

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT (CORRECTED)
LB198

Hearing Date: Monday February 09, 2009
Committee On: General Affairs
Introducer: Stuthman
One Liner: Adopt the Reduced Cigarette Ignition Propensity Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 8 Senators Coash, Cook, Dierks, Dubas, Friend, Karpisek, Price, Rogert
Nay:
Absent:
Present Not Voting:

Proponents: Senator Arnie Stuthman Jim Moylan Kathy Siefken David Nuss	Representing: Introducer Reynolds American NE Grocery Industry Assn. National Fire Protection Assn. and the Coalition for Fire Safe Cigarettes
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Opponents:	Representing:
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Neutral:	Representing:
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Summary of purpose and/or changes:

Bill Summary

LB 198 creates the Reduced Cigarette Ignition Propensity Act. The Act establishes standards for testing, reporting, and certifying the ignition strength of cigarettes. LB 198 includes civil penalties for violating this Act and authorizes the State Fire Marshal and Attorney General to enforce the provisions of the Act. LB 198 is similar to LB 404 introduced by Senator Cornett. Included below is a comparison of the two bills.

Details

Section 1 - This Section names the Act the Reduced Cigarette Ignition Propensity Act.

Section 2 - Defines the following terms: (1) Agent, (2) Cigarette, (3) Consumer Testing, (4) Manufacturer, (5) Quality Control and Quality Assurance Program, (6) Repeatability, (7) Retail Dealer, (8) Sale, (9) Sell, and (10) Wholesale Dealer.

Section 3 - Requires cigarettes to be tested to determine whether they meet the performance standard with a written certification filed by the manufacturer with the State Fire Marshal. Section (1) Subsections (a), (b), (c), (d), (e), (f), (g), and (h) specify the testing requirements. Subsection (8) states that this Act shall follow the New York Safety Standards for Cigarettes, as such standards existed on the operative date of this Act.

Section 4 - Requires that cigarettes to be sold or offered for sale in Nebraska be tested and certified. Each manufacturer shall submit to the State Fire Marshal a written certification. Subsection (4) requires that each cigarette listed in the

brand family of cigarettes shall be recertified every five years. Subsection (5) requires that the manufacturer pay the State Fire Marshal a fee of \$1,000 for each brand family of cigarettes identified in the certification. Subsection (6) establishes the Reduced Cigarette Ignition Propensity Fund, which will consist of all certification fees and any other funds made available for such purposes. Any funds available for investment will be invested by the State Investment Officer. Subsection (7) requires that if there are any changes to cigarettes that may cause that cigarette to no longer comply with this Act, then those cigarettes are not to be sold until the cigarettes have been retested.

Section 5 - This Section deals with how the cigarettes are to be marked so as to indicate that they have been certified in accordance with Section 4 of this Act.

Section 6 - Subsection (1) specifies the civil penalties for a manufacturer, wholesale dealer, agent, or any other person or entity that knowingly sells or offers to sell cigarettes in violation of Section 3 of this Act. 1st offense penalty is not to exceed \$1,000 per sale. Subsequent offense penalty is not to exceed \$10,000 per sale. The subsequent offense penalty is capped at \$50,000 during any 30-day period. Subsection (2) specifies the civil penalties for a retail dealer who knowingly sells cigarettes in violation of Section 3 of this Act. 1st offense penalty is not to exceed \$250. Subsequent offense penalty is not to exceed \$500 per sale or offer for sale of cigarettes. This penalty against any retail dealer is not to exceed \$25,000 during any 30-day period. Subsection (3) sets the civil penalties for any corporation, partnership, sole proprietor, limited partnership, or association making the cigarettes that knowingly falsify certification pursuant to Section 4 of this Act to not exceed \$75,000. Subsection (4) states that any person violating any other section of this Act is liable to a civil penalty not to exceed \$1,000 for a 1st offense and \$5,000 for a subsequent offense. Subsection (5) requires the seizure and forfeiture of all cigarettes that have been sold or offered for sale that do not comply with the performance standards required by Section 3 of this Act. The holder of the trademark rights has the right to inspect the cigarettes before they are destroyed. In Subsection (6), the State Fire Marshal or the Attorney General may petition for injunctive relief or to recover any costs or damages suffered by the state because of a violation of the Act. This includes enforcement costs and attorney's fees. Each violation of the Act or of rules or regulations related to the Act constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief.

