

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1368

Introduced by

Representatives Kroeber, Glassheim, Hofstad, Nelson

Senators Lyson, Robinson

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

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

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

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

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

1 the testing and to ensure that the testing repeatability remains within the required
2 repeatability values stated in subdivision f of subsection 1 of section 18-13-02 for
3 all test trials used to certify cigarettes in accordance with this chapter.

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

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

8 7. "Sale" means any transfer of title or possession or both, exchange or barter,
9 conditional or otherwise, in any manner or by any means or any agreement to do
10 the same. The term includes the giving of cigarettes as samples, prizes, or gifts,
11 and the exchanging of cigarettes for any consideration other than money.

12 8. "Sell" means to sell or to offer or agree to sell.

13 9. "Wholesale dealer" means any person that sells cigarettes or tobacco products to
14 retail dealers or other persons for purposes of resale, and any person that owns,
15 operates, or maintains a cigarette or tobacco product vending machine in, at, or
16 upon premises owned or occupied by any other person.

17 **18-13-02. Test method and performance standard - Penalty.**

18 1. Except as provided in subsection 7, a cigarette may not be sold or offered for sale
19 in this state or offered for sale or sold to persons located in this state unless the
20 cigarette has been tested in accordance with the test method and meets the
21 performance standard specified in this section, a written certification has been filed
22 by the manufacturer with the state fire marshal in accordance with section
23 18-13-03, and the cigarette has been marked in accordance with section 18-13-04.

24 a. Testing of cigarettes must be conducted in accordance with the American
25 society of testing and materials standard E2187-04, "standard test method for
26 measuring the ignition strength of cigarettes".

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

28 c. No more than twenty-five percent of the cigarettes tested in a test trial in
29 accordance with this section may exhibit full-length burns. Forty replicate
30 tests must comprise a complete test trial for each cigarette tested.

- 1 d. The performance standard required by this section must be applied only to a
2 complete test trial.
- 3 e. Written certifications must be based upon testing conducted by a laboratory
4 that has been accredited pursuant to standard ISO/IEC 17025 of the
5 international organization for standardization, or other comparable
6 accreditation standard required by the state fire marshal.
- 7 f. A laboratory conducting testing in accordance with this section shall
8 implement a quality control and quality assurance program that includes a
9 procedure that will determine the repeatability of the testing results. The
10 repeatability value may not be greater than nineteen hundredths.
- 11 g. This section does not require additional testing if cigarettes are tested
12 consistent with this chapter for any other purpose.
- 13 h. Testing performed or sponsored by the state fire marshal to determine a
14 cigarette's compliance with the performance standard required must be
15 conducted in accordance with this section.
- 16 2. Each cigarette listed in a certification submitted pursuant to section 18-13-03 which
17 uses lowered permeability bands in the cigarette paper to achieve compliance with
18 the performance standard set forth in this section must have at least two nominally
19 identical bands on the paper surrounding the tobacco column. At least one
20 complete band must be located at least fifteen millimeters from the lighting end of
21 the cigarette. For cigarettes on which the bands are positioned by design, at least
22 two bands must be located at least fifteen millimeters from the lighting end and ten
23 millimeters from the filter end of the tobacco column, or ten millimeters from the
24 labeled end of the tobacco column for nonfiltered cigarettes.
- 25 3. A manufacturer of a cigarette that the state fire marshal determines cannot be
26 tested in accordance with the test method prescribed in subdivision a of
27 subsection 1 shall propose a test method and performance standard for the
28 cigarette to the state fire marshal. Upon approval of the proposed test method and
29 a determination by the state fire marshal that the performance standard proposed
30 by the manufacturer is equivalent to the performance standard prescribed in
31 subdivision c of subsection 1, the manufacturer may employ the test method and

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

14 4. Each manufacturer shall maintain copies of the reports of all tests conducted on all
15 cigarettes offered for sale for a period of three years, and shall make copies of
16 these reports available to the state fire marshal and the attorney general upon
17 written request. Any manufacturer who fails to make copies of these reports
18 available within sixty days of receiving a written request is subject to a civil penalty
19 not to exceed ten thousand dollars for each day after the sixtieth day that the
20 manufacturer does not make those copies available.

