. Kaldor moved a Do Pass as amended by .0201.

Rep. Metcalf seconded the motion.

Voice Vote of adoption of amendment.

MOTION CARRIED, AMENDMENT ADOPTED.

Rep. Kaldor: Do Pass As Amended.

Rep. Metcalf: Second.

Rep. Skarphol: In this particular legislation that allows for a civil penalty and I am assuming that is being collected by the AG's office, what is the use of that civil penalty once it is accumulated in the Attorney General's Office? Civil penalties in the Ag Commissioner's Office go to the Ag Commissioner to be used by the Ag Commissioner. I'm looking at page 6 of Subsection B of 2 where it does allow for subject to a civil penalty not to exceed \$5,000.

Ms. Roll: On page 9 of the bill it provides for a fire prevention public safety fund and that is where the penalties that are collected are deposited.

Rep. Skarphol: So in addition to the monies collected from the tobacco industry that is where those monies would go into as well?

Ms. Roll: There are two separate funds, the fire prevention public safety fund and the reduce the cigarette ignition for (inaudible) fire fighters protection act. Look at your amendments in Section 2. The monies that go into that fund are a \$250 fee that is charged every three years to manufacturers. In Section 3 of the appropriation, that \$2,500 would be any penalties that are collected.

Roll Call Vote: 16 yes, 8 no, 1 absent.

MOTION CARRIED.

Rep. Kroeber: I would ask that we could have the bill carrier from the committee which heard the entire policy committee would carry this on the floor. I think that is what we have done in the past out of this committee.

Chm. Svedjan: Who was that?

Rep. Kroeber: Rep. Schneider: And I'm sure he is aware of it.

Chm. Svedjan: Then that's what we will do.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1368

Page 1, line 2, after the second semicolon insert "to provide an appropriation;"

Page 10, after line 12, insert:

**"SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the attorney general to be made available to the state fire marshal for the purpose of processing, testing, enforcement, and oversight activities in this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the fire prevention and public safety fund, not otherwise appropriated, the sum of \$25,000, or so much of the sum as may be necessary, to the attorney general to be made available to the state fire marshal for the purpose of supporting fire safety and prevention programs, for the biennium beginning July 1, 2009, and ending June 30, 2011."

Renumber accordingly

Date: 2/5/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1368

**Full House Appropriations Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number 90255. 0201

Action Taken Adopt amendment .0201

Motion Made By Kroeber Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Rep. Skarphol			Rep. Kroeber		
Rep. Wald			Rep. Onstad		
Rep. Hawken			Rep. Williams		
Rep. Klein					
Rep. Martinson					
Rep. Delzer			Rep. Glassheim		
Rep. Thoreson			Rep. Kaldor		
Rep. Berg			Rep. Meyer		
Rep. Dosch					
Rep. Pollert			Rep. Ekstrom		
Rep. Bellew			Rep. Kerzman		
Rep. Kreidt			Rep. Metcalf		
Rep. Nelson					
Rep. Wieland					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Voice Vote - Carries*

Date: 2/5/09  
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1368

**Full House Appropriations Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number 50255.0201

Action Taken No Pass or Amended by .0201

Motion Made By Kaldor Seconded By Metcalf

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald		✓	Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer		✓	Rep. Glassheim	✓	
Rep. Thoreson	✓		Rep. Kaldor	✓	
Rep. Berg		✓	Rep. Meyer	✓	
Rep. Dosch		✓			
Rep. Pollert		✓	Rep. Ekstrom	✓	
Rep. Bellew		✓	Rep. Kerzman	✓	
Rep. Kreidt		✓	Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland		✓			

Total (Yes) 16 No 8

Absent 1

Floor Assignment Rep. Schneider Kroeber

If the vote is on an amendment, briefly indicate intent:

6<sup>th</sup> order

**REPORT OF STANDING COMMITTEE**

**HB 1368: Appropriations Committee (Rep. Svedjan, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (16 YEAS, 8 NAYS, 1 ABSENT AND NOT VOTING). HB 1368 was placed on the Sixth order on the calendar.

Page 1, line 2, after the second semicolon insert "to provide an appropriation;"

Page 10, after line 12, insert:

**"SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the attorney general to be made available to the state fire marshal for the purpose of processing, testing, enforcement, and oversight activities in this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the fire prevention and public safety fund, not otherwise appropriated, the sum of \$25,000, or so much of the sum as may be necessary, to the attorney general to be made available to the state fire marshal for the purpose of supporting fire safety and prevention programs, for the biennium beginning July 1, 2009, and ending June 30, 2011."

Renumber accordingly

2009 SENATE FINANCE AND TAXATION

HB 1368

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1368

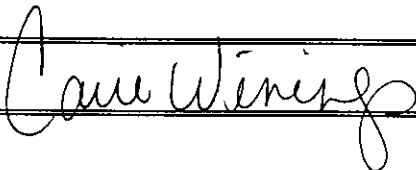
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/09/2009

Recorder Job Number: 10483

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opened hearing on HB 1368.

**Representative Joe Kroeber, District 12:** See Attachment #1 for testimony as sponsor and in support of the bill. Tax department is going to draw up some amendments that will need to be applied to the bill.

**3.35 Dave Nuss, Regional Manager, NFPA:** See Attachment #2 for testimony in support of the bill.

**8.00 Chairman Cook:** I see the fee the manufacturer has to pay is \$250 for each different brand, if you have a brand that is sold in a box and a soft carton, is that two different brands?

**Dave Nuss:** Yes. Each state does it differently. In some states the certification is per brand style (each different kind of cigarette) and some other states have gone to brand family concept (in that case all Marlboro's would be a brand family). I believe North Dakota is under brand family. The certification is good for a 3 year period. There are 650 to 700 brands in individual states.

**Chairman Cook:** Why is it in here that the state fire marshal can adjust the fee?

**Dave Nuss:** The intent of that is if there is not enough brands to fulfill the financial requirement for the state fire marshal's office to cover the cost of providing the certification

process or to administer the program, then there is language in there that would offer the state fire marshal the opportunity to go to rule making to adjust that.

**Chairman Cook:** The fine is \$10,000 for the manufacturer and the retailer it is \$500?

**Dave Nuss:** That is correct.

**Chairman Cook:** With that kind of fine, why would anyone put anything into this state that wasn't fire retardant?

**Dave Nuss:** That is a good question. That is the intent of the penalty process to begin with. There is potential out there, but I think it is very unlikely.

**Chairman Cook:** My guess is that when a manufacturer sells his product to a wholesaler, that manufacturer has no idea what state that cigarette might end up in.

**Dave Nuss:** That is correct. I think manufactures have been doing a good job of making sure their product is compliant in those states.

**Chairman Cook:** My guess is that most of the manufacturer's would 100% compliant by now.

**Dave Nuss:** Only RJ Reynolds is the only one that is fire safe right now. The other manufacturers have not at this point taken that step.

**12.21 Vice Chairman Miller:** It looks like all but three states are moving in this direction; I assume that the companies will be all going compliant. I think we will see these things in here anyway.

**Dave Nuss:** Since we couldn't get federal legislation going we made the decision to go state by state. You are right the trend is to go that direction.

**14.08 Senator Hogue:** You mentioned that this version is the New York version, is that the model version or is theirs scaled back from this?

**Dave Nuss:** This is the New York version and then it was made into model language for all the other states. They all have something similar. Some of the fees and fines have varied.

**Senator Hogue:** As far as the smaller tobacco manufacturers, is there a cost to them, do they have to buy a patent that is associated with this product? Why wouldn't everyone want to manufacturer their cigarettes with this?

**Dave Nuss:** There is an additional cost to the manufacturer and they have not as of yet passed it on to the consumer.

**Chairman Cook:** I asked that of the 5<sup>th</sup> largest manufacturer and the cost of the paper went from ¼ cent per pack to 2 cents per pack. That equates to 6 million dollars per year.

17.25 **Senator Anderson:** Does anyone roll their own tobacco cigarettes?

**Dave Nuss:** Yes they do, but roll your own does not follow the provisions of this law.

**Senator Triplett:** If this has been around for so many years then why has it not been done sooner?

**Dave Nuss:** You would have to ask them that. We have been pushing the issue since 2004.

**Chairman Cook:** Are there any of these being sold in North Dakota right now?

**Dave Nuss:** I assume because the states on both sides require it.

19.52 **Jerry Vein, Grand Forks Firefighter:** See Attachment #3 for testimony in support of the bill. I do not advocate smoking, but we need to focus on fire safety. Each fire we have puts a firefighter in danger. They are a leading cause of home fires in the country. ¼ of the victims of the smoking related fires are not smokers themselves.

23.09 **Senator Triplett:** Do these cigarettes cool off that fast that if they are thrown out a window that they will not ignite in dry grass?

**Jerry Vein:** I have heard that, I think it is situational.

**Senator Anderson:** If a person weren't puffing, and it were unattended does anyone have any idea what would it take to get to that point where it would go out?

**Jerry Vein:** I don't think you can get those figures.

**25.25 Steve Nardello, Mandan Fire Chief, Representing North Dakota Fire Chiefs**

**Association:** Testified in support of the bill.

**Senator Hogue:** Could you provide us any antidotal information about fires in North Dakota that are suspected to have been caused by cigarettes?

**Steve Nardello:** The fire marshal can get that for you.

**26.45 Lois Hartman, Executive Director, North Dakota Firefighter's Association:** See Attachment #4 for testimony in support of the bill.

**27.50 John Olson, Altria Client Services, Parent Company to Phillip Morris USA:** Testified in support of the bill. Phillip Morris has worked with the National Fire Protection Association and other in developing this legislation. Aside from all of the testimony you have heard, Phillip Morris believes that a uniform national standard is important for the manufacturing process.

One other feature of the legislation is that if the federal government passes this legislation then that would preempt all of the states legislation in this area.

**029.05 Senator Triplett:** Why did it take the cigarette manufacturers so long to get this technology? I hear what you are saying about consistency, but they could have agreed on an industry standard I would think a long time ago.

**John Olson:** I don't have the answer to that. I certainly will pass that on.

**Mike Rud, North Dakota Retailers Association:** Testified in support of the bill. From the safety standpoint it is a very good bill. We have heard from the different states that there are issues with the sales of cigarettes going down but it is a regressive sale in our eyes.

**Vice Chairman Miller:** Are you aware of any of your clients selling these cigarettes in North Dakota already?

**Mike Rud:** Not that I am aware of.

**Senator Triplett:** Once this passes in North Dakota, do you think that the Tribes should pass this as well?

**Mike Rud:** One of the things we have tried to do for a number of sessions is bring the Native Americans into compliance with what we are trying to do on the national level. We assume that they would be treated the same as the rest. I think we would expect that they use the fire safe cigarettes as well.

**Senator Triplett:** Do you think this law is drafted to include the whole state?

**Mike Rud:** I do believe it is drafted that way.

**Senator Hogue:** Referring to page 9, relating to inspection, what it basically says is that the Attorney General and the Fire Marshal can come into one of your members and open their books, are your members comfortable with that provision?

**Mike Rud:** I think our members are willing to do whatever is necessary to be compliant. I don't think any of our members are out there trying to fool the government in any way.

**Senator Oehlke:** I don't think that it would affect the reservation. Maybe it is a non-issue.

**Mike Rudd:** Again, I would assume that the manufacturers will treat everyone the same.

**Vice Chairman Miller:** I think it goes back to the economy, if everyone around is selling them then they will give you the same product.

35.02 **Lee Arsvold, Self:** Testified in support and against. Drivers can have a problem with them because the ashes drop off five times faster than a normal cigarette. They go out if you are not puffing on them all the time. There have been reports on TV that they cause more cancer from the glue they use on the paper. The tribes don't have to follow the rules that we do. Their cigarettes are not taxed and I doubt they will have the fire retardant paper.

37.20 **Vice Chairman Miller:** Any further Testimony?

**Myles Vosberg, Tax Commissioners Office:** Testified in neutral capacity. As we looked at this bill closer when it came out of the House, we found three places within the bill where we believe there is a technical correction that is needed. The bill refers to affixing tax stamps and we do not do that in North Dakota. (Page 1, line 9 defining an agent; page 5, Line 2-3 where it deals with inventory on hand; page 9, line 8 where it is talking about preventing sales of non-compliant cigarettes) We will draft an amendment on those.

**40.55 Senator Oehlke:** The fiscal note estimates \$200,000, we heard testimony earlier that the state will be getting \$250 per brand, is that figured into the expenses?

