FIRES

CHAPTER 194

SENATE BILL NO. 2204

(Senators Klein, Freborg, Nelson)
(Representatives Brandenburg, Hofstad, Wrangham)

AN ACT to amend and reenact sections 18-05-01, 18-05-04, 18-05-05, 18-05-06, 18-05-07, 18-05-09, 18-05-10, 18-05-12, and 18-05-13 of the North Dakota Century Code, relating to rural fire department firefighters relief associations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-05-01 of the North Dakota Century Code is amended and reenacted as follows:

18-05-01. Firefighters relief association - Where it may be organized. A firefighters relief association may be organized in any city, rural fire department, or rural fire protection district that has a fire department. In organizing a firefighters relief association, the procedure provided in chapter 10-33 must be followed.

SECTION 2. AMENDMENT. Section 18-05-04 of the North Dakota Century Code is amended and reenacted as follows:

18-05-04. Apportioning insurance tax received by city, rural fire department, or rural fire protection district. The city auditor in a city or the treasurer of a rural fire department or rural fire protection district with a fire department and a firefighters relief association shall apportion the amount received under section 18-04-05, so one-half of the amount is placed in a fund to be disbursed by the city's, rural fire department's, or rural fire protection district's governing body in maintaining the fire department and one-half is paid to the treasurer of the firefighters relief association. Except, the city's governing body may direct the city auditor or the rural fire department or rural fire protection district's board of directors may direct the treasurer to pay all or any portion of the one-half of the amount received which would otherwise be disbursed in maintaining the fire department to the treasurer of the firefighters relief association if its financial condition makes the disposition necessary or advisable.

SECTION 3. AMENDMENT. Section 18-05-05 of the North Dakota Century Code is amended and reenacted as follows:

18-05-05. Disbursement of money received by treasurer of firefighters relief association. The amount received by the treasurer of a firefighters relief association from the state may be disbursed for the following purposes only:

1. For the maintenance of the association.

2. For pensions to and the relief of sick, injured, and disabled members of any fire department in the municipality, rural fire department, or the rural fire protection district and the members' surviving spouses and children.

3. For the payment of service pensions as provided in section 18-05-06 in the amounts and manner the association designates in its articles of incorporation and bylaws.

SECTION 4. AMENDMENT. Section 18-05-06 of the North Dakota Century Code is amended and reenacted as follows:

18-05-06. Service pension - Who may receive - Recipient entitled to no further relief from association.

1. A firefighters relief association organized under the laws of this state must be an internal revenue service approved plan.

2. A firefighters relief association organized under the laws of this state may pay out of any funds received from the state, city, municipality, or any other source a service pension in an amount as may be provided by the association's bylaws to each of its members who has retired and who:

   a. Has reached the age of fifty years; and

   b. ~~Has done active duty for twenty years or more as a member of a fire department in the municipality or rural fire protection district in which the association exists;~~

   ~~c. Has been a member of the firefighters relief association for at least ten years before the date of retirement; and~~

   ~~d. Complies with any additional conditions as to age, service, and membership that may be prescribed by the bylaws of the association.~~ Meets all the requirements of the firefighters relief association bylaws.

~~2.~~ 3. A pension may not be paid to any individual while that individual remains a member of the fire department, rural fire department, or rural fire protection district department, and an individual who is receiving a service pension is entitled to no other relief from the association. ~~An individual who becomes a member of a firefighters relief association at the time of the formation of the association and who meets all of the requirements of subsection 1, except subdivision c relating to vesting, may receive a retirement benefit under this section if the benefit is actuarially reduced to account for the decreased period of contribution to the fund.~~

SECTION 5. AMENDMENT. Section 18-05-07 of the North Dakota Century Code is amended and reenacted as follows:

18-05-07. Eligibility for service pension may be acquired by paying back assessments. A firefighter who, for the number of years required for retirement, actually has served in a fire department in a municipality, rural fire department, or rural fire protection district in which a firefighters relief association has been organized and who pays into the firefighters relief and pension fund maintained in the municipality, rural fire department, or rural fire protection district assessments equal to the amounts assessed against the members of the association during the time of the firefighter's service in the department, with interest upon the assessments, must be allowed membership in the association and is entitled to receive, upon

retirement, the same pension from the fund as is paid to other firefighters. The bylaws of an association may not contain any provision that discriminates against a firefighter who actually has worked as a firefighter during the number of years required by the bylaws or which prevents the firefighter from, or discriminates against the firefighter in, participating in the association or in the benefits from the fund. The rights provided for in this chapter are acquired by compliance with this section whether compliance was accomplished before or after July 1, 1935, without regard to the time when the required service was performed.