21 5. The state fire marshal may adopt a subsequent American society of testing and
22 materials standard test method for measuring the ignition strength of cigarettes
23 upon a finding that the subsequent method does not result in a change in the
24 percentage of full-length burns exhibited by any tested cigarette when compared to
25 the percentage of full-length burns the same cigarette would exhibit when tested in
26 accordance with American society of testing and materials standard E2187-04 and
27 the performance standard in subdivision c of subsection 1.

28 6. The state fire marshal shall review the effectiveness of this section and report each
29 interim to the legislative council the state fire marshal's findings and any
30 recommendation for legislation to improve the effectiveness of this chapter.

31 7. The requirements of subsection 1 may not prohibit:

- 1 a. Wholesale or retail dealers from selling their existing inventory of cigarettes
2 after July 31, 2010, if the wholesale or retail dealers can establish that state
3 tax stamps were affixed to the cigarettes before August 1, 2010, and if the
4 wholesale or retail dealers can establish that the inventory was purchased
5 before August 1, 2010, in comparable quantity to the inventory purchased
6 during the same period of the prior year; or
- 7 b. The sale of cigarettes solely for the purpose of consumer testing. For
8 purposes of this subsection, "consumer testing" means an assessment of
9 cigarettes which is conducted by a manufacturer, or under the control and
10 direction of a manufacturer, for the purpose of evaluating consumer
11 acceptance of those cigarettes, utilizing only the quantity of cigarettes which
12 is reasonably necessary for the assessment.
- 13 8. This chapter must be interpreted and construed to effectuate its general purpose to
14 make uniform this chapter with the laws of those states that have enacted reduced
15 cigarette ignition propensity laws as of the date this chapter is enacted.

16 **18-13-03. Certification and product change.**

- 17 1. Each manufacturer shall submit to the state fire marshal a written certification
18 attesting that each cigarette listed in the certification has been tested in
19 accordance with section 18-13-02 and each cigarette listed in the certification
20 meets the performance standard set forth in subdivision c of subsection 1 of
21 section 18-13-02.
- 22 2. Each cigarette listed in the certification must be described with the following
23 information:
- 24 a. Brand or trade name on the package;
- 25 b. Style, such as light or ultra light;
- 26 c. Length in millimeters;
- 27 d. Circumference in millimeters;
- 28 e. Flavor, such as menthol or chocolate, if applicable;
- 29 f. Filter or nonfilter;
- 30 g. Package description, such as soft pack or box;
- 31 h. Marking approved in accordance with section 18-13-04;

- 1 i. The name, address, and telephone number of the laboratory, if different than
2 the manufacturer that conducted the test; and
- 3 j. The date that the testing occurred.
- 4 3. The certifications must be made available to the attorney general for purposes
5 consistent with this chapter and the state tax commissioner for the purposes of
6 ensuring compliance with this section.
- 7 4. Each cigarette certified under this section must be recertified every three years.
- 8 5. For each cigarette listed in the certification, a manufacturer shall pay to the state
9 fire marshal an initial fee of two hundred fifty dollars. The state fire marshal may
10 adjust this fee annually to ensure the fee defrays the actual costs of the
11 processing, testing, enforcement, and oversight activities required by this chapter.
- 12 6. There is established in the state treasury a special fund to be known as the
13 Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement
14 fund. The fund must consist of all certification fees submitted by manufacturers,
15 and, in addition to any other moneys made available, be available pursuant to
16 legislative appropriation, to the state fire marshal solely to support processing,
17 testing, enforcement, and oversight activities under this chapter.
- 18 7. If a manufacturer has certified a cigarette under this section and makes any
19 change to the cigarette which is likely to alter its compliance with the reduced
20 cigarette ignition propensity standards required by this chapter, that cigarette may
21 not be sold or offered for sale in this state until the manufacturer retests the
22 cigarette in accordance with the testing standards set forth in section 18-13-02 and
23 maintains records of that retesting as required by section 18-13-02. Any altered
24 cigarette that does not meet the performance standards set forth in section
25 18-13-02 may not be sold in this state.
- 26 **18-13-04. Marking of cigarette packaging.**
- 27 1. Cigarettes that are certified by a manufacturer in accordance with section 18-13-03
28 must be marked to indicate compliance with the requirements of section 18-13-02.
29 The marking must be in eight-point type or larger and consist of:
- 30 a. Modification of the product uniform product code to include a visible mark
31 printed at or around the area of the uniform product code which may consist