**Myles Vosberg:** That appropriation is not with the Tax Commissioners Office. I believe it is for the State Fire Marshal. If I remember right, there is a new fund put in here where each one of those fees goes into that fund.

**Senator Oehlke:** How much is that?

**Myles Vosberg:** I don't have any information on that.

**42.50 Ray Lambert, State Fire Marshal:** I would like to address a few questions asked. As far as Tribal lands, I would mention that we have no authority over the Tribal lands in inspections and certification. The certification does not specify where they are being sold. The funding that comes in to the Attorney General's office is made available to us for the services that we provide. The office already has in place a system where we do tracking. We track that closely. We have already done an analysis on this for the administrative time to do the certifications and get them back out to the manufactures is well under our abilities at this time. As far as the onsite inspections and the follow up, it would be done as my office already covers the state well. We are in most of the communities on a regular basis. A spot check on the ones sold would be handled at that time. We are ready and able to put this bill into effect.

**45.48 Senator Triplett:** You indicated that you have no authority over the reservations, have you thought of what you would do about that?

**Ray Lambert:** That has been discussed and I do not have specific answers on that. We are certainly willing to work with them on this issue.

**Chairman Cook:** Have you read the penalty section?

**Ray Lambert:** Yes I have.

**Chairman Cook:** Does that mean that any person in violation of carrying these would get that penalty?

**Ray Lambert:** I had read that and I will look into that. I believe that it is not for an individual, but it is for the wholesalers and the retailers carrying them.

**Chairman Cook:** The company that I talked to indicated that they are making and will be distributing these cigarettes no matter whether we pass this bill or not. How important is that initial test in your mind? Could we do this with minimal burden on manufacturers?

**Ray Lambert:** I have done some research and the testing that is done initially is what the certification is. In visiting in other states, only if they have had an issue and can pinpoint that a fire started due the cigarette then the testing is done. I have been told that there is no further testing being done unless they identify as being a problem.

**Chairman Cook:** Other states are doing that?

**Ray Lambert:** As far as I know they are as part of their procedures.

**Chairman Cook:** We need to work on ways to try and minimize this.

**Ray Lambert:** That is the primary reason I looked into that issue. It appears that that is taking place very little of the time.

**Chairman Cook:** What if we gave you the tool to randomly go into a tobacco store and test randomly and then bill the manufacturer for the service.



**Ray Lambert:** I understand that is available in the law.

**Chairman Cook:** Closed the hearing on HB 1368.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1368

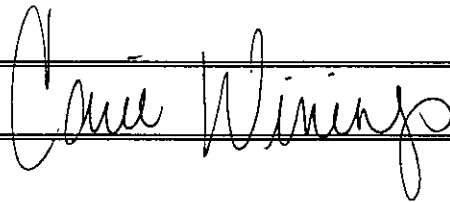
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/11/2009

Recorder Job Number: 10735

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on HB 1368. See Attachment #1 for information from the state Fire Marshal. States that he would like the \$250 fee for each type of cigarette to come out of the bill. I think that we will see the benefits of it in this state regardless.

**Discussion:** A discussion occurred among all committee members regarding the \$250 fee and the purposes for it and whether or not it would be effective and whether the companies would care if that fee was imposed. Also the other states that have adopted this idea and how similar they are to the bill. Senator Hogue specifically stated that he would like to see the bill cut back considerably as for as the fines, inspection rights, etc. The labeling of the packs was discussed. Concerns of expense to the state were discussed. The amount of language that was being adding was excessive to most of the committee members, and over what parts were absolutely necessary to the bill. The issue of the reservations and that there is no authority there was briefly discussed. The committee discussed whether or not the requirement to use the fire retardant paper would drive up the cost to the manufacturer and if it would be passed on. The cost per pack of cigarette was discussed and the fact that the industry is subsidized by the government.

**Chairman Cook:** Closed the discussion on HB 1368.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1368

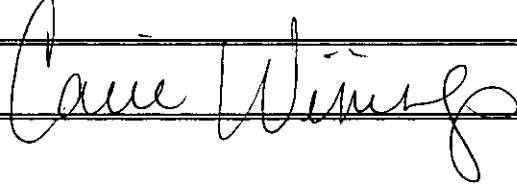
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/16/2009

Recorder Job Number: 11060

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on HB 1368. We have an over kill in the fees. There is an appropriation in here for the Attorney General to do this. It is more than he needs. I would like to take the fee out and appropriation out. Need to take section 2 and 3 out of the bill. (Checks with intern on the amendments Senator Hogue wanted)

**Senator Triplett:** Are we free then to take care of this later?

**Chairman Cook:** I think so.

**Senator Triplett:** This is a complicated bill for a very simple rule and it might be better to rewrite it very briefly and refer to the standard, or invite the health department to do rule making if they think it is necessary.

**Chairman Cook:** That is a fantastic idea.

**Senator Triplett:** Moved Amendment to amend out lines 13-23 on page 10. (In order to take care of appropriation)

**Senator Dotzenrod:** Seconded.

**Chairman Cook:** Discussion? (no)

**A Voice Vote was taken: Yea 6, Nay 0, Absent 1 (Senator Hogue).**

**Motion passed.**

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1368

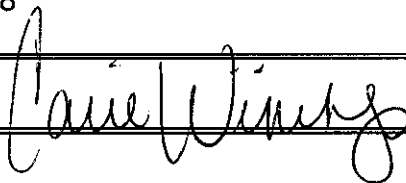
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/17/2009

Recorder Job Number: 11118

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on HB 1368.

**Senator Hogue:** See Attachment #1 for proposed amendments.

**Senator Triplett:** Clarifies the amendments. It does follow along with what I was suggesting

yesterday and since I do not have any amendments myself I think I don't have a problem with this. I ran into the lobbyist for one of the manufacturers and he seemed considerable annoyed that we were going to amend the bill drastically.

**Chairman Cook:** I find that interesting, I am sure that we will find out what is behind the bill.

Can we take care of this right now?

**Senator Triplett:** I did tell the lobbyist that we would take it up this afternoon.

**Chairman Cook:** I have a lot of pressure on me to get this out of here.

**Senator Triplett:** I think we can wait till this afternoon.

**Chairman Cook:** That is what we will do. Suspended discussion until the afternoon.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1368

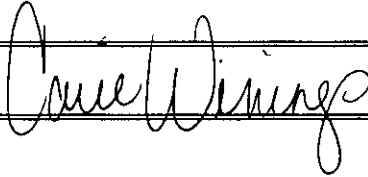
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/17/2009

Recorder Job Number: 11141

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened the discussion on HB 1368.

**Senator Hogue:** Strike what I said about have to amend to remove that fire prevention public safety fund. It turns out the act creates two funds. One to hold the fees that the tobacco companies would be charged to certify their brands, and there is another separate fund if the Fire Marshal would impose penalties. The second fund was the one that was struck; the one that would hold the fines. I think the amendments are as I had intended them to be.

**Chairman Cook:** Are you all comfortable with the amendments?

Vice Chairman Miller: Where are we at with the fines?

**Senator Hogue:** There are no fines. There are provisions for penalties and fines if it turns out that your brand didn't meet the test or if you knowingly sold cigarettes in the state that violated the provisions of the act.

**Chairman Cook:** So if we amend this bill and pass it we will have a law that requires that all cigarettes sold in North Dakota must contain this paper, they will have to be marked, referencing the test that has to be used to know that the paper meets a standard, the fee will be \$100 for every brand, and the Fire Marshal will have a limited ability to inspect.

**Senator Hogue:** Moved the amendments that I distributed.

**Senator Dotzenrod:** Seconded.

**Chairman Cook:** Discussion?

**Discussion:** The committee proceeded to discuss exactly all that was amended and what that means for the fees and penalties. They also agreed that Page 4, lines 17, "any....." to line 20 also needed to be removed, as well as Page 2, line 17 delete the word "penalty". There was a considerable amount of concern over whether or not there were enough penalties left to deal with someone who is in violation, as well as how the retailers will feel and if there was going to be an effort to make them aware of the new laws and help them to be compliant. The removal of the product would occur if they are not in compliance. Some felt that just the fact that the states around have passed the law would probably cause us to have the product whether we pass the law or not. It was discussed that the Fire Marshal does have the ability to come back if more needs to be done to increase fees and penalties. Page 7 of the bill does require the manufacturers to provide a certificate to the retailers. The penalties and fines were removed with the amendment for the retailers; they just could lose their inventory. The packages are clearly marked and the retailers should have no problem being able to tell if they were compliant cigarettes. It was generally agreed that the bill should go do the floor as it is with these amendments would be the best thing for now. The bill will probably end up in conference committee and there will most likely be additional changes at that time. If more needs to be done, next session would be that opportunity.

**Chairman Cook:** Let's see where we are at as a committee. We need to get this thing out of here today.

**Senator Hogue:** Gives two additional changes.

**Discussion:** The committee proceeded to go back through all of the changes and make sure everyone understood.

**Chairman Cook:** See Attachment #1 for a final set of amendments that were created by the intern for the committee to review before a final vote.

**Chairman Cook:** So these are friendly amendments to the amendment.

38.56 **Chairman Cook:** Any further discussion?

**A Roll Call vote was taken: Yea 7, Nay 0, Absent 0.**

**Amendments passed.**

**Vice Chairman Miller: Moved a Do Pass As Amended.**

**Senator Dotzenrod: Seconded.**

**Chairman Cook:** Any discussion? (no)

**A Roll Call vote was taken: Yea 7, Nay 0, Absent 0.**

**Senator Hogue will carry the bill.**

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1368

Page 1, line 2, remove “to provide a penalty; to provide an”

Page 1, line 3, remove “appropriation;”

Page 1, line 8, replace “state tax commissioner” with “attorney general”

Page 1, line 9, replace “an affix stamps on” with “or sell”

Page 5, line 2, remove “, if the wholesale or retail dealers can establish that state”

Page 5, line 3, remove “tax stamps were affixed to the cigarettes before August 1, 2010, and”

Page 7, remove line 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through ~~31~~ <sup>29</sup>

Page 10, remove lines ~~1~~ <sup>4</sup> through 8

Page 10, line 9 replace “18-13-10” with “18-13-5”

Page 10, remove lines 13 through 23

Renumber accordingly

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 1212

Senate Finance and Taxation Committee

☐ Check here for Conference Committee *Amendment*

Legislative Council Amendment Number lines 13-23 page 10

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Senator Triplett Seconded By Senator Dotzenrood

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller – Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	—		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

*All in favor*

Total: Yes 6 No 0

Absent 1 Hogue

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

#1  
PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1368

Page 1, line 2, remove "to provide a penalty; to provide an"

Page 1, line 3, remove "appropriation;"

Page 1, line 8, replace "state tax commissioner" with "attorney general"

Page 1, line 9, replace "and affix stamps on" with "or sell"

Page 2, line 17, replace "Penalty" with "Seizure"

Page 4, remove lines 17 through 20

Page 5, line 2, remove ", if the wholesale or retail dealers can establish that state"

Page 5, line 3, remove "tax stamps were affixed to the cigarettes before August 1, 2010, and"

Page 5, after line 15 insert:

"9. If any law enforcement personnel or duly authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by section 18-13-03, or which have not been marked as required by section 18-13-04, that personnel or representative may seize and take possession of the cigarettes. Cigarettes seized under this subsection must be destroyed; provided, however, that before the destruction of the cigarettes, the true holder of the trademark rights in the cigarette brand is permitted to inspect the cigarette."

Page 6, line 9, replace "two" with "one", remove "fifty", and remove "The state fire marshal may"

Page 6, remove lines 10 through 11

Page 7, remove line 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 8

Page 10, line 9 replace "18-13-10" with "18-13-5"

Page 10, remove lines 13 through 23

Renumber accordingly

Date: 03/17/09

Roll Call Vote #: /

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. :** 1368

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Amendments

by Senator Hogue

Action Taken

☐ Do Pass

☐ Do Not Pass

☐ Amended

Motion Made By

Senator Hogue

Seconded By

Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes

7

No

0

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3/17/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 1368

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended AS

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sen. Arden Anderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Joe Miller - Vice Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sen. Jim Dotzenrod	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. David Hogue	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sen. Constance Triplett	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Dave Oehlke	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Hogue

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1368, as reengrossed: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1368 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "to provide a penalty; to provide an"

Page 1, line 3, remove "appropriation;"

Page 1, line 8, replace "state tax commissioner" with "attorney general"

Page 1, line 9, replace "and affix stamps on" with "or sell"

Page 2, line 17, replace "**Penalty**" with "**Seizure**"

Page 4, line 17, remove "Any manufacturer who fails to make copies of these reports"

Page 4, remove lines 18 through 20

Page 5, line 2, remove "if the wholesale or retail dealers can establish that state"

Page 5, line 3, remove "tax stamps were affixed to the cigarettes before August 1, 2010, and"

Page 5, after line 15, insert:

"9. If any law enforcement personnel or duly authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by section 18-13-03, or which have not been marked as required by section 18-13-04, that personnel or representative may seize and take possession of the cigarettes. Cigarettes seized under this subsection must be destroyed; provided, however, that before the destruction of the cigarettes, the true holder of the trademark rights in the cigarette brand is permitted to inspect the cigarette."