SECTION 6. AMENDMENT. Section 18-05-09 of the North Dakota Century Code is amended and reenacted as follows:

18-05-09. Who deemed firefighter. A substitute firefighter, a person serving on probation, and a firefighter in a municipality, rural fire department, or rural fire protection district having a relief association in its fire department who is not a member of the association may not be deemed a firefighter within the meaning of this chapter.

SECTION 7. AMENDMENT. Section 18-05-10 of the North Dakota Century Code is amended and reenacted as follows:

18-05-10. Qualifications as to age ~~and term of service~~ inapplicable to pension for disability. The qualifications as to age ~~and term of service~~ prescribed by this chapter do not apply to a member of a fire department who makes an application for a pension on account of injuries or disabilities that result in the firefighter being unfit to perform the duties of an active firefighter. The relief association shall pay the pension to those members, or to the surviving spouse or children of a deceased firefighter, in the amounts and under the limitations and conditions as its articles of incorporation and bylaws provide and permit. A pension paid to any one family, however, may not exceed the maximum monthly service pension permitted under this chapter.

SECTION 8. AMENDMENT. Section 18-05-12 of the North Dakota Century Code is amended and reenacted as follows:

18-05-12. Secretary and treasurer of firefighters relief association to prepare report - Contents - Filing. The secretary and treasurer of every firefighters relief association shall prepare annually a report of all the receipts and expenditures of the association for the previous year showing the source of all receipts and for what purpose and to whom any money was paid and expended. The report must be filed in the office of the city auditor of the municipality wherein the association is situated or in the case of a rural fire department or rural fire protection district, the office of the county auditor of the county in which the rural fire department or rural fire protection district is located, and a duplicate of the report must be filed with the office of management and budget before any money may be paid to the relief association.

SECTION 9. AMENDMENT. Section 18-05-13 of the North Dakota Century Code is amended and reenacted as follows:

18-05-13. Audit of books of relief association - Report of unauthorized spending to governor - Duty of governor. The books and accounts of the secretary and treasurer of each firefighters relief association receiving funds under the provisions of this chapter must be audited as required by section 54-10-14. If the money, or any part of it, has been or is being expended for unauthorized purposes, the facts must be reported to the governor. Thereupon, the governor shall direct the office of management and budget not to prepare any warrants for the benefits of the

fire department or relief association of the municipality, rural fire department, or rural fire protection district in which the association is organized until it appears to the state auditor, who shall report the fact to the governor, that all moneys wrongfully expended have been replaced. The governor may take such further action as the emergency may demand.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 195

HOUSE BILL NO. 1070

(Representatives Grande, Ekstrom, Boehning)
(Senators Grindberg, Flakoll, Fischer)

AN ACT to create and enact a new section to chapter 18-11 of the North Dakota Century Code, relating to alternate firefighters relief association plan benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 18-11 of the North Dakota Century Code is created and enacted as follows:

Service, disability, and survivor pensions - Formulation of optional plan. With the consent of the governing body of the city involved, and in substitution for a pension payment schedule, disability pension provision, and survivor pension provision provided in sections 18-11-15, 18-11-16, 18-11-17, and 18-11-26, a firefighters relief association may adopt a monthly service pension plan, disability pension for members, and pensions for survivors of deceased members of the association as provided in this section.

1. Normal retirement date. Normal retirement date for a service pension is the first day of the month coincident with or next following the member's attainment of age fifty-five and the completion of ten years of service.

2. Service pensions. A member retiring on or after the member's retirement date is entitled to receive a monthly benefit beginning following the member's actual retirement and continuing for the member's lifetime as specified in subsection 7. The benefit amount is equal to two and fifty hundredths percent of average final compensation, times years of service, up to a maximum of seventy-five percent.