Section 7 - Authorizes the State Fire Marshal to adopt and promulgate rules and regulations necessary to carry out the Act. The Tax Commissioner is authorized to inspect cigarettes to ensure that they have the proper markings and requires the Tax Commissioner to notify the State Fire Marshal if marking requirements are not met.

Section 8 - Authorizes the Attorney General and the State Fire Marshal to examine the 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.

Section 9 - This Act does not prohibit cigarettes that do not meet the standards of this Act if reasonable steps were taken to ensure that the cigarettes were not sold or offered for sale in Nebraska or if the cigarettes were only used for consumer testing.

Section 10 - Any federal reduced cigarette ignition propensity standard that preempts this Act would cause this Act to become void. This Act preempts any local laws, ordinances, or regulations that conflict with this Act.

Section 11 - Specifies the date that this bill becomes operative as July 1, 2011.

Comparison

LB 198 (page 8, lines 2 and 4) The bill refers to "retailer dealer."

LB 404 (page 8, lines 2 and 4) The bill refers to "retail dealer."

LB 198 (page 8, line 11) The bill refers to "Standards existed on the operative date of this Act."

LB 404 (page 8, lines 9-10) The bill refers to "Standards existed on January 1, 2009."

LB 198 (page 9, lines 13-15) "Each cigarette listed in the brand family of cigarettes which is certified under this section shall be recertified every five years."

LB 404 (page 9, lines 12-14) "Each cigarette listed in the brand family of cigarettes which is certified under this section shall be recertified every three years."

LB 198 (page 9, line 19) Does not contain a provision allowing the State Fire Marshal to adjust fees.

LB 404 (page 9, lines 18-22) "The State Fire Marshal may annually adjust the fee to ensure it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by the Reduced Cigarette Ignition Propensity Act."

LB 198 (page 9, lines 19-22) "The fee paid shall apply to all cigarettes listed in the brand family identified in the certification and shall include any new cigarette certified within the brand family during the five-year certification period."

LB 404 (page 9, lines 22-25) "The fee paid shall apply to all cigarettes listed in the brand family identified in the certification and shall include any new cigarette certified within the brand family during the three-year certification period."

LB 198 (page 10, line 10) Refers to "the Act."

LB 404 (page 10, lines 13-14) Refers to "the Reduced Cigarette Ignition Propensity Act."

LB 198 (page 11, line 21 - page 12, line 5) "A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 3 of this Act, shall be liable to a civil penalty not to exceed one thousand dollars per each sale of such cigarettes for a first offense and shall be liable to a civil penalty not to exceed ten thousand dollars for any subsequent offense per each sale of such cigarettes, except that this penalty against any such person or entity shall not exceed fifty thousand dollars during any thirty-day period."

LB 404 (page 11, line 25 - page 12, line 9) "A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 3 of this Act, shall be liable to a civil penalty not to exceed ten thousand dollars per each sale of such cigarettes for a first offense and shall be liable to a civil penalty not to exceed twenty-five thousand dollars for any subsequent offense per each sale of such cigarettes, except that this penalty against any such person or entity shall not exceed one hundred thousand dollars during any thirty-day period."

LB 198 (page 12, lines 6-13) "A retail dealer who knowingly sells cigarettes in violation of section 3 of this Act shall be liable to a civil penalty not to exceed two hundred fifty dollars for a first offense and shall be liable to a civil penalty not to exceed five hundred dollars for any subsequent offense for each such sale or offer for sale of such cigarettes, except that this penalty against any retail dealer shall not exceed twenty-five thousand dollars during any thirty-day period."

LB 404 (page 12, lines 10-17) "A retail dealer who knowingly sells cigarettes in violation of section 3 of this Act shall: (a) Be liable to a civil penalty not to exceed five hundred fifty dollars for a first offense and be liable to a civil penalty not to exceed two thousand dollars for any subsequent offense per each such sale or offer for sale of such cigarettes, if the total number of cigarettes sold or offered for sale in such sale does not exceed one thousand cigarettes; or (b) Be liable to a civil penalty not to exceed one thousand dollars for a first offense and be liable to a civil penalty not to exceed five thousand dollars for any subsequent offense per each such sale or offer of sale of such cigarettes, if the total number of cigarettes sold or offered for sale in such sale exceeds one thousand cigarettes, except that this penalty against any retail dealer shall not exceed twenty-five thousand dollars during any thirty-day period."