Page 6, line 9, replace "two" with "one", remove "fifty", and remove "The state fire marshal may"

Page 6, remove lines 10 and 11

Page 7, remove line 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 8

Page 10, line 9, replace "18-13-10" with "18-13-05"

Page 10, remove lines 13 through 23

Renumber accordingly

2009 SENATE APPROPRIATIONS

HB 1368

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1368

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: March 30, 2009

Recorder Job Number: 11553

Committee Clerk Signature

*Rose Laning*

Minutes:

**V. Chair Bowman:** Called the committee hearing to order on HB 1368 which relates to reduced ignition propensity standards for cigarettes. Roll call was taken.

**Rep. Joe Kroeber, District 12:**

Written attached testimony # 1.

The cigarette companies want a national set of standards for cigarette safety. These funds would be paid by the manufacturer. The Attorney General's office has some responsibility in this and will speak later. The appropriations sections were removed at the end of the bill. You have the money, but can't spend it. The old fiscal note was \$200,000 and the new one is \$80,000. I wouldn't have any problem to have these differences worked out in conference committee.

**V. Chair Bowman:** Are all the enforcements in the bill itself as to who enforces it, what they have for penalties and what they have for costs? Will we know the total impact on the states?

**Joe Kroeber:** Yes, the original bill had all this in place. The amendments took all the funding away from the Attorney General's office and I do see they are still mentioned in the bill, and I think that is a problem. The dollars will be paid by the manufacturers. In North Dakota we have 40 cents per pack tax. We are still going to have relatively cheaper cigarettes. This would have no effect on the Indian Reservations.

**V. Chair Bowman:** Is the reservation data inclusive in that?

**Joe Kroeber:** Jerry talked about North Dakota, I would think it would be but I don't know.

**Senator Krebsbach:** Has there been anything looked at from this issue from the federal side?

**Joe Kroeber:** There has been no action taken on a national level. They are dealing with bigger issues right now. The standards need to be very clear and all the standards in this bill and with the coalition are what they call, "To the New York standard". So they don't have to manufacture different cigarettes for every state.

**John Olson, Altria, Lobbyist # 142:**

Testified in favor of HB 1368.

Philip Morris supports this bill. Uniformity is the biggest criteria. After North Dakota passes this bill, there will be 40 states that have passed it. We have no problem with the up to \$250 per brand and it was reduced by the Senate to \$100 per brand. The Attorney General's office needs the money to support the law. A bill without penalties or enforcement is no bill at all.

The bill will not apply to retail dealers on reservations. The fire safe cigarettes are not going to be that big of an issue; there may be some black market cigarettes someplace who can tell. The feds are doing nothing now, but there is a provision in this bill that provides for Federal pre-emption. If the feds get involved, this bill becomes void.

**V. Chair Bowman:** There are still some of the older cigarettes out there. If there is a fire, who is liable, the person who bought or the person who sold?

**John Olson:** I don't see any liability issues as long as the state approves this. The cigarette company has always been attacked for liability of whatever injuries occur. I don't believe there is going to be any liability issues as long as the state approves this method of marketing the fire safe cigarette. There is a delayed effective date in this bill to give all the retailers to sell off their non-fireproof cigarette.

**V. Chair Bowman:** In this being the trend, even in Canada why would the companies not do this without a law?

**Joe Olson:** That's been asked a couple of times. There are a couple of reasons for that, liability is a concern, and the law provides the basis for the marketing and for the manufacturing. In prior years, there wasn't consumer acceptance for the product. In fact major companies are going to fire safe cigarettes voluntarily. We still have the problem of smaller manufacturers trying to keep a niche in the market with the non-fire safe cigarette.

**Senator Warner:** I was wondering about your comment about customer acceptability. Are there any issues we need to be aware of when we take this back to our constituents? Are there ascetic issues we need to be aware of?

**Joe Olson:** I haven't heard of anything like that.

**V. Chair Bowman:** Your statement of the little guys might not want to do this. Is this bill designed to put them out of business? The quickest way to get rid of your competition is to regulate them. Are there indirect consequences to this bill?

**Joe Olson:** That was purely speculative; I don't have any basis for saying that. Where there have implemented fire safe cigarettes there hasn't been an increase in price. The patent paper is available to everyone. That's why we need the enforcement provisions.

**Wayne Stenehjem, Attorney General, State of North Dakota:**

Remain neutral on this bill. No written testimony.

This is a bill that Mr. Olson came to talk to me about in my office about prior to the session, saying there was a development of these fire safe papers and said he was introducing this bill for the purpose of making these cigarette sales safer and said manufacturers were absorbing these fees. If we don't have regulations, we may become dumping the ground for non-hazardous paper cigarettes for the rest of the nation. The problem I have is the Senate

committee removed virtually all the requirements of the enforcement that requires the Fire Marshall to be engaged in the business of determining if the cigarette sales that are sold in the state are compliant with the fire safe requirements. There are about 1000 different cigarettes. Somebody has to go out and see if there is compliance. I worry about the amendments that were taken out and who could go and inspect. If you don't plan on having the Fire Marshall do this than why don't you put in a section that says, the Legislature does not intend for the Fire Marshall is not required to go out. If someone sees someone in violation, they're going to call him and then they are going to call me. You might want to look at what the Senate committee took out because all the enforcement provisions and fines for violators which would provide for improving the cost of assessing the crimes would be appropriated with my office, so I guess our lawyers will work on enforcing this. Do you intend to have my office do anything or not and if you do make sure it is in there.

**Senator Warner:** Could you work with the principles so we have amendments before us.

**Wayne Stenehjem:** Yes, I am happy to do that, I've already discussed this with Mr. Olson on Friday. I assume this will likely go to the conference committee.

**V. Chair Bowman:** It looks like the amendments have already been prepared.

**John Olson:** I'd be willing to help prepare the needed amendments,

**V. Chair Bowman:** We should put a subcommittee together to look at this bill. Does anyone have a subcommittee that could meet? It would be nice if we could get this put this together today before noon. We'll come back at one today. The hearing was closed.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1368

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 04-01-09

Recorder Job Number: 11627 (HB 1018 also on this job)

Committee Clerk Signature

*Alice Delzer*

Minutes:

**Chairman Holmberg** called the committee to order in regards to HB 1368. (4.41)

**Senator Robinson** I am not an expert on this bill but it has been suggested that at least two or three times here since we've heard it that we consider put it into conference and let the conference committee work out the issues. There is a number of issues involved and we can dig through that. That would mean the committee might need to meet and spend some time on it. It's just a comment. The difference is between the House and Senate and it is going to take some work. (5.37)

**Chairman Holmberg** It is one of those bills that's ripe for conference committee.

**Senator Christmann** What is the difference between the House and Senate versions? Is it this tax and this money? There must have been some money before. He was told there was a lot more on the House side.

**V. Chair Bowman** There is \$250,000 taken out of the Attorney General's to enforce this and that's what has me bewildered if it is so much better why does it have to be enforced. Or do you go after the ones who don't have the paper and say you are out of compliance and we are going to throw you in jail, or what do we do with them. They've been using that paper for 100 years. It almost looks like to me it shouldn't even be here.

**Senator Christmann** I support the bill to change and require this cigarette paper. It's safer, insurance, but every time we pass a new law do we need to set up a whole new pool and hire people to enforce this thing. Cigarette companies want to be licensed to do business in North Dakota and that sort of thing it seems to me that they'll follow the law. On down the road if somebody's house burns down and it turns out that that brand of cigarette, they can always find what caused it, and if that brand isn't living up to the law, I suppose they will have a lot of liability. I would think that no manufacturer would want to sell something illegally if there is such a propensity to burn down houses and be traced back to them. I can't see that we need anything but the law that says that they are suppose to use this kind of cigarette paper. I don't know if that's amendable at all in this bill or if it is so intertwined that a new program that it can't be separated.

**Senator Wardner** On the fiscal note is this correct by collecting \$100.00 for each brand the manufacturer is to pay the fire marshall. Is that where the \$80,000 comes from?

**Senator Robinson** On a 1,000 different brands, they couldn't inspect them all.

**Senator Mathern** asked Senator Christmann about his intentions regarding this bill.

**Senator Christmann** it is my understanding that the Attorney General's program is in here and I am trying to find the part that says they have to use this type of cigarette paper.

**Senator Mathern** I thought the Attorney General said he wants more money.

**Senator Kilzer** Was there any kind of a handout by any of the testifiers?

**Chairman Holmberg** Let me ask this question. Who was here? Who heard the hearing? Recall on this particular bill we should be aware that it passed 41 to nothing and then was rereferred because it wasn't referred to us.

**SENATOR MATHERN MOVED A DO PASS. SECONDED BY SENATOR KRAUTER.**

**V. Chair Bowman** There were amendments presented to us to reinstate the \$250.00 manufacturing fee that was suppose to go to the Attorney General for enforcement if I understand that amendment. And that was not included in the bill as it came to us because it was taken out in policy part.

**A ROLL CALL VOTE WAS TAKEN RESULTING IN 11 YEAS, 2 NAYS, 1 ABSENT.**

**SENATOR HOGUE FROM FINANCE AND TAX WILL CARRY THE BILL.**

**Senator Kilzer** Is there going to be a want to put this into the Attorney General's budget or will we deal with that later.

**Chairman Holmberg** We will deal with that in the conference committees.(13.14)

**Chairman Holmberg** closed the hearing on HB 1368. (However on this job is further discussion regarding the Emergency Commission and subcommittee work).

Date: 4/1/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1368

Senate Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Mather Seconded By Krauter

Representatives	Yes	No	Representatives	Yes	No
Senator Fischer			Senator Warner	<input checked="" type="checkbox"/>	
Senator Christmann		<input checked="" type="checkbox"/>	Senator Robinson	<input checked="" type="checkbox"/>	
Senator Krebsbach	<input checked="" type="checkbox"/>		Senator Krauter	<input checked="" type="checkbox"/>	
Senator Bowman	<input checked="" type="checkbox"/>		Senator Lindaas	<input checked="" type="checkbox"/>	
Senator Kilzer	<input checked="" type="checkbox"/>		Senator Mather	<input checked="" type="checkbox"/>	
Senator Grindberg	<input checked="" type="checkbox"/>		Senator Seymour	<input checked="" type="checkbox"/>	
Senator Wardner	<input checked="" type="checkbox"/>				
Chairman Holmberg	<input checked="" type="checkbox"/>				

Total Yes 11 No 2

Absent 1

Floor Assignment F & tax

If the vote is on an amendment, briefly indicate intent:

Hogue

**REPORT OF STANDING COMMITTEE**

**HB 1368, as reengrossed: Appropriations Committee (Sen. Holmberg, Chairman)**  
recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).  
Reengrossed HB 1368 was placed on the Fourteenth order on the calendar.

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HB 1368

# 2009 HOUSE STANDING COMMITTEE MINUTES

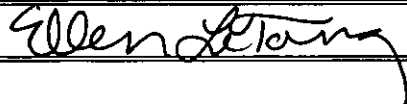
Bill/Resolution No. 1368

## House Industry, Business and Labor Committee

☒ Check here for Conference Committee

**Hearing Date** April 20, 2009

**Recorder Job Number:** 12019

Committee Clerk Signature 

**Chairman N Johnson:** Opens the Conference Committee hearing on HB 1368 relating to reduced ignition propensity standards for cigarettes and provide a penalty & effect date.

**Representative N Johnson:** Basically curious why the changes? On the 1<sup>st</sup> page you went from the state tax commissioner to the attorney general, I have no difficulty with that change.

On page 4, lines 17-20, on version .0400, why was that section pulled out?