3. Termination benefits. If a member terminates the member's employment as a firefighter, either voluntarily or by discharge, and is not eligible for any other benefits, the member is entitled to the following:

   a. Nonvested termination. If the member has less than ten years of credited service upon termination, the member is entitled to a refund of the member's accumulated contributions, payable in a single lump sum payment. Any benefits already received by the member from the association must be deducted from this payment. Upon return of the member's accumulated contributions, all of the member's rights and benefits under the plan are forfeited and terminated. Upon any reemployment, a firefighter may not receive credit for years or completed months of service for which the firefighter has withdrawn the firefighter's accumulated contributions from the plan, unless the firefighter repays into the plan the contributions the firefighter has withdrawn, with interest, as determined by the board, within ninety days after the firefighter's reemployment. A member may voluntarily leave the member's accumulated contributions in the plan for a period of five years after leaving the employ of the department pending the possibility of

being reemployed as a firefighter, without losing credit for the time that the member was a member of the plan. If a member who is not vested is not reemployed as a firefighter with the department within five years, the member's accumulated contributions must be returned. During this period, the member is not entitled to any benefits under subsection 4 or 5.

b. Vested termination. If the member has ten or more years of service upon termination, the member is entitled to a monthly retirement benefit, determined in the same manner as a service pension, and based upon the member's service and the applicable pay in effect at the time of termination. The monthly benefit amount commences upon application by the member, at the member's age fifty-five. Alternatively, upon the member's request, the member's accumulated contributions must be returned to the member. Following payment under such election, neither the member nor the member's beneficiaries or estate is entitled to any future benefit payments from the fund.

4. Disability pensions.

a. Eligibility. An active member who becomes disabled, and is not yet eligible to begin payments under a service pension, is eligible to receive a disability pension. A service or deferred pensioner who becomes disabled, which disability arose from or is attributable to service on the fire department, and who has ceased to be an active member of the association for five years or less is eligible to receive a disability pension.

b. The disability benefit is determined as follows:

(1) Benefit amount. The monthly benefit under the disability pension equals a percentage of the monthly salary of a top paid firefighter for the year that the first benefit is paid, reduced as described below. The percentage equals ten percent times the member's years of credited service, up to a maximum of fifty percent. If the member is eligible for a service pension, the member's monthly benefit equals the greater of the disability pension or the service pension. If the member is eligible for a deferred pension, the member will receive the disability pension through the member's normal retirement age, and then is entitled to receive the greater of the disability pension or the member's service pension amount.

(2) Adjusted for other income. The disability pension amount must be reduced by one dollar for every "excess dollar". "Excess dollar" is the sum of earned income plus payments by the association, plus other insurance payments, less the salary of a top paid firefighter on January thirty-first of the year that the excess dollar amount is determined. This reduction must be redetermined each year. For purposes of this provision, earned income is all income reported or reportable for federal income tax purposes, excluding passive income, but including wages, salary, commissions, and similar pay from any gainful work, including partnership

profits when applicable. For purposes of this provision, passive income is interest, rent, receipts, inheritance payments, private disability insurance, or other payments not related to wages. Other insurance payments received by a disabled member of the association for disability must be included in the excess dollar calculation without any reduction for taxes or other miscellaneous payments. For purposes of this provision, insurance includes disability benefits under workers' compensation or similar legislation, as well as primary and dependent disability benefits provided under social security. Any lump sum payment attributable to wages or insurance payments received by the member will be prorated over the period of time for which the payment is intended to provide benefits.

c. Determination of benefit amount by board. Every disabled member of the association who disagrees with the findings of the association with regard to the benefit calculation may have the calculation determined by an independent third party in an arbitration process, the results of which are final. The association has the right and responsibility to all active members to determine the excess dollar calculation for each disabled member of the association. Any attempt to fraudulently receive benefits under this section by misrepresenting physical condition or withholding information affecting benefit payments may be cause for dismissal from the association and immediate suspension of all benefit payments, current or future.

d. Application for benefit. All applications for pensions must be made on forms furnished by the association. Applicants shall answer all questions under oath and furnish such evidence as the board requests. Should any doubt arise in regard to the existence of disability, the matter must be referred to three physicians, one to be chosen by the applicant, one to be chosen by the board, and the two physicians so selected shall choose a third physician. In such case, the three physicians thus chosen shall examine the applicant and report to the board.

5. Optional forms of payment.

a. Normal form of benefit. For a member married at retirement, the normal form of payment of the service pension or deferred vested pension is a monthly payment for the member's lifetime, with fifty percent of this amount payable to the member's surviving spouse. For a member who is not married at retirement, the normal form of payment is a monthly payment for the member's lifetime, with no survivor payments, but actuarially adjusted as described in subdivision b as if the member were married to a spouse of the same age.

b. Optional forms of benefits. In place of the normal form of benefit provided in subdivision a, a member may elect to receive an actuarially equivalent benefit, based on the factors provided in subsection 8, in one of the following optional forms of payment:

(1) Life annuity. A monthly benefit payable for the member's lifetime only, with no survivor benefits payable.