- 1 of alphanumeric or symbolic characters permanently stamped, engraved,
2 embossed, or printed in conjunction with the uniform product code;
3 b. Any visible combination of alphanumeric or symbolic characters permanently
4 stamped, engraved, or embossed upon the cigarette package or cellophane
5 wrap; or
6 c. Printed, stamped, engraved, or embossed text that indicates that the
7 cigarettes meet the standards of this chapter.
8 2. A manufacturer may use only one marking and shall apply this marking uniformly
9 for all packages, including packs, cartons, and cases, and brands marked by that
10 manufacturer.
11 3. The state fire marshal must be notified as to the marking that is selected.
12 4. Before the certification of any cigarette, a manufacturer shall present its proposed
13 marking to the state fire marshal for approval. Upon receipt of the request, the
14 state fire marshal shall approve or disapprove the marking offered, except that the
15 state fire marshal shall approve any marking in use and approved for sale in New
16 York pursuant to the New York fire safety standards for cigarettes. Proposed
17 markings are deemed approved if the state fire marshal fails to act within ten
18 business days of receiving a request for approval.
19 5. A manufacturer may not modify its approved marking unless the modification has
20 been approved by the state fire marshal in accordance with this section.
21 6. A manufacturer certifying cigarettes in accordance with section 18-13-03 shall
22 provide a copy of the certifications to every wholesale dealer and agent to which
23 the manufacturer sells cigarettes, and shall provide sufficient copies of an
24 illustration of the package marking utilized by the manufacturer under this section
25 for each retail dealer to which the wholesale dealer or agent sells cigarettes. A
26 wholesale dealer and agent shall provide a copy of these package markings
27 received from the manufacturer to all retail dealers to which they sell cigarettes.
28 Wholesale dealers, agents, and retail dealers shall permit the state fire marshal,
29 the tax commissioner, the attorney general, and their employees to inspect
30 markings of cigarette packaging marked under this section.