**Hogue:** I can give you an overview. We looked at the bill and it's creating a new manufacturing standard for cigarettes. We agreed that was reasonable from hearing testimony. It's a safety issue, let's have a new standard that says that these cigarettes will have this paper where they self extinguish. Beyond that, we regarded the bill as a dramatic overreaction to wanting to implement that standard. We set about the process to cut down this bill as much as we could to reduce the penalties to the retail and wholesalers from \$250 to \$100. We wanted to establish this one standard. We brought our amended bill to the Senate floor and I thought we would get unanimous support, but even with the amended version, they thought this is still excessive regulation and we should not have this bill at all. That's the Senate's reaction to the bill and that's what our amended does to gear back some of those provisions which Finance & Tax committee regarded as excessive regulation.

**Representative Schneider:** I agree on the face of it that it does see excessive regulation but I don't think that current practice that it's too far out of step of what we are reducing. The effective dates for August 1, 2010 to get rid of any inventory that would be in violation of the proposed language. There wasn't any opposition on our side. This was based off of model legislation enacted across the country. The fee of \$100 or \$250 isn't that big of a difference for a manufacturer.

**Hogue:** One thing that never came up on committee but on the Senate floor from a Senator who didn't sit on the committee, he said we don't need regulation at all, let's just pass the standard in one section. Once the standard is adopted, all cigarette companies will comply with it because if you have 30-40 fires a year, the insurance companies will go after tobacco companies to force that standard. This will be an economic incentive to comply. This came from somebody who wasn't on the committee and it seemed the simplest solution.

**Representative Sukut:** If I'm understanding this, you have eliminated all the penalties, so you are assuming that the manufacturer, retail, wholesaler and all of these folks are automatically claiming to abide by the law. You don't see any problems with other people infiltrating other cigarettes in? I see something happening there that not exactly what we would like to happen. I would agree these penalties do seem somewhat excessive but I'm not so sure that we shouldn't have some kind of penalties in there.

**Senator Anderson:** As I recall the discussion was is that the states that do not have this type of restriction on that type of paper are getting to be very few. Whether we pass this or not, the cigarette companies are not going to continue to manufacture the papers they are using now.

**Senator Hogue:** Our chairman did contact some tobacco companies and basically what they said was we may manufacture cigarettes in 37 states and they are going to comply or adopting this paper, the manufactures message was, "we don't make cigarettes for North Dakota, we

make cigarettes for huge regions". If would like to respond to the penalty, when I thought about the tort liability you have, that is going to be enough economic incentive to cause everyone to comply.

**Representative N Johnson:** Do you know what surrounding states have?

**Senator Hogue:** I knew at one point but between Minnesota, South Dakota and Montana, they have already passed it or are going to pass it.

**Representative Schneider:** What was the discussion on the testimony on the Senate's side when the bill came out of the House?

**Senator Miller:** From what I recall there was no real amendment proposed from the proponents except from one guy. He said that basically that these are garbage cigarettes and didn't want them. Testimony was largely based upon was to protect people and prevent fires.

The committee's work on it was based upon getting it to look more like a North Dakota bill than a New York bill.

**Representative N Johnson:** You pulled that out of appropriation for the dollars would go toward fire protection?

**Senator Hogue:** One appropriation was for relates to the penalty. There is a separate fund was created for penalties assessed. Since we eliminated the penalties, we didn't seem to need any appropriation to disburse the penalties.

**Representative N Johnson:** What happen if some retail or wholesaler does put something into an establishment?

**Senator Hogue:** We did add in that the law enforcement is authorized to take possession, the seizure.

**Representative Schneider:** What was the discussion regarding the tax department to the attorney general. The definition of agent to purchase and affix a stamp I assume is for tax purposes.

**Representative N Johnson:** I think they eliminated "and the fixed stamps" also. I haven't talked to the Attorney General's office to see what they think about this.

**Senator Hogue:** One thing worth asking is why that is, when we scale back, industries are usually asking for less regulation and now we are have some companies asking for more fines, penalties and authority. I think that's a pertinent question because you don't see that very often.

**Representative N Johnson:** I don't think we are going to resolve anything right now. I will talk to Mr. Trendbeth.

**Tom Trendbeth~Chief Deputy Attorney General.** When the bill first introduced and we had some conversation with those responsible for the language and bringing it to North Dakota:

- ~ Not our bill.
- ~ It was satisfactory for us.
- ~ It's a bill we don't know what we are enforcing, how we are enforcing, by what method to enforce it and there is no money there to enforce it.
- ~ There is the liability issue. If you take that into the next step, I don't think you will be able to know what brand was left unattended. This just retards the ability to start a fire.
- ~ I also share with Senator Hogue the concern about is motivation this whole business.
- ~ I suspect that if you don't regulate the industry, you run the risk of North Dakota to be a dumping ground.
- ~ If you are thinking of the common brands of major tobacco producers, those people are going to comply. It's the off brands that seem to be coming more and more each year

that you run the risk of not complying because there are not going to be able to afford the technology.

~ It's more complicated than they appear. We prefer the bill in its original form. It's highly regulatory, yes but it at least provides the fund and the stick to insure compliance.

Neither one of those items are in the bill.

**Senator Anderson:** We have to put a fixed stamp and without having those, the penalty can't be enforced.

**Trenbeth:** I think there has to be some type of identifying mark.

**Senator Anderson:** I remember talking about this but I don't remember what judgment we came on that.

**Representative N Johnson:** I look back on my testimony and there was a FSC fire safety symbol printed on the package.

**Tranbeth:** But in a nut shell, the Attorney General's office really doesn't take a position with the respect to the idea of the bill.

**Representative N Johnson:** You are basically saying you are going to be the ones in charge of regulating it you need funds to regulate and ability to coerce someone to comply. John, could you come up and explain why big tobacco is interested in this?

**John Olson~Tobacco Industry:** I don't think I could have said it better than what Mr Trenbeth said in front of Senate Appropriations. Wayne stood up and said that we don't want to be the dumping ground. The big tobacco is interested in a standard and they want it enforced and they will all comply. You asked the question about the states, there are probably more now. One other comment I would like to make is the manufactures themselves are supporting adequate funding and no disagreement on the \$250. They are the ones paying it per brand and if the Attorney General's office is going to enforce it, they should have the

money to enforce it because the funds are provided by the companies. The counties are not out of line. The penalty needs to be significant enough to require them to comply. The last thing in terms of the retailer, nobody is trying to get at our retailer in the state. It was set at a fairly modest penalty which I think was \$500. If you want to reduce that, the companies themselves, have no problem. The retailers will comply if the manufactures comply. The retail problem is less of a problem in our state than the manufactures. Senator Hogue mentioned that this law came out of New York state, that's true, it originated there, it's been modified into model legislation to fit all of the other states. Point is we are no different than New York in lot of respects, maybe different in the volume; we still have non-compliance cigarettes that come into the state, and proliferate the market.

**Senator Anderson:** If I'm hearing you right, this penalty clause definitely has to be in there to regulate it?

**Mark Vosberg~North Dakota Tax Department.** When this bill came to our attention, the first thing that caught our eye was the affixing of the stamps. In North Dakota we are one of the few states that don't fix stamps to the cigarettes, so we needed to change that language because it was incorrect. The Attorney General's office is responsible of the licensing of the wholesales, retailer and so on. We don't really have enforcement activities with tobacco products. We just collect the tax.

**Olson:** The bill came from that model act and the National Fire Association. What happened is they knew that North Dakota didn't have stamps, so we eliminated all the them except a couple, just a technical glitch.

**Representative N Johnson:** We need to meet and I will adjourn the meeting.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1368

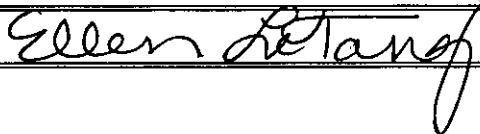
### House Industry, Business and Labor Committee

☒ Check here for Conference Committee

Hearing Date: April 22, 2009

Recorder Job Number: 12097

Committee Clerk Signature



**Chairman Representative N Johnson** opens the Conference Committee hearing on HB 1368 to order.

**Representative N Johnson:** Senator Hogue did you bring some amendments.

**Senator Hogue:** Yes I do. Mr Dawson for Legislative Council prepared them (see attachments). They do a couple of things. One put back into the bill the appropriations that are necessary because of the creation of the 2 separate funds. One fund is for the fees that are accessed against the manufacture of cigarettes on a per brand basis and the second a separate fund is created if the Attorney General's office should impose a fine for violations of this act. Second, I also added back a penalty just for the manufacturers up to \$2000 per violation. The Senate would recede from its amendments and then amend 1368 with these changes.

**Representative N Johnson:** Your concept is that the retailer is selling illegal cigarettes, what you are saying is that we go back to the manufacturer?

**Senator Hogue:** Correct, the retailer is getting these cigarette prepackaged basis. They are not altering or stacking their racks.

**Representative Schneider:** It seem to me that if a manufacturer was have cigarettes that were legal in some states but not in North Dakota, a rogue retailer chooses to go out and purchase those cigarettes, it would seem silly to go after the manufacturer in that case and not the retailer. The manufacturer had no idea they were going to sell the cigarettes here. Seems to me to have the penalties for all three and let the authorities decide who is to blame.

**Senator Hogue:** I guess if we adopt the standard, every manufacturer is going to have to comply and there won't be any exceptions. There is going to have to be a manufacturer who the retailer is getting them from. The retailers have pretty limited means to buy non-compliance cigarettes.

**Representative Schneider:** Let's say for example there is a specialty cigarette and the retailer that brings this cigarette in and it may be legal there but it doesn't meet our standards.

All of a sudden this manufacturer is subject to penalty and the retailer nothing. That doesn't make much sense.

**Senator Hogue:** That is an issue, where you have a remote brand; certainly I would embrace this in another legislative session. I think there is a great market industry, I couldn't say what percentage would comply, I would say a safe bet would be 90%.

**Representative N Johnson:** I'm a little concerned about the retailer aspect. Manufacturer would not have any control over it.

**Senator Hogue:** The biggest concern in our committee, on the reservations we don't have any control; we were looking for better information as to what's happening there. We figured this bill couldn't get at those transactions anyway.

**Representative Schneider:** I don't see the harm in leaving the whole gamut of people in and letting the authorities figure it out based on the different scenarios. Just leaving everybody is in there, it doesn't mean that they will be fined.

**Representative N Johnson:** We have several options we can start with, Senator Hogue's amendments, we could amend those, amend the bill and there are many actions we can take here. What are your wishes?

**Representative Sukut:** I would like a little more opportunity to digest these amendments.

**Senator Anderson:** Senator Hogue, what do you think of Representative Schneider's thought of getting those in? Would it be difficult to do to include the other two?

**Senator Hogue:** It wouldn't, I want to make clear that I don't support the amendments that I presented to you and I do not concur with Representative Schneider. HB 1368 is a gross overreaction to implement a manufacturing standard. I'm trying to find some middle ground.

**Representative Schneider:** I think we heard from the Attorney General's office the importance of this bill so North Dakota doesn't become a dumping ground for these less than safe cigarettes. The agencies need some guidance on how to enforce these too.

**Senator Hogue:** I did think about the dumping ground and I don't think that's a very apt analogy. I don't see us as a receptacle for these unwanted cigarettes.

**Senator Miller:** Is there a shelf life for these cigarettes?

**Representative Schneider:** I would just add, how many other state that have enacted legislation or in the process of doing so? If I have inventory banned in these states and I have these handful of these state who haven't enacted the statute, that's where I'm sending my inventory.

**Senator Miller:** Once again you come back to that point of self life.

**Senator Hogue:** Once if you simply put the standard in place, the manufacturer is going to know, I can't ship them to North Dakota, they have the same standard. Unless you take the fines out, I'll take the risk of being fined. I think we can accomplish with what we want by simply adopting the standard.

**Representative Schneider:** I would like to hear from the Attorney General's office if what would happen if we just adopted the standard, if that's enough language to enforce the provision.