LB 198 (page 12) "In addition to any civil penalty, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to section 4 of this Act shall be liable to a civil penalty of seventy-five thousand dollars for such false certification."

LB 404 (page 13, lines 1-9) "In addition to any civil penalty, any corporation, partnership, sole proprietor, limited partnership, limited liability company, limited liability partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to section 4 of this Act shall, for a first offense, be liable to a civil penalty of at least seventy-five thousand dollars and, for any subsequent offense, be liable to a civil penalty not to exceed two hundred fifty thousand dollars for each such false certification."

LB 198 (page 15, lines 1-4) "The Reduced Cigarette Ignition Propensity Act shall be repealed if a federal reduced cigarette ignition propensity standard that preempts the Act is adopted and becomes effective."

LB 404 (page 15, lines 16-19) "The Reduced Cigarette Ignition Propensity Act shall be void if a federal reduced cigarette ignition propensity standard that preempts the Act is adopted and becomes effective."

LB 198 (page 15, line 12) "This Act becomes operative on July 1, 2011."

LB 404 (page 16, line 2) "This Act becomes operative on July 1, 2010."

Explanation of amendments:

AM 679 to LB 198 includes elements of LB 404. The substantive aspects of LB 404 that appear in AM 679 include:

1. Referring to the standards as they existed on January 1, 2009.
2. Cigarettes must be recertified every 4 years (LB 404 required recertification every 3 years and LB 198 required recertification every 5 years).
3. AM 679 does not incorporate LB 404's provision allowing the State Fire Marshal to annually adjust fees.
4. AM 679 incorporates LB 404's fee structure for manufacturers, wholesale dealers, agents, or other persons or entities who knowingly sells or offers to sell cigarettes in violation of Section 3: \$10,000 per each sale for a first offense not to exceed \$25,000 for any subsequent offenses not to exceed \$100,000 during any 30-day period.
5. AM 679 incorporates LB 404's fee structure for retail dealers who knowingly sell cigarettes in violation of Section 3: The penalty is not to exceed \$500 for a first offense not to exceed \$2,000 for any subsequent offenses of fewer than 1,000 cigarettes. The penalty is not to exceed \$1,000 for a first offense not to exceed \$5,000 for any subsequent offenses per each sale or offer of sale of 1,000 cigarettes or more.
6. AM 679 incorporates LB 404's fee structure for any corporation, partnership, sole proprietor, limited partnership, limited liability company, limited liability partnership, or association engaged in the manufacture of cigarettes that knowingly make a false certification is liable for subsequent offenses a civil penalty not to exceed \$250,000 for each such false certification.
7. AM 679 states that this Act is terminated if a federal reduced cigarette ignition propensity standard that preempts this Act is adopted and becomes effective.
8. AM 679 states that Sections 1-10 of this Act become operative July 1, 2010 and the other Sections become operative on their effective date.
9. A number of changes for clarification purposes to LB 198 include:
 - A. Changing the definition of cigarette to make it consistent with federal law (AM 679 p. 1, lines 11-18).
 - B. Changing the definition of manufacturer to make it consistent with other states' RCIP Acts to include regulating manufacturers that intend to sell cigarettes in Nebraska (AM 679 p. 1, line 23 - p. 2, line 5).
 - C. Changing the definition of wholesale dealer to avoid any confusion and clarify that the definition does not include a manufacturer (p. 3, lines 4 - 9).
 - D. Clarifying that state officials do not approve markings (p. 6, line 22).
 - E. Eliminating any potential confusion about the entity responsible for making certifications available to other state officials. (p. 6, line 27 - p. 7, line 3)
 - F. Clarifying that manufacturers must submit a certification for each cigarette, and not just for each brand family (p. 7, lines 4 - 5).
 - G. Clarifying the state officials' enforcement powers without diminishing them (p. 10, line 19 - p. 11, line 1 and p. 11, lines 6 - 11).
 - H. Requiring notification of wholesale dealers and agents when cigarettes have been found to violate the requirements of this Act so that tax stamps or cigarette tax meter impressions are not affixed to such cigarettes (p. 11, lines 17 - 21).

Russ Karpisek, Chairperson