

A bill for an act

relating to public safety; establishing reduced ignition propensity standards for cigarettes; authorizing the state fire marshal to monitor and the state attorney general to enforce the standards; imposing a fee; establishing penalties for violations; proposing coding for new law in Minnesota Statutes, chapter 299F.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[299F.850] CIGARETTE FIRE SAFETY DEFINITIONS.**

Subdivision 1. **Scope.** The terms used in sections 299F.850 to 299F.858 have the meanings given them in this section.

Subd. 2. **Agent.** "Agent" means any person licensed by the commissioner of revenue to purchase and affix adhesive or meter stamps on packages of cigarettes.

Subd. 3. **Cigarette.** "Cigarette" means any roll for smoking made wholly or in part of tobacco, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

Subd. 4. **Manufacturer.** "Manufacturer" means:

(1) any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in the state, including cigarettes intended to be sold in the United States through an importer;

(2) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(3) any entity that becomes a successor of an entity described in clause (1) or (2).

Subd. 5. **Quality control and quality assurance program.** "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. This program ensures that the testing repeatability remains within the required repeatability values stated in section 299F.851, subdivision 1, paragraph (g), for all test trials used to certify cigarettes in accordance with sections 299F.850 to 299F.858.

Subd. 6. **Repeatability.** "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

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

Subd. 8. **Sale.** "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefore. In addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts and the exchanging of cigarettes for any consideration other than money, are considered sales.

Subd. 9. **Sell.** "Sell" means to make a sale or to offer or agree to make a sale.

Subd. 10. **Wholesale dealer.** "Wholesale dealer" means any person (1) who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale or (2) who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

Sec. 2. [299F.851] TEST METHOD AND PERFORMANCE STANDARD.

Subdivision 1. **Requirements.** (a) Except as provided in this subdivision, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless (1) the cigarettes have been tested in accordance with the test method and have met the performance standard specified in this section, (2) a written certification has been filed by the manufacturer with the state fire marshal in accordance with section 299F.852, and (3) the cigarettes have been marked in accordance with section 299F.853.

(b) Testing of cigarettes must be conducted in accordance with the American Society of Testing and Materials (ASTM) standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

(c) Testing must be conducted on ten layers of filter paper.

(d) No more than 25 percent of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests comprise a complete test trial for each cigarette tested.

(e) The performance standard required by this subdivision must only be applied to a complete test trial.

(f) 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 (ISO), or other comparable accreditation standard required by the state fire marshal.

(g) Laboratories 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 must be no greater than 0.19.

(h) This subdivision does not require additional testing if cigarettes are tested consistent with sections 299F.850 to 299F.858 for any other purpose.

(i) 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.

Subd. 2. Permeability bands. Each cigarette listed in a certification submitted pursuant to section 299F.852 that 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 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands fully located at least 15 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.

Subd. 3. Equivalent test methods. A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in subdivision 1, paragraph (b), 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 1, paragraph (d), the manufacturer may employ such test method and performance standard to certify the cigarette pursuant to section 299F.852. 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 subdivision, 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 subdivision, then 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 sections 299F.850 to 299F.858. All other applicable requirements of this section apply to the manufacturer.

Subd. 4. **Civil penalty.** 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 60 days of receiving a written request is subject to a civil penalty not to exceed \$10,000 for each day after the 60th day that the manufacturer does not make such copies available.

Subd. 5. **Future ASTM Standards.** The state fire marshal may adopt a subsequent ASTM 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 ASTM Standard E2187-04 and the performance standard in subdivision 1, paragraph (d).

Subd. 6. **Report to legislature.** The state fire marshal shall review the effectiveness of this section and report findings every three years to the legislature and, if appropriate, make recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations must be submitted no later than January 2 of each three-year period.

Subd. 7. **Inventory before state standards.** The requirements of subdivision 1 do not prohibit wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this section if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes before the effective date of this section, and if the wholesale or retail dealer can establish that the inventory was purchased before the effective date of this section in comparable quantity to the inventory purchased during the same period of the previous year.

Subd. 8. **Implementation.** This section must be implemented in accordance with the implementation and substance of the New York "Fire Safety Standards for Cigarettes."

Sec. 3. [299F.852] CERTIFICATION AND PRODUCT CHANGE.

Subdivision 1. **Attestation.** Each manufacturer shall submit to the state fire marshal a written certification attesting that:

(1) each cigarette listed in the certification has been tested in accordance with section 299F.851; and

(2) each cigarette listed in the certification meets the performance standard set forth in section 299F.851, subdivision 1, paragraph (d).

Subd. 2. **Description.** Each cigarette listed in the certification must be described with the following information:

(1) brand, or trade name on the package;

(2) style, such as light or ultra light;

(3) length in millimeters;

(4) circumference in millimeters;

(5) flavor, such as menthol or chocolate, if applicable;

(6) filter or nonfilter;

(7) package description, such as soft pack or box;

(8) marking approved in accordance with section 299F.853;

(9) the name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and

(10) the date that the testing occurred.