**Tom Trenbeth: Attorney General's Office.** Frankly, it doesn't make much difference to me who you hold liable or what penalties, if you merely adopt the standard which you expect the manufacturer to live by, and if they don't, I have no enforcement. Some other manufacturers and they are going to be asking, go and enforce this standard. I haven't got that. That is our main problem with the bill as it now exists. Secondly what I would have said is, if you are going to adopt something with the nature that before you now with the amendments that Senator Hogue has, please understand that it contains an appropriation of \$100,000. It doesn't really have the ability to generate \$100,000 over the course of time that the appropriation takes place. As it would read now, it would be \$100 every 3 years, if you read it the way I read it. Some people might read it \$100 total forever. If you see the relative fiscal note, that would generate \$80,000 during the biennium with the \$100 fee. You would have to go to the \$250 fee which would be \$200,000 this biennium with the 3<sup>rd</sup> year you would generate far less. If you would forward with this bill, I agree with the appropriations of this bill, we would ask that you fund that appropriation appropriately.

**Representative N Johnson:** I will adjourn and reschedule.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1368

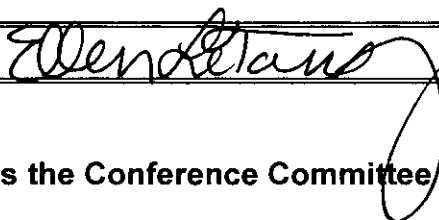
## House Industry, Business and Labor Committee

☒ Check here for Conference Committee

**Hearing Date:** April 23, 2009

**Recorder Job Number:** 12168

Committee Clerk Signature



**Chairman N Johnson opens the Conference Committee on HB 1368.**

**Representative N Johnson:** I've handed out the proposed amendments to Reengrossed HB 1368 that House members put together yesterday based on the bill 0.300. (See amendment attachment).

**Senator Hogue:** If I'm reading the amendment right, looks like you kept in the more objectionable provisions from the Senate's perspective. The inspection feature of permitting the Attorney General and the Fire I to examine the records of the retailers and you left in the implementation section which directs the State Fire I to adopt rules and implement the chapter. One question I have, given the detailed nature of the standard and the guidance to the State Fire I, what additional rules would you expect that he would implement? Maybe a simpler approach would be to adopt the standard and direct the State Fire I to implement rules.

**Representative N Johnson:** In response to your first question, I don't know what kind of rules that they need to adopt.

**John Olson~Tobacco Industry.** I think that the law provides that that the Fire Marshall may.

The best I can recall, if there needed to be any adjustment, they could do that. I don't think it's

a critical part of the bill. I think that they wanted states to look at and see if there are any adjustments because of the Federal Law.

**Representative Sukut:** Motions to adopt the amendments.

**Representative Schneider:** Second.

**Representative N Johnson:** Further discussion.

**Voting roll call was taken on the HB 1368, the amendments from .0300 (see attachment), motion failed 3 yes, 3 nays, 0 absent.**

**Representative N Johnson:** The implication and inspection portion, are they the sticking points for you or is it a lot more than that?

**Senator Hogue:** The per charge fee, we didn't have evidence that any sum was needed. We understand that some amount but it seem to us that these cigarettes coming in from distribution centers and they have to comply the laws of Minnesota, South Dakota, Montana and other states that are part of the same distribution network. We weren't sure what our State Fire Marshal would be doing with the money or what they needed the money for. That's why we lowered it from \$250 to \$100. The fire marshals that we had said that this is a good safety measure. I also recognize that this is a tax on the tobacco companies but I've always taken the view that when you tax somebody, you have an identified need for that tax. That's why we cut it and that would be the other part of the concern.

**Senator Miller:** I would like Myles Fosberg, Tax Commissioner, what the procedure when they tax cigarettes and how is that compared?

**Fosberg:** We don't do a lot of inspection right now, mostly an occasional inspection related products on retailers delivered to wholesalers, especially cigars, where the retailers are purchasing them through someone other than wholesaler and therefore they are not being

taxed. We also done inspections to determine that the products are being in compliance and not prohibited.

**Senator Anderson:** When Mr Trenbeth, he stated that the inspections couldn't be made if they were less than \$250 per brand every year.

**Fosberg:** That inspection is to test to see if they are in compliance with the appropriate paper that's required under this statue.

**Representative N Johnson:** That would be every 3 years.

**Fosberg:** Yes.

**Senator Anderson:** The more talking I've done, I really think it's not fair at all to cigarette companies if you don't have inspection and penalty.

**Senator Hogue:** Does the tax commissioner or any other agency that inspects cigarettes that come in?

**Fosberg:** On a regular basis, I don't think so other than quality control package. We deal mainly with wholesalers. I don't know of any other agency.

**Senator Hogue:** Do the cigarettes that come into North Dakota stamped.

**Fosberg:** They are not stamp, the wholesalers has the equipment to place the stamps.

**Senator Miller:** If it the general practice for the tax department to look at the books during inspection.

**Fosberg:** In general we look on a sample basis and look at the invoices.

**Senator Hogue:** Cigarette that goes from the wholesaler to the Indian Reservations, are they in the same warehouses & wholesalers?

**Fosberg:** They are provided by the same wholesalers. They are not subjected to tax delivered on the reservations and we report that separately.

**Representative N Johnson:** In one section we talk about the Attorney General & State Fire Marshal being able to examine books, papers & invoices, is that something that is a critical issue?

**Trenbeth:** The wholesaler demonstrates that these cigarettes have this type of paper on them. That's the distinction I draw between questions that would be related to the function of this bill and the tax department. These are fees and not taxes and they are intended to defray the expense that is associated with the inspection to offset it.

**Senator Hogue:** I'm not sure our amendment provided for only a onetime fee. I thought was it was \$100 every 3 years.

**Representative N Johnson:** I believe it is.

**Trenbeth:** I was hoping that was your presumption because it didn't read that clearly. On page 6, line 8, it is certification, you need to add recertification the manufacturer will pay to make it more clear.

**Senator Miller:** There was concern from the Senate committee we had a concern expressed and that's why these inspections were taken out. I'm wondering if something can be done there?

**Representative N Johnson:** As you read that inspection part, do you understand that all related to the cigarette part and not to every other kind of inspection?

**Senator Miller:** I guess that I see that.

**Senator Hogue:** One thing that was pointed out to us was the penalties; the senate give the Fire Marshal/Attorney General the ability to confiscate the cigarettes. That would be a penalty if they lost the inventory if they already paid the wholesaler.

**Representative N Johnson:** The grounds we can't agree on are implementation of the adoption of the rules, inspection, amount of the penalties and the funds on how they were being used, whether it's \$100 or \$250.

**Senator Hogue:** Another area is page 4, lines 17-20, the fine of \$10,000 is the manufacturer doesn't provide a copy of the report within 60 days.

**Representative Schneider:** It does say not to exceed \$10,000, so it would leave it to the discretion of the Attorney General's office to determine the appropriate amount is.

**Senator Hogue:** Motions to adjourn the hearing.

**Senator Miller:** Second.

**Representative N Johnson:** Closes the Conference Committee hearing on HB 1368.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1368

### House Industry, Business and Labor Committee

☒ Check here for Conference Committee

**Hearing Date:** April 27, 2009

**Recorder Job Number:** 12305

Committee Clerk Signature

*Ellen Letang*

**Chairman N Johnson** opened the Conference Committee hearing on HB 1368.

**Senator Hogue:** Moves that the Senate recedes from its amendments.

**Senator Anderson:** Second.

**Representative N Johnson:** Further discussion? We do need to amend.

**Senator Hogue:** Strike everything except the first two lines.

**Representative N Johnson:** Reads proposed amendments:

- ~ Page 1, line 8, state tax commissioner with attorney general.
- ~ Page 1, line 9, replace and affix stamps on with or sell.
- ~ Page 6, line 8, after certification insert recertification.

**Senator Miller:** Goes over what was voted for his clarification.

**Representative N Johnson:** That's my understanding, yes.

**Senator Miller:** I think this issue will go away in a few years anyway and anything we do in that manner would be unnecessary.

**Voting roll call was taken on the HB 1368 the Senate recedes the Senate's amendments, motion carries 6 yes, 0 nays, 0 absent and Representative N Johnson is the carrier.**

**Representative N Johnson:** Closes the Conference Committee hearing on HB 1368.

**Representative N Johnson: Reconvenes the hearing on HB 1368.**

**Representative N Johnson:** We have a couple more places where tax stamps need to be amended:

- ~ Page 5, line 2, remove the wholesale or retail dealers can establish that state.
- ~ Page 5, line 3, remove tax stamps were affixed to the cigarettes before August 1, 2010, and if.
- ~ Page 9, line 8, replace the first underscored comma with or and remove or affixing tax.

**Voice voting was taken on the HB 1368 to accept the amendments, motion carried 5 yes, 0 nays, 1 absent.**

**Voting roll call was taken on the HB 1368 the Senate recedes the Senate's amendments, motion failed 5 yes, 0 nays, 1 absent and Representative N Johnson is the carrier.**

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1368 (, as (re)engrossed):

Date: Apr 17, 2009

Your Conference Committee House 1BL

**For the Senate:**

**For the House:**

	YES / NO			YES / NO		
Apr 22 Apr 17 ***	Sen Hogue		*	Ch N Johnson	*	Apr 17 Apr 2 * *
***	Sen Miller		*	Rep Sukut	*	* *
*** ↑ Apr. 23	Sen Anderson		*	Rep Schneider	*	* * 7 Apr 2

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1368 was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Sukut

SECONDED BY: Schneider

OTE COUNT 3 YES 3 NO 0 ABSENT motion fails

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1368

That the Senate recede from its amendments as printed on pages 1272 and 1273 of the House Journal and pages 879 and 880 of the Senate Journal and that Reengrossed House Bill No. 1368 be further amended as follows:

Page 1, line 8, replace "state tax commissioner" with "attorney general"

Page 1, line 9, replace "and affix stamps on" with "or sell"

Page 2, line 17, replace "**Penalty**" with "**Seizure**"

Page 4, line 17, remove "Any manufacturer who fails to make copies of these reports"

Page 4, remove lines 18 through 20

Page 5, line 2, remove "the wholesale or retail dealers can establish that state"

Page 5, line 3, remove "tax stamps were affixed to the cigarettes before August 1, 2010, and if"

Page 5, after line 15, insert:

"9. If any law enforcement personnel or duly authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by section 18-13-03, or which have not been marked as required by section 18-13-04, that personnel or representative may seize and take possession of the cigarettes. Cigarettes seized under this subsection must be destroyed; provided, however, that before the destruction of the cigarettes, the true holder of the trademark rights in the cigarette brand is permitted to inspect the cigarette."

Page 6, line 9, replace "two" with "one", remove "fifty", and remove "The state fire marshal may"

Page 6, remove lines 10 and 11

Page 7, line 31, replace "**Penalties**" with "**Penalty**"

Page 8, line 1, remove "1." and remove ", wholesale dealer, agent, or any other person"

Page 8, line 3, remove "for a first offense" and replace "ten" with "two"

Page 8, line 4, remove ", and for a subsequent offense is subject to a civil"

Page 8, remove lines 5 and 6

Page 8, line 7, remove "thirty-day period"

Page 8, remove lines 8 through 31

Page 9, remove lines 1 through 29

Page 9, line 30, replace "18-13-08" with "18-13-06"

Page 10, line 4, replace "18-13-09" with "18-13-07"

Page 10, line 9, replace "18-13-10" with "18-13-08"

Page 10, line 15, replace "\$200,000" with "\$100,000"

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1368 (, as (re)engrossed):

Date: Apr 27-2009

Your Conference Committee HIBL

For the Senate:

For the House:

	YES / NO		YES / NO
* Sen Hogue	<input checked="" type="checkbox"/>	Ch. N Johnson	<input checked="" type="checkbox"/>
* Sen Miller	<input checked="" type="checkbox"/>	Rep. Surant	<input checked="" type="checkbox"/>
* Sen Anderson	<input checked="" type="checkbox"/>	Rep. S	<input checked="" type="checkbox"/>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from

the (Senate/House) amendments on (SJ/HJ) page(s) 1272 - 1273

\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_, adopt (further) amendments as follows, and place 7<sup>th</sup> on the  
Seventh order:

\_\_\_\_, having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed.

((Re)Engrossed) 1368 was placed on the Seventh order of business on the calendar.

