

**SECOND ENGROSSMENT
with Senate Amendments**

Sixty-first
Legislative Assembly
of North Dakota

REENGROSSED 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 an effective date; and to
3 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 attorney general to purchase or sell
9 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

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

5. "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.
6. "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.
7. "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means or any agreement to do the same. The term includes the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money.
8. "Sell" means to sell or to offer or agree to sell.
9. "Wholesale dealer" means any person that sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person that owns, operates, or maintains a cigarette or tobacco product vending machine in, at, or upon premises owned or occupied by any other person.

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

1. Except as provided in subsection 7, a cigarette may not be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarette has been tested in accordance with the test method and meets the performance standard specified in this section, a written certification has been filed by the manufacturer with the state fire marshal in accordance with section 18-13-03, and the cigarette has been marked in accordance with section 18-13-04.
 - a. Testing of cigarettes must be conducted in accordance with the American society of testing and materials standard E2187-04, "standard test method for measuring the ignition strength of cigarettes".
 - b. Testing must be conducted on ten layers of filter paper.
 - c. No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests must comprise a complete test trial for each cigarette tested.

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

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

4. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the state fire marshal and the attorney general upon written request.
5. The state fire marshal may adopt a subsequent American society of testing and materials standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with American society of testing and materials standard E2187-04 and the performance standard in subdivision c of subsection 1.
6. The state fire marshal shall review the effectiveness of this section and report each interim to the legislative council the state fire marshal's findings and any recommendation for legislation to improve the effectiveness of this chapter.
7. The requirements of subsection 1 may not prohibit:
 - a. Wholesale or retail dealers from selling their existing inventory of cigarettes after July 31, 2010, if the wholesale or retail dealers can establish that the

1 inventory was purchased before August 1, 2010, in comparable quantity to
2 the inventory purchased during the same period of the prior year; or

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

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

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

19 **18-13-03. Certification and product change.**

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

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

- 27 a. Brand or trade name on the package;
28 b. Style, such as light or ultra light;
29 c. Length in millimeters;
30 d. Circumference in millimeters;
31 e. Flavor, such as menthol or chocolate, if applicable;

- f. Filter or nonfilter;
- g. Package description, such as soft pack or box;
- h. Marking approved in accordance with section 18-13-04;
- i. The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
- j. The date that the testing occurred.

3. The certifications must be made available to the attorney general for purposes consistent with this chapter and the state tax commissioner for the purposes of ensuring compliance with this section.

4. Each cigarette certified under this section must be recertified every three years.

5. For each cigarette listed in the certification, a manufacturer shall pay to the state fire marshal an initial fee of one hundred dollars.

6. There is established in the state treasury a special fund to be known as the Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund. The fund must consist of all certification fees submitted by manufacturers, and, in addition to any other moneys made available, be available pursuant to legislative appropriation, to the state fire marshal solely to support processing, testing, enforcement, and oversight activities under this chapter.

7. If a manufacturer has certified a cigarette under this section and makes any change to the cigarette which is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter, that cigarette may not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in section 18-13-02 and maintains records of that retesting as required by section 18-13-02. Any altered cigarette that does not meet the performance standards set forth in section 18-13-02 may not be sold in this state.

18-13-04. Marking of cigarette packaging.

1. Cigarettes that are certified by a manufacturer in accordance with section 18-13-03 must be marked to indicate compliance with the requirements of section 18-13-02. The marking must be in eight-point type or larger and consist of:

- a. Modification of the product uniform product code to include a visible mark printed at or around the area of the uniform product code which may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the uniform product code;
 - b. Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or
 - c. Printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter.
2. A manufacturer may use only one marking and shall apply this marking uniformly for all packages, including packs, cartons, and cases, and brands marked by that manufacturer.
 3. The state fire marshal must be notified as to the marking that is selected.
 4. Before the certification of any cigarette, a manufacturer shall present its proposed marking to the state fire marshal for approval. Upon receipt of the request, the state fire marshal shall approve or disapprove the marking offered, except that the state fire marshal shall approve any marking in use and approved for sale in New York pursuant to the New York fire safety standards for cigarettes. Proposed markings are deemed approved if the state fire marshal fails to act within ten business days of receiving a request for approval.
 5. A manufacturer may not modify its approved marking unless the modification has been approved by the state fire marshal in accordance with this section.
 6. A manufacturer certifying cigarettes in accordance with section 18-13-03 shall provide a copy of the certifications to every wholesale dealer and agent to which the manufacturer sells cigarettes, and shall provide sufficient copies of an illustration of the package marking utilized by the manufacturer under this section for each retail dealer to which the wholesale dealer or agent sells cigarettes. A wholesale dealer and agent shall provide a copy of these package markings received from the manufacturer to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the state fire marshal,

1 the tax commissioner, the attorney general, and their employees to inspect
2 markings of cigarette packaging marked under this section.

3 **18-13-05. Local regulation.** Notwithstanding any other provision of law, home rule
4 charter, or ordinance made under a home rule charter, a political subdivision may not enact or
5 enforce any ordinance or regulation conflicting with any provision of this chapter or with any
6 policy of this state expressed by this chapter.

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