Subd. 3. **Information availability.** The certifications must be made available to the attorney general for purposes consistent with this section and the commissioner of revenue for the purposes of ensuring compliance with this subdivision.

Subd. 4. **Recertification.** Each cigarette certified under this subdivision must be recertified every three years.

Subd. 5. **Fee.** For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a \$250 fee, to be deposited into a dedicated account in the fire marshal's budget.

Subd. 6. **Retesting.** If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by sections 299F.850 to 299F.858, that cigarette must 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 299F.851 and maintains records of that retesting as required by section 299F.851. Any altered cigarette that does not meet the performance standard set forth in section 299F.851 may not be sold in this state.

Sec. 4. [299F.853] MARKING AND CIGARETTE PACKAGING.

(a) Cigarettes that are certified by a manufacturer in accordance with section 299F.852 must be marked to indicate compliance with the requirements of section 299F.851. The marking must be in eight-point type or larger and consist of:

(1) modification of the product UPC code to include a visible mark printed at or around the area of the UPC code, which may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the UPC;

(2) any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(3) printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of sections 299F.850 to 299F.858.

(b) A manufacturer shall use only one marking and shall apply this marking uniformly for all brands marketed by that manufacturer and all packages, including but not limited to packs, cartons, and cases.

(c) The state fire marshal must be notified as to the marking that is selected.

(d) Prior to 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.

(e) No manufacturer shall modify its approved marking unless the modification has been approved by the state fire marshal in accordance with this section.

(f) Manufacturers certifying cigarettes in accordance with section 299F.852 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to whom they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the state fire marshal, the commissioner of revenue, the attorney general, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

Sec. 5. [299F.854] PENALTIES AND REMEDIES.

Subdivision 1. **Wholesale.** (a) 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 299F.851 is liable to a civil penalty:

(1) for a first offense, not to exceed \$10,000 per each sale of such cigarettes; and

(2) for a subsequent offense, not to exceed \$25,000 per each sale of such cigarettes.

(b) However, the penalty against any such person or entity for a violation under paragraph (a) must not exceed \$100,000 during any 30-day period.

Subd. 2. **Retail.** (a) A retail dealer who knowingly sells cigarettes in violation of section 299F.851 is liable to a civil penalty:

(1) for a first offense, not to exceed \$500, and for a subsequent offense, not to exceed \$2,000, per each sale or offer for sale of such cigarettes, if the total number sold or offered for sale does not exceed 1,000 cigarettes; or

(2) for a first offense, not to exceed \$1,000, and for a subsequent offense, not to exceed \$5,000, per each sale or offer for sale of such cigarettes, if the total number sold or offered for sale exceeds 1,000 cigarettes.

(b) However, the penalty against any retail dealer must not exceed \$25,000 during any 30-day period.

Subd. 3. **False certification.** In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to subdivision 3 is, for a first offense, liable to a civil penalty of at least \$75,000, and for a subsequent offense a civil penalty not to exceed \$250,000 for each false certification.

Subd. 4. **Violation of other provision.** Any person violating any other provision in sections 299F.850 to 299F.858 is liable to a civil penalty for a first offense not to exceed \$1,000, and for a subsequent offense a civil penalty not to exceed \$5,000, for each violation.

Subd. 5. **Forfeiture.** Cigarettes that have been sold or offered for sale that do not comply with the performance standard required by section 299F.851 are subject to forfeiture under section 297F.21 and, upon judgment of forfeiture, must be destroyed; provided, however, that before destroying any cigarettes seized in accordance with section 297F.21, which seizure is hereby authorized, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

Subd. 6. **Remedies.** In addition to any other remedy provided by law, the state fire marshal or attorney general may institute a civil action in district court for a violation of this section, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation under this section, including enforcement costs

relating to the specific violation and attorney fees. Each violation of sections 299F.850 to 299F.858 or of rules adopted under sections 299F.850 to 299F.858 constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief.

Sec. 6. [299F.855] IMPLEMENTATION.

Subdivision 1. **Rules.** The commissioner of public safety, in consultation with the state fire marshal, may adopt rules, pursuant to chapter 14, necessary to effectuate the purposes of sections 299F.850 to 299F.858.

Subd. 2. **Commissioner of revenue.** The commissioner of revenue in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under chapter 297F, may inspect cigarettes to determine if the cigarettes are marked as required by section 299F.853. If the cigarettes are not marked as required, the commissioner of revenue shall notify the state fire marshal.

Sec. 7. [299F.856] INSPECTION.

To enforce sections 299F.850 to 299F.858, 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 is hereby directed and required to give the attorney general and the state fire marshal the means, facilities, and opportunity for the examinations authorized by this section.

Sec. 8. [299F.858] SALE OUTSIDE OF MINNESOTA.

Sections 299F.850 to 299F.858 do not prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section 299F.851 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 or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in Minnesota.

Sec. 9. REPEAL BY PREEMPTION.

This act is repealed if a federal reduced cigarette ignition propensity standard that preempts this act is adopted and becomes effective.

Sec. 10. EFFECTIVE DATE.

9.1 This act is effective the first day of the 19th month following the date of its final
9.2 enactment.