DATE: Apr. 27-2009

CARRIER: Rep. N Johnson

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment <u>See attachment</u>	

MOTION MADE BY: Sen. Hogue

SECONDED BY: Sen. Anderson

OTE COUNT 6 YES 0 NO 0 ABSENT

VR  
4/27/09

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1368

That the Senate recede from its amendments as printed on pages 1272 and 1273 of the House Journal and pages 879 and 880 of the Senate Journal and that Reengrossed House Bill No. 1368 be amended as follows:

Page 1, line 8, replace "state tax commissioner" with "attorney general"

Page 1, line 9, replace "and affix stamps on" with "or sell"

Page 5, line 2, remove "the wholesale or retail dealers can establish that state"

Page 5, line 3, remove "tax stamps were affixed to the cigarettes before August 1, 2010, and if"

Page 6, line 8, after "certification" insert "or recertification"

Page 9, line 8, replace the first underscored comma with "or" and remove ", or affixing tax stamps to"

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1368 (, as (re)engrossed):

Date: Apr. 27-2009

Your Conference Committee HIBL

**For the Senate:**

**For the House:**

	YES / NO			YES / NO	
Sen Hogue	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ch. N Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen Miller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Surut	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen Anderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Schneider	<input type="checkbox"/>	<input type="checkbox"/>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ -- \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Surut - Ref

SECONDED BY: Sen. Miller

VOTE COUNT 5 YES 0 NO 1 ABSENT

*amendment.  
See attachment.*

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)

Bill Number 1368 (, as (re)engrossed):

Date: Apr. 27-2009

Your Conference Committee HIBL

For the Senate:

For the House:

	YES / NO			YES / NO	
Sen Hogue	*		Ch. N Johnson	*	
Sen Miller	*		Rep. Surut	*	
Sen Anderson	*		Rep. Schneider		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1272 - 1273

\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the  
Seventh order:

\_\_\_\_, having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed.

((Re)Engrossed) 1368 was placed on the Seventh order of business on the calendar.

DATE: Apr 27-2009

CARRIER: Rep N Johnson

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Miller

SECONDED BY: Surut

VOTE COUNT 5 YES 0 NO 1 ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**HB 1368, as reengrossed:** Your conference committee (Sens. Hogue, Miller, Anderson and Reps. N. Johnson, Sukut, Schneider) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1272-1273, adopt amendments as follows, and place HB 1368 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1272 and 1273 of the House Journal and pages 879 and 880 of the Senate Journal and that Reengrossed House Bill No. 1368 be amended as follows:

Page 1, line 8, replace "state tax commissioner" with "attorney general"

Page 1, line 9, replace "and affix stamps on" with "or sell"

Page 5, line 2, remove "the wholesale or retail dealers can establish that state"

Page 5, line 3, remove "tax stamps were affixed to the cigarettes before August 1, 2010, and if"

Page 6, line 8, after "certification" insert "or recertification"

Page 9, line 8, replace the first underscored comma with "or" and remove ", or affixing tax stamps to"

Renumber accordingly

Reengrossed HB 1368 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1368

## Chairman Keiser and Members of the Industry, Business, & Labor Committee

I'm Rep. Joe Kroeber from District 12 which includes 5/6 of Jamestown. I am here supporting HB # 1368 which is a Fire Safe Cigarette bill. It is often referred to as the reduced ignition cigarette bill. I ask for your vote for this bill to help save lives, prevent injuries and help prevent property losses which total hundreds of millions of dollars each year. While there is no such thing as a cigarette that will totally eliminate fires, a fire-safe cigarette has a reduced tendency to burn when left unattended. The most common fire-safe technology used is to make the paper thicker in places to act as "speed bumps" where the paper is thicker and will self-extinguish if it is left unattended or is not being actively smoked. The first state to pass this legislation was New York in 2004. Now 22 states, plus the District of Columbia have already implemented fire-safe cigarette laws. In addition, 15 more states have passed similar laws, which will become effective throughout 2009 and 2010. As of this date only about four states will not have yet filed this type of legislation. In Canada, fire-safe cigarettes are required nationwide using the New York Standard. The Grand forks Herald quoted Jerry Vein, Fire Marshal in Grand Forks "that from 2005-2007, there were 11 deaths and 99 cases of property damage in North Dakota caused by cigarette-ignited fires. Nationwide cigarettes are the leading cause of home fire fatalities, killing 700 to 900 people-smokers and non-smokers alike-every year. Cigarettes are still the leading cause of residential fire deaths. There are a number of groups in North Dakota supporting this bill. They are the Fire Chief's Association, Fire Protection Association, and the Fire Fighter's Association. There is also a National Coalition for Fire-Safe Cigarettes which includes over 60 different organizations. There are other people here to testify for this bill which know a great deal more about it than I do, however I would be happy to try and answer any questions the committee may have.

**Legislative Testimony on House Bill 1368 from Tobacco Free North Dakota**

**Dear Chairman Keiser and members of the House Industry, Business and Labor Committee:**

**Tobacco Free North Dakota is an organization dedicated to reducing the negative impact of tobacco on the citizens of our state.**

**While we know that there is no safe cigarette, we recognize that tobacco kills in many ways, including through fires.**

**We applaud Representative Kroeber's efforts, which will increase protection for firefighters and the public from injury and death by fire.**

**Sincerely,**

**The members of Tobacco Free North Dakota**

The Coalition for Fire-Safe Cigarettes is a national group of fire service members, consumer and disabled rights advocates, medical and public health practitioners and others, coordinated by the National Fire Protection Association (NFPA), who are committed to saving lives and preventing injuries by reducing the threat of cigarette-ignited fires.

## Mission Statement

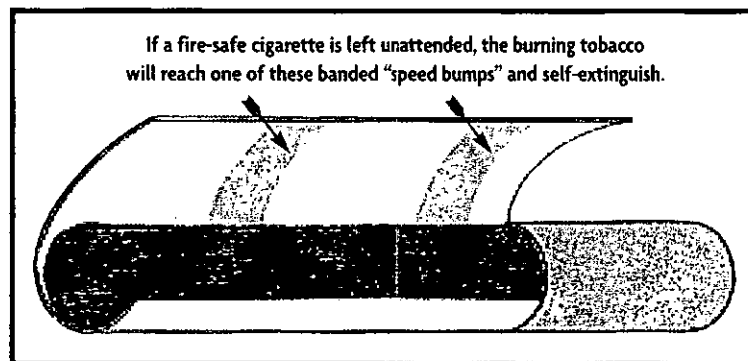
The mission of the Coalition for Fire-Safe Cigarettes is to save lives, prevent injuries and devastation from cigarette-ignited fires by calling on cigarette manufacturers to immediately produce and market only cigarettes that adhere to an established cigarette fire safety performance standard and working to see that these standards for fire-safe cigarettes are required in every state in the country.

## What is a Fire-Safe Cigarette?

While there is no such thing as a cigarette that will totally eliminate fires, a fire-safe cigarette has a reduced propensity to burn when left unattended. The most common fire-safe technology used by cigarette manufacturers is to make the paper thicker in places to act as "speed bumps" to slow down a burning cigarette. If a fire-safe cigarette is left unattended, the burning tobacco will reach one of these "speed bumps" where the paper is thicker and self-extinguish.

Fire-safe cigarettes meet an established cigarette fire safety performance standard (based on ASTM E2187, Standard Test Method for Measuring the Ignition Strength of Cigarettes).

- Cigarettes are the leading cause of home fire fatalities in the United States, killing 700 to 900 people—smokers and non-smokers alike—per year.
- Property losses total hundreds of millions of dollars each year.
- On average there are 32,000 smoking material structure fires per year in the United States.
- Fires caused by smoking materials have declined in recent years, thanks in part to more stringent standards for fire-resistant mattresses and upholstered furniture, public education, and a dramatic decrease in the number of cigarettes consumed per adult in the United States. But cigarettes are still the leading cause of residential fire deaths.



- The risk of dying in a home structure fire caused by smoking materials rises with age. Two-fifths (38 percent) of fatal smoking-material fire victims are age 65 or older.

- One-quarter of victims of smoking-material fire fatalities are not the smoker whose cigarette started the fire: 34 percent are children of the smokers; 25 percent are neighbors or friends; 14 percent are spouses or partners; and 13 percent are parents.
- Almost half (43 percent) of fatal home smoking-material fire victims were sleeping when injured;

one-third (32 percent) were attempting to escape, to fight the fire, or to rescue others.

- One in four Americans is now or soon will be covered by fire-safe cigarette mandates approved in New

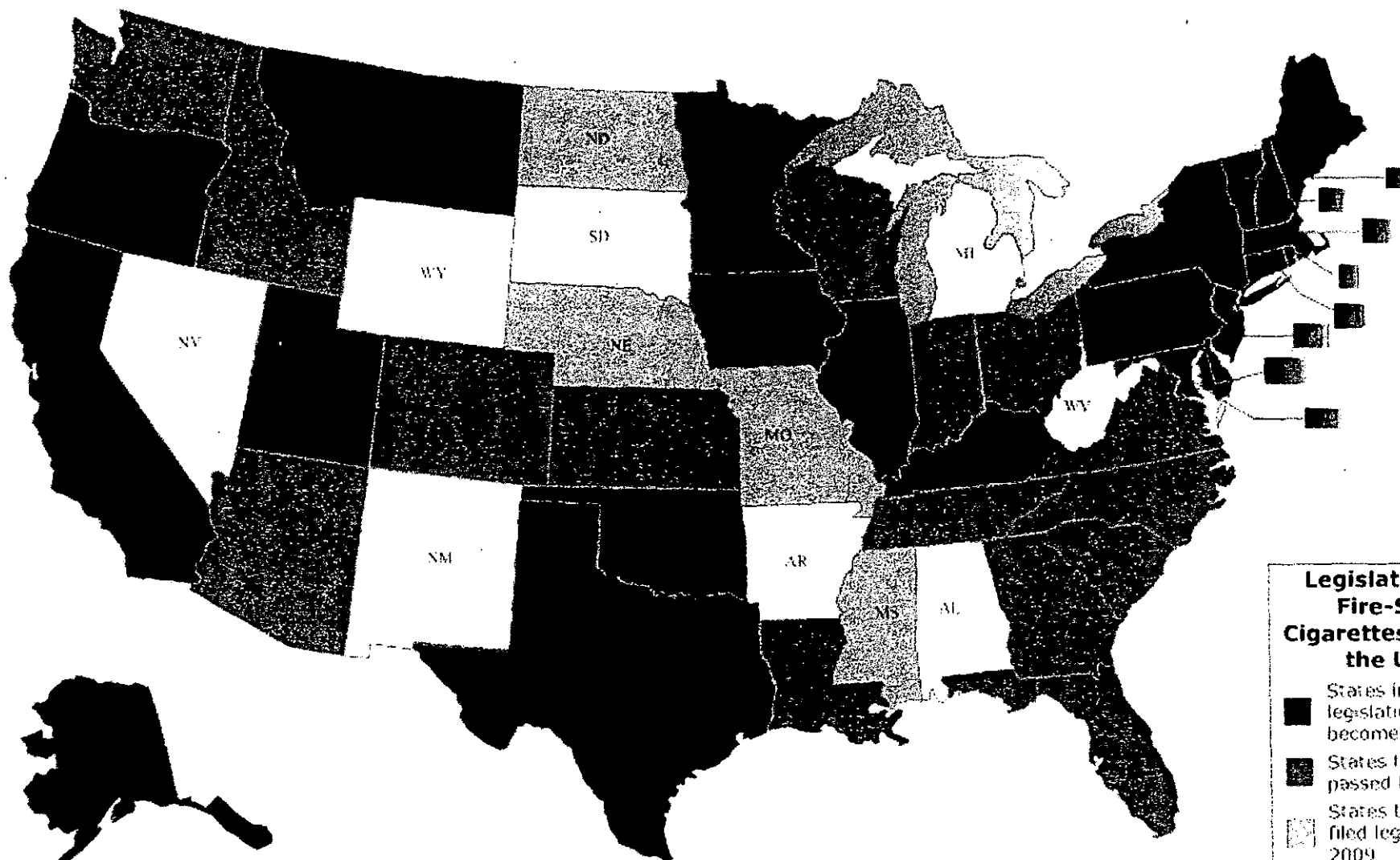
York, California, Vermont, Illinois, New Hampshire, and Massachusetts. A fire-safe cigarette mandate has also been approved for all of Canada.

- Research in New York State shows no decline in cigarette sales with the introduction of fire-safe cigarettes, but cigarette-fire fatalities were reported to have declined in the state by a third in 2004 when the law was in place for not quite half the year.

## What Can I Do To Help Protect People and Property From Cigarette-Ignited Fires?

- Log on to [www.firesafecigarettes.org](http://www.firesafecigarettes.org)
- Sign the online petition calling for tobacco companies to produce and sell only fire-safe cigarettes in the U.S.
- Find out what is happening in your state.
- Learn more about this important issue.

