CHAPTER 18-13
IGNITION PROPENSITY FOR CIGARETTES

18-13-01. (Contingent expiration date - See note) Definitions.

In this chapter, unless the context otherwise requires:

1. "Agent" means any person authorized by the attorney general to purchase or sell packages of cigarettes.
2. "Cigarette" means any roll for smoking made wholly or in part of tobacco and encased in any material except tobacco.
3. "Manufacturer" means:
   a. Any person that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced which the person intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer;
   b. The first purchaser that intends to resell in the United States cigarettes manufactured that the original manufacturer or maker does not intend to be sold in the United States; or
   c. Any person that becomes a successor of a person described in subdivision a or b.
4. "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic 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. (Contingent expiration date - See note) Test method and performance standard - Penalty.

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. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request is subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make those copies available.

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

18-13-03. (Contingent expiration date - See note) Certification and product change.

1. Each manufacturer shall submit to the state fire marshal a written certification attesting that each cigarette listed in the certification has been tested in accordance with section 18-13-02 and each cigarette listed in the certification meets the performance standard set forth in subdivision c of subsection 1 of section 18-13-02.
2. Each cigarette listed in the certification must be described with the following information:
   a. Brand or trade name on the package;
   b. Style, such as light or ultra light;
   c. Length in millimeters;
   d. Circumference in millimeters;
   e. Flavor, such as menthol or chocolate, if applicable;
   f. Filter or 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 or recertification, a manufacturer shall pay to the state fire marshal an initial fee of two hundred fifty dollars. The state fire marshal may adjust this fee annually to ensure the fee defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this chapter.
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. (Contingent expiration date - See note) 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, the tax commissioner, the attorney general, and their employees to inspect markings of cigarette packaging marked under this section.

18-13-05. (Contingent expiration date - See note) 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. 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.
6. 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 or offering to sell 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.
7. 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. (Contingent expiration date - See note) Implementation.

1. The state fire marshal may adopt rules to implement this chapter.
2. 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.

18-13-07. (Contingent expiration date - See note) Inspection.

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. (Contingent expiration date - See note) 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. (Contingent expiration date - See note) 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.

18-13-10. (Contingent expiration date - See note) Local regulation.

Notwithstanding any other provision of law, home rule charter, or ordinance made under a home rule charter, a political subdivision may not enact or enforce any ordinance or regulation conflicting with any provision of this chapter or with any policy of this state expressed by this chapter.