31 **18-13-05. Penalties.**

- 1 1. A manufacturer, wholesale dealer, agent, or any other person that knowingly sells
2 or offers to sell cigarettes, other than through retail sale, in violation of section
3 18-13-02, for a first offense is subject to a civil penalty not to exceed ten thousand
4 dollars for each sale of cigarettes, and for a subsequent offense is subject to a civil
5 penalty not to exceed twenty-five thousand dollars for each sale, but the penalty
6 against any person may not exceed one hundred thousand dollars during any
7 thirty-day period.
- 8 2. A retail dealer that knowingly sells cigarettes in violation of section 18-13-02:
 - 9 a. For a first offense is subject to a civil penalty not to exceed five hundred
10 dollars, and for a subsequent offense is subject to a civil penalty not to
11 exceed two thousand dollars, for each sale or offer for sale of cigarettes if the
12 total number of cigarettes sold or offered for sale in the sale does not exceed
13 one thousand cigarettes; or
 - 14 b. For a first offense is subject to a civil penalty not to exceed one thousand
15 dollars, and for a subsequent offense is subject to a civil penalty not to
16 exceed five thousand dollars for each sale or offer for sale of such cigarettes
17 if the total number of cigarettes sold or offered for sale in the sale exceeds
18 one thousand cigarettes, provided that this penalty may not exceed
19 twenty-five thousand dollars during a thirty-day period.
- 20 3. In addition to any penalty prescribed by law, any manufacturer that knowingly
21 makes a false certification pursuant to section 18-13-03 is subject to a civil penalty
22 of at least seventy-five thousand dollars, but not to exceed two hundred fifty
23 thousand dollars for each false certification.
- 24 4. Any person violating any other provision in this chapter is subject to a civil penalty
25 for a first offense not to exceed one thousand dollars, and for a subsequent
26 offense to a civil penalty not to exceed five thousand dollars for each violation.
- 27 5. If any law enforcement personnel or duly authorized representative of the state fire
28 marshal discovers any cigarettes for which no certification has been filed as
29 required by section 18-13-03, or which have not been marked as required by
30 section 18-13-04, that personnel or representative may seize and take possession
31 of the cigarettes. Cigarettes seized under this subsection must be destroyed;

1 provided, however, that before the destruction of the cigarettes, the true holder of
2 the trademark rights in the cigarette brand is permitted to inspect the cigarette.

3 6. In addition to any other remedy provided by law, the state fire marshal or attorney
4 general may file an action in district court for a violation of this chapter, including
5 petitioning for:

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

10 b. To recover any costs or damages suffered by the state because of a violation
11 of this chapter, including enforcement costs relating to the specific violation
12 and attorney's fees.

13 7. Each violation of this chapter or of rules adopted to implement this chapter
14 constitutes a separate civil violation for which the state fire marshal or attorney
15 general may obtain relief.

16 **18-13-06. Implementation.**

17 1. The state fire marshal may adopt rules to implement this chapter.

18 2. The state tax commissioner in the regular course of conducting inspections of
19 wholesale dealers, agents, and retail dealers, as authorized under chapter 57-36,
20 may inspect such cigarettes to determine if the cigarettes are marked as required
21 by section 18-13-04. If the cigarettes are not marked as required, the state tax
22 commissioner shall notify the state fire marshal.

23 **18-13-07. Inspection.** The attorney general and the state fire marshal may examine
24 the books, papers, invoices, and other records of any person in possession, control, or
25 occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as
26 well as the stock of cigarettes on the premises. Every person in the possession, control, or
27 occupancy of any premises where cigarettes are placed, sold, or offered for sale, shall give the
28 attorney general and the state fire marshal the means, facilities, and opportunity for the
29 examinations authorized by this section.

30 **18-13-08. Fire prevention and public safety fund.** There is established in the state
31 treasury a special fund to be known as the fire prevention and public safety fund. The fund

1 consists of all moneys recovered as penalties under section 18-13-05. The moneys must be
2 deposited to the credit of the fund and must be made available to the state fire marshal to
3 support fire safety and prevention programs upon legislative appropriation.

4 **18-13-09. Sale outside of North Dakota.** This chapter does not prohibit any person
5 from manufacturing or selling cigarettes that do not meet the requirements of section 18-13-02
6 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside
7 the United States and that person has taken reasonable steps to ensure that the cigarettes will
8 not be sold or offered for sale to persons located in this state.

9 **18-13-10. Local regulation.** Notwithstanding any other provision of law, home rule
10 charter, or ordinance made under a home rule charter, a political subdivision may not enact or
11 enforce any ordinance or regulation conflicting with any provision of this chapter or with any
12 policy of this state expressed by this chapter.

13 **SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act becomes effective
14 August 1, 2010, however, this Act becomes ineffective on the date the state fire marshal
15 certifies to the legislative council that a federal reduced cigarette ignition propensity standard
16 has been adopted and has become effective.