*Same  
given to  
Senate.*



85% of the U.S. population is now or soon will be better protected from cigarette fires thanks to state passage of fire-safe cigarette legislation.

In Canada, fire-safe cigarettes are required nationwide using the New York standard.

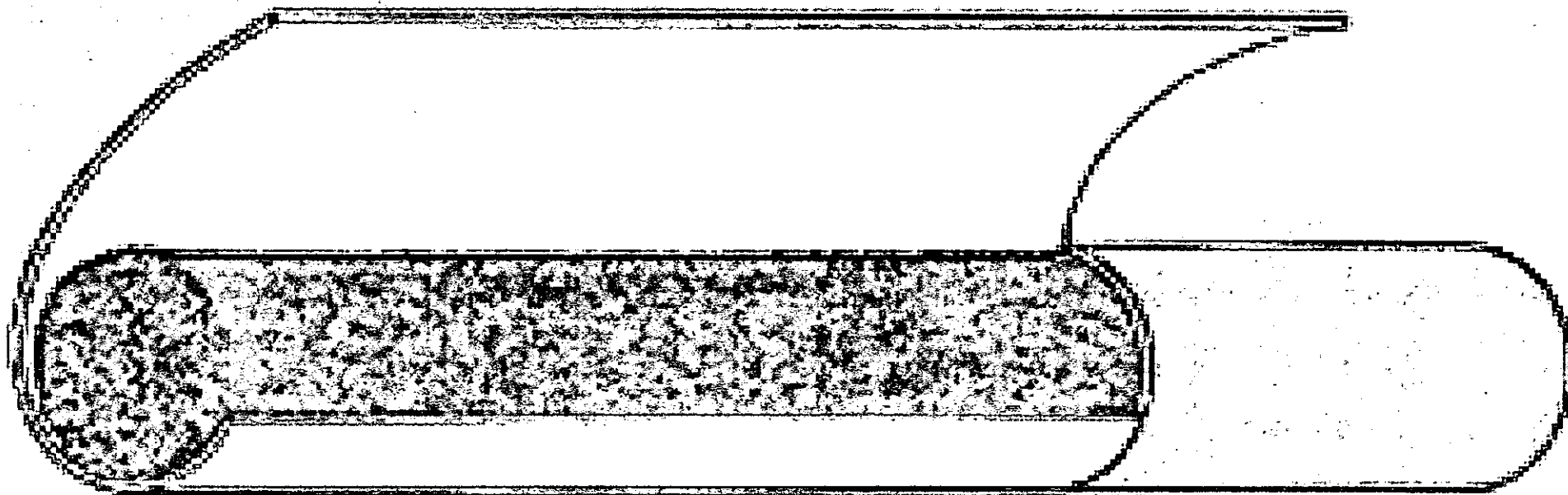
Click on any state to learn more.

**Legislation for  
Fire-Safe  
Cigarettes around  
the U.S.**

- States in which legislation has become effective
- States that have passed legislation
- States that have filed legislation in 2009
- States that have not filed legislation in 2009

*Same given  
to Senate.*

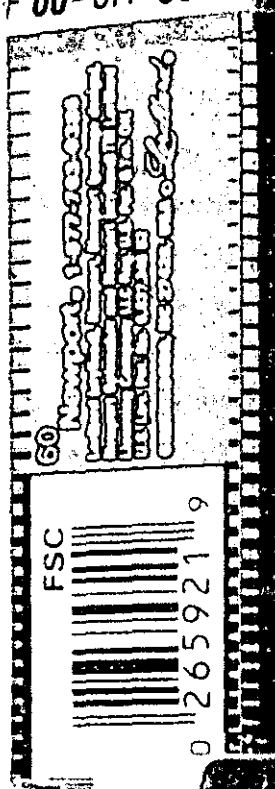
If a fire-safe cigarette is left unattended,  
the burning tobacco will reach one of these  
banded "speed bumps" and self-extinguish.



Same given  
to Senate.

20

F 60¢ OFF 60¢ OFF



Marlboro

FLIP-TOP<sup>®</sup> BOX

PHILIP MORRIS USA  
RICHMOND, VA 23261  
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HOUSE BILL NO. 1368

Fire Safe Cigarette Bill/Reduced Ignition Cigarettes Bill

Chairman Keiser's and the IBL Committee

**Presented by:** Jim A. Reuther

(Career Firefighter)

1743 4<sup>th</sup> Ave NE

Jamestown, ND

Mr. Chairman Keiser, and members of the IBL committee, my name is Jim A. Reuther from Jamestown. I'm in favor of House Bill No. 1368 (Reduced Ignition Cigarettes), but as a firefighter I am not here to promote cigarette smoking."

I support this house bill for some of the following reasons:

- Saving Lives (Occupants/Emergency Responders – Firefighters/Law Enforcement/EMS)
- Property Loss
  - Reduce structure fires caused by smoking materials (Average 3 a year)
  - Reduce wildland fires caused by smoking materials (Average 10 a year)

**"I do believe that reduced ignition cigarettes would help save lives and reduce property loss."**

In the last 20 years of being in the fire service, I have been involved in incidents that cigarettes have been a contributing factor in the cause of the fire. Within that time, we have had two (2) fire fatalities at 2 separate incidents. Latest was January 2007 at a motel, one (1) fatality and a large property loss.

***"We as firefighters our job is to save lives and protect property, HB 1368 is just one more way of helping us (firefighters) do our job."***

Thank you

Mr. Chairman Keiser, and members of the IBL committee, I would like to thank you for giving me the opportunity to speak in front of you about HB 1368.

Sixty-first  
Legislative Assembly  
of North Dakota

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1368

Page 1, line 2, remove "an"

Page 1, line 3, replace "date" with "dates"

Page 5, line 1, replace "wholesale" with:

";  
a. Wholesale

Page 5, line 6, after "year" insert:

"; or  
b. The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" shall mean an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer), for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.  
8. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform this chapter with the laws of those states that have enacted reduced cigarette ignition propensity laws as of the date this chapter is enacted"

Page 5, line 31, replace "a fee of at least" with "an initial fee of"

Page 8, line 15, replace "for a first offense, and for a subsequent offense a civil penalty" with "and"

Page 8, replace lines 21 through 25 with:

"5. Whenever any law enforcement personnel or duly authorized representative of the state fire marshal shall discover any cigarettes (i) for which no certification has been filed as required by section 18-13-03, or (ii) that have not been marked as required by section 18-13-04, such personnel is hereby authorized and empowered to seize and take possession of such cigarettes. Cigarettes seized pursuant to this subsection shall be destroyed; provided, however, that prior to the

destruction of any cigarette pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette."

Page 8, line 28, replace "petitioning for injunctive relief or" with:

"(i) for preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or any other person or entity to enjoin such entity from selling, offering to sell, or affixing tax stamps to any cigarette that does not comply with the requirements of this chapter, or (ii)"

Page 9, after line 26, insert:

"18-13-10. Preemption. This chapter shall be repealed if a federal reduced cigarette ignition propensity standard is adopted and becomes effective."

Page 9, line 27, replace "18-13-10" with "18-13-11"

Page 9, line 31, after "2010" insert ", except that section 18-13-11 becomes effective on August 1, 2009"

Renumber accordingly

**Testimony  
HB No. 1368  
House Industry, Business and Labor Committee  
January 19, 2009, 8:00 a.m.**

Good morning Chairman Keiser and members of the House, Industry, Business and Labor Committee. My name is Kathleen Mangskau and I am the chair of the Tobacco Prevention and Control Advisory Committee. I am here to provide information related to HB 1368 and fire-safe cigarettes.

The Tobacco Prevention and Control Advisory Committee has primary goals of preventing youth from starting to use tobacco, helping youth and adults to quit tobacco use, eliminating exposure to secondhand smoke and identifying and eliminating tobacco use disparities. Implementing evidence-based, statewide tobacco control programs that are comprehensive, integrated, sustained and accountable have been shown to reduce smoking rates, tobacco-related deaths, and diseases caused by smoking. These programs will prevent or accelerate declines in heart disease, lung diseases and disorders, and once again make lung cancer a rare disease. From a health perspective, we believe there is no such thing as a safe cigarette. We recognize that cigarettes are the leading cause of fire death in the nation, and that many of the victims are nonsmokers, including children, family members, neighbors and firefighters.

Although the advisory committee goals differ from the firefighters, we applaud their goal to save lives by introducing this legislation.

Thank you.

## Chairman Svedjan and Members of the Appropriations Committee

I'm Rep. Joe Kroeber from District 12 which includes 5/6 of Jamestown. I am here supporting engrossed HB # 1368 which is a Fire Safe Cigarette bill. It is often referred to as the reduced ignition cigarette bill. I ask that you amend HB#1368 with amendment # 90255.0201 which adds an appropriation section to the bill. I ask for your vote for this amendment and then the bill to help save lives, prevent injuries and help prevent property losses which total hundreds of millions of dollars each year. While there is no such thing as a cigarette that will totally eliminate fires, a fire-safe cigarette has a reduced tendency to burn when left unattended. The most common fire-safe technology used is to make the paper thicker in places to act as "speed bumps" where the paper is thicker and will self-extinguish if it is left unattended or is not being actively smoked. The first state to pass this legislation was New York in 2004. Now 22 states, plus the District of Columbia have already implemented fire-safe cigarette laws. In addition, 15 more states have passed similar laws, which will become effective throughout 2009 and 2010. As of this date only about four states will not have yet filed this type of legislation. In Canada, fire-safe cigarettes are required nationwide using the New York Standard. The Grand forks Herald quoted Jerry Vein, Fire Marshal in Grand Forks "that from 2005-2007, there were 11 deaths and 99 cases of property damage in North Dakota caused by cigarette-ignited fires. Nationwide cigarettes are the leading cause of home fire fatalities, killing 700 to 900 people-smokers and none-smokers alike-every year. Cigarettes are still the leading cause of residential fire deaths. There are a number of groups in North Dakota supporting this bill. They are the Fire Chief's Association, Fire Protection Association, and the Fire Fighter's Association. There is also a National Coalition for Fire-Safe Cigarettes which includes over 60 different organizations. This engrossed bill passed the IBL Committee by a vote of 13-0. There are other people here to testify for this bill which know a great deal more about it than I do, however I would be happy to try and answer any questions the committee may have.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1368

Page 1, line 2, after "cigarettes;"; insert "to provide a penalty; to provide an appropriation;"

Page 8, after line 2, insert:

**"18-13-05. Penalties.**

1. A manufacturer, wholesale dealer, agent, or any other person that 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 ten thousand dollars for each sale of cigarettes, and for a subsequent offense is subject to a civil penalty not to exceed twenty-five thousand dollars for each sale, but the penalty against any person may not exceed one hundred thousand dollars during any thirty-day period.
2. A retail dealer that knowingly sells cigarettes in violation of section 18-13-02:
  - a. For a first offense is subject to a civil penalty not to exceed five hundred dollars, and for a subsequent offense is subject to a civil penalty not to exceed two thousand dollars, for 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 for each sale or 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 may not exceed twenty-five thousand dollars during a thirty-day period.
3. In addition to any penalty prescribed by law, any manufacturer that knowingly makes a false certification pursuant to section 18-13-03 is subject to a civil penalty of at least seventy-five thousand dollars, but not to exceed two hundred fifty thousand dollars for each false certification.
4. Any person violating any other provision in this chapter is subject to a civil penalty for a first offense not to exceed one thousand dollars, and for a subsequent offense to a civil penalty not to exceed five thousand dollars for each violation.

5. In addition to any other remedy provided by law, the state fire marshal or attorney general may file an action in district court for a violation of this chapter, including petitioning for:
  - a. Preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or any other person to enjoin the person from selling, offering to sell, or affixing tax stamps to any cigarette that does not comply with the requirements of this chapter; or
  - b. To recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney's fees.
6. Each violation of this chapter or of rules adopted to implement this chapter constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief.

**18-13-06. Implementation.** The state fire marshal may adopt rules to implement this chapter.

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

1. The state tax commissioner in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under chapter 57-36, may inspect such cigarettes to determine if the cigarettes are marked as required by section 18-13-04. If the cigarettes are not marked as required, the state tax commissioner shall notify the state fire marshal.
2. The attorney general and the state fire marshal may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, shall give the attorney general and the state fire marshal the means, facilities, and opportunity for the examinations authorized by this section.

**18-13-08. Fire prevention and public safety fund.** There is established in the state treasury a special fund to be known as the fire prevention and public safety fund. The fund consists of all moneys recovered as penalties under section 18-13-05. The moneys must be deposited to the credit of the fund and must be made available to the state fire marshal to support fire safety and prevention programs upon legislative appropriation.

**18-13-09. Sale outside of North Dakota.** This chapter does not prohibit any person from manufacturing or selling cigarettes that do not meet the requirements of section 18-13-02 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in this state."

Page 8, line 3, replace "**18-13-05**" with "**18-13-10**"

Page 8, after line 6, insert:

**“SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the attorney general to be made available to the state fire marshal for the purpose of processing, testing, enforcement, and oversight activities in this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the fire prevention and public safety fund, not otherwise appropriated, the sum of \$25,000, or so much of the sum as may be necessary, to the attorney general to be made available to the state fire marshal for the purpose of supporting fire safety and prevention programs, for the biennium beginning July 1, 2009, and ending June 30, 2011.”

Page 8, line 7, replace “SECTION 2.” with “SECTION 4.”

Renumber accordingly

Chairman Cook and Members of the Finance and Tax Committee

I'm Joe Kroeber from District 12 which includes 5/6 of Jamestown. I ask for your support for HB#1368 which is a Fire Safe Cigarette bill. It is often referred to as the reduced ignition cigarette bill. I ask for you vote for this bill to help save lives, prevent injuries and help prevent injuries and property losses which total hundreds of millions of dollars each year. While there is no such thing as a cigarette that will totally eliminate fires, fire-safe cigarettes have a reduced tendency to burn when left unattended. The most common fire-safe technology used is to make the paper thicker in places to act as "speed bumps" where the paper is thicker and will self-extinguish if it is left unattended or is not being actively smoked. The first state to pass this legislation was New York in 2004. Now 22 states, plus the District of Columbia have already implemented fire-safe cigarette laws. In addition, 15 more states have passed similar laws, which will become effective throughout 2009 and 2010. As of this date only about four states will not have yet filed this type of legislation. In Canada, fire-safe cigarettes are required nationwide using the New York Standard. The Grand Forks Herald quoted Jerry Vein, Fire Marshal in Grand Forks "that from 2005-07, there were 11 deaths and 99 cases of property damage in ND caused by cigarette-ignited fires. Nationwide cigarettes are the leading cause of residential fire deaths. There are a number of groups in ND supporting this bill. They are the Fire Chief's Association, Fire Protection Association, and the Fire Fighter's Association. There is also a National Coalition for Fire-Safe Cigarettes which includes over 60 different organizations. This model legislation was developed between major tobacco companies, National Coalition for Fire-Safe Cigarettes and was reviewed and amended by our Attorney General's Office and the State Fire Marshal. There are other people here to testify for this bill which know a great deal about it. However, I would be happy to try and answer any questions the committee may have.

#2

**Reduced Cigarette Ignition Propensity  
Testimony in Support of HB 1368  
David Nuss, Regional Manager, NFPA**

**The Problem:**

- Smoking related fires are the number one cause of civilian fire deaths in the U.S. killing between 700 to 900 a year.
- Property loss is in the hundreds of millions of dollars.
- 1 in 4 victims is not the smoker:
  - 34% were children
  - 25% were neighbors
  - 14% were spouses
  - 13% were parents
- 1 in 3 or 34% of the victims were 65 or older.
- In 47% of the fires alcohol or other drugs were involved.

**The Solution:**

- Reduced ignition propensity cigarettes are a proven, practical, and effective way to eliminate the risk of cigarette-ignited fires. The use of such cigarettes will help prevent thousands of cigarette-ignited fires each year.
- Currently 38 states covering 85% of the American public, and all of Canada, already have passed legislation requiring this type of cigarette. The law is currently in effect in 23 states and effective dates in the remaining states occur sometime in the next 12 months.
- The use of reduced ignition propensity technology provides a tremendous reduction in the risks by cutting off the burning time before most cigarettes are able to ignite things like furniture or bedding materials.

**About the Bill:**

The bill is modeled after the original New York state bill and is comprised of 4 major sections:

- Section 2 on page 2 of the proposed bill establishes the criteria for flammability by requiring cigarettes that are sold in North Dakota to meet the requirements of the American Society of Testing and Materials (ASTM) standard E2187.04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes".
- Section 3 on page 5 outlines a certification process that requires cigarette manufacturers to verify to the State that cigarettes offered for sale in North Dakota meet the provisions of the ASTM standard. This section also provides for an assessment of fees by the State to defray the actual costs of enforcing this regulation.
- Section 4 on page 6 stipulates the marking of cigarette packaging to indicate compliance with these requirements.
- Section 5 on page 7 outlines penalties for non-compliance with these regulations.

**Summary:**

- Cigarettes are the leading cause of home fire fatalities in the U.S. But we have the opportunity to prevent these horrible situations through the simple but effective technology found in reduced ignition propensity cigarettes. I urge you to support me in this effort.

#3

## **Testimony on House bill 1368**

### **Senate Finance and Taxation Committee**

**Jerry Vein**  
**Grand Forks Professional Fire Fighter**

**March 9, 2009**

Chairman Dwight Cook and Committee Members

My name is Jerry Vein a fire professional from Grand Forks. I have been in the fire service for the last 39 years. I think it's important to point out that I do not advocate smoking. It is harmful to you and to others.

Today I want to focus on smoking as a public safety issue. Fire safe cigarettes not only affect YOUR safety but also to those in and around your home, and place of business. If a fire can be prevented, fire safe cigarettes will also affect the safety of fire fighters and first responders around the state of North Dakota.

I support this bill for some to the following reason:

Cigarettes are the leading cause of home fire fatalities in the US killing 900 people a year smokers and non-smokers a year

On average there are 32,000 smoking material structure fires per year in the United States.

The risk of dying in a home structure fire caused by smoking materials rise with age.

One-quarter of victims of smoking material fire fatalities are not the smoker whose cigarette started the fire: 34% are children of the smokers.

I believe that fire safe cigarettes will reduce the fire injury and fire deaths in the state of North Dakota.

In

2005, 31 smoking related fires

2006, 38 smoking related fires

2007, 30 smoking related fires

In

2005, 6 smoking related fatalities

2006, 4 smoking related fatalities

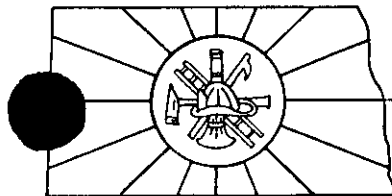
2007, 1 smoking related fatalities

From my years in the fire service I have seen my share of fires started by cigarettes. I believe that if House bill 1368 is passed there will be a reduction of cigarette fires and cigarette caused fatalities will go down in North Dakota. Statistics in other states have proved this with the passage of the reduced ignition propensity cigarettes (fire safe cigarette).

Thank You

Jerry Vein

#4



Organized June 4, 1884. incorporated January 20, 1901.

# *North Dakota Firefighter's Association*

P.O. Box 6127 • Bismarck, ND 58506-6127

Phone: 701-222-2799

Fax: 701-222-2899

## **HB 1368 Finance and Taxation March 9, 2009**

Chairman Belter and members of the Senate Finance and Taxation Committee, my name is Lois Hartman. I am the Executive Director of the North Dakota Firefighter's Association. I appear before you today in support of HB1368.

As the Executive Director of the North Dakota Firefighter's Association, I serve as the State Director for the National Volunteer Fire Council. I have been actively supporting this issue in an effort to reduce the number of deaths due to residential fires. This new technology will help reduce the number of residential fires.

On behalf of the North Dakota Firefighter's Association, I urge a do pass on HB 1368.

Thank You

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226  
www.ag.nd.gov

Wayne Stenehjem  
ATTORNEY GENERAL

STATE FIRE MARSHAL  
4205 State Street, PO Box 1054  
Bismarck, ND 58502-1054  
(701) 328-5555 FAX (701) 328-5510

March 10, 2009

Senator Dwight Cook  
Chairman, Finance and Taxation Committee  
1408 17<sup>th</sup> Street SE  
Mandan ND 58554-4895


Dear Senator Cook:

In response to a request made March 9, 2009, during a committee hearing on House Bill 1368, the Fire Safe Cigarette bill, attached is information on the number of fires that occurred from cigarette causes in the State of North Dakota for 2007 and 2008.

The statistical data provided is from fire incident reporting of individual fire departments for each of these two years. The data shows residential fires; other structure fires, which are considered sheds or businesses; wildland fires that have occurred from cigarette causes; and other fires, such as vehicle or trash fires.

If any other information should be needed, please do not hesitate to contact my office at 701-328-5555.

Sincerely,

  
Raymond Lambert  
State Fire Marshal

lh  
enc.

## Reported Fires in North Dakota Caused by Cigarettes

### 2007

Type of Fire	Number
Residential	12
Other Structure (shed, business)	3
Wildland	12
Other Fires (vehicle, trash)	3
Total Fires Caused by Cigarettes	30

### 2008

Type of Fire	Number
Residential	7
Other Structure (shed, business)	3
Wildland	6
Other Fires (vehicle, trash)	5
Total Fires Caused by Cigarettes	21

From .0300

N Johnson

Purposed Amendment  
Apr. 23, 2009

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1368

Page 1, line 8, replace "state tax commissioner" with "attorney general"

Page 1, line 9, replace "and affix stamps on" with "or sell"

Page 2, line 17, replace "Penalty" with "Seizure"

Page 5, line 2, remove "the wholesale or retail dealers can establish that state"

Page 5, line 3, remove "tax stamps were affixed to the cigarettes before August 1, 2010, and if"

Page 5, after line 15, insert:

"9. If any law enforcement personnel or duly authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by section 18-13-03, or which have not been marked as required by section 18-13-04, that personnel or representative may seize and take possession of the cigarettes. Cigarettes seized under this subsection must be destroyed; provided, however, that before the destruction of the cigarettes, the true holder of the trademark rights in the cigarette brand is permitted to inspect the cigarette."

Page 6, line 9, remove "The state fire marshal may"

Page 6, remove line 10 and 11

Page 8, line 9, replace "five" with "two"

Page 8, line 11, replace "two" with "one"

Page 8, line 14, replace "one thousand" with "five hundred"

Page 8, line 16, replace "five" with "two" and after "thousand" insert "five hundred"

Page 8, line 19, replace "twenty-five" with "ten"

Page 8, line 25, replace "one thousand" with "five hundred"

Page 8, line 26, replace "five" with "two" and after "thousand" insert "five hundred"

## Chairman Holmberg and Members of the Appropriations Committee

I'm Joe Kroeber from District 12 which includes 5/6 of Jamestown. I ask for your support for HB#1368 which is a Fire Safe Cigarette bill. It is often referred to as the reduced ignition cigarette bill. I ask for you vote for this bill to help save lives, prevent injuries and help prevent injuries and property losses which total hundreds of millions of dollars each year. While there is no such thing as a cigarette that will totally eliminate fires, fire-safe cigarettes have a reduced tendency to burn when left unattended. The most common fire-safe technology used is to make the paper thicker in places to act as "speed bumps" where the paper is thicker and will self-extinguish if it is left unattended or is not being actively smoked. The first state to pass this legislation was New York in 2004. Now 22 states, plus the District of Columbia have already implemented fire-safe cigarette laws. In addition, 15 more states have passed similar laws, which will become effective throughout 2009 and 2010. As of this date only about four states will not have yet filed this type of legislation. In Canada, fire-safe cigarettes are required nationwide using the New York Standard. The Grand Forks Herald quoted Jerry Vein, Fire Marshal in Grand Forks "that from 2005-07, there were 11 deaths and 99 cases of property damage in ND caused by cigarette-ignited fires. Nationwide cigarettes are the leading cause of residential fire deaths. There are a number of groups in ND supporting this bill. They are the Fire Chief's Association, Fire Protection Association, and the Fire Fighter's Association. There is also a National Coalition for Fire-Safe Cigarettes which includes over 60 different organizations. This model legislation was developed between major tobacco companies, National Coalition for Fire-Safe Cigarettes and was reviewed and amended by our Attorney General's Office and the State Fire Marshal. There are other people here to testify for this bill which know a great deal about it. The Senate made a large number of changes to the bill. I have asked the AG' office to check over the bill and I have not heard from them, but I have a call into Cathy Roll about their ideas about the changes. However, would be happy to try and answer any questions the committee may have.