(2) Certain and life annuity. A monthly benefit payable for the member's lifetime, but with one hundred twenty payments guaranteed. If the member dies before receiving one hundred twenty payments, monthly payments will be made to the member's designated beneficiary or estate until one hundred twenty payments have been paid.

(3) Joint and survivor annuity. A monthly benefit payable for the member's life, plus payments equal to seventy-five percent or one hundred percent of this benefit amount to the member's spouse following the member's death. Under this option, the surviving spouse is the member's spouse at the time of retirement. If the spouse dies before the member, no benefits will be paid to a survivor following the member's death.

c. Benefit selection. A member may select one of the optional forms of payment in subdivision b during the ninety days prior to the member's actual retirement, or upon attaining normal retirement age, on a form provided by the board. The selection may be changed at any time before cashing or depositing the first retirement payment. Consent of the member's spouse is not required to select or change an optional benefit form. A member may change the beneficiary designated under the certain and life payment form at any time prior to the member's death by filing a new selection form with the board. The beneficiary's consent is not required. If a member dies after having completed and filed a selection form with the board, but before actually retiring, the board shall direct that payments be made as if the member had retired on the member's date of death, and had selected the optional payment indicated in the member's form. If a member dies after reaching normal retirement age without having completed a selection form, the board shall direct that payments be made as if the member had retired on the member's date of death, and had selected the joint and one hundred percent survivor optional payment form if the member was married on the member's date of death, or the certain and life form if the member was not married. If the member's spouse dies after the member has filed forms with the board selecting a joint and survivor benefit form, but before cashing or depositing the first retirement payment, and if the member does not file a revised selection form, the board shall direct that payments be made under subdivision a, providing for payments to a member who is not married at retirement.

6. Preretirement death benefits.

a. Surviving spouse benefits. If a vested active or vested deferred member dies before retirement, a pension in the sum of fifty percent of the amount of the disability pension, or if greater, fifty percent of the deferred vested pension, the member would have been entitled to on the date of death must be paid to the surviving spouse for the period of the spouse's natural life.

b. Children's benefit. If a vested active or vested deferred member dies before retirement, a monthly benefit must be paid to the member's surviving children until age eighteen, or until completion of high school, if the children are actively enrolled beyond age eighteen. The benefit amount to be shared among the children is equal to a percentage of the top paid firefighter's monthly salary on January thirty-first of the year the benefit is paid. The percentage is determined based on the number of children at the time of each benefit payment and whether the children's parent is alive. If the children's surviving parent is alive, the percentage is twenty percent. If no parent survives, and there is more than one child, the percentage is sixty percent. If there is no parent and only one child, the percentage is forty percent. Children who were living while the deceased was on the payroll of the department, or who were born within nine months after the decedent was withdrawn from the payroll of the department, are eligible for this benefit.

c. Minimum benefit. When an active member who is not yet vested dies, the member's beneficiaries designated on forms provided by the pension association or the member's estate, in case this form has not been filed with the association, or in case the designated beneficiaries do not exist or cannot be found within six months of the date of death, shall receive in addition to the funeral benefit, a sum equal to what the member has contributed to the association, less the amount of any benefits received by the active member or the member's beneficiaries or estate.

7. Commencement of benefits.

a. Payment of benefits. Monthly benefit payments must be distributed on the last day of each month. For service or deferred pensions, the first payment must be prorated to equal the total monthly benefit earned, times the number of days in the month following actual retirement, divided by the total number of days in the month. Benefits payable to the surviving beneficiary of a retired member who had been receiving payments commence in the month following the retired member's death. Benefits payable to the surviving spouse or children of a member who dies before retirement must be similarly prorated based on the date of death of the active or deferred member. The final monthly benefit paid in the month a retired member dies, a surviving beneficiary dies, or a surviving beneficiary ceases to be eligible for benefits must be paid on the last day of the month of death or termination of eligibility and must equal a full monthly payment with no reduction or proration.

b. Mandatory commencement of benefits. Not withstanding any provision in this section to the contrary, benefits payable under the plan are subject to the following:

(1) A member's benefits may not commence later than April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half and the calendar year in which the member terminates employment. If a lump sum death benefit is payable to a deceased member's beneficiary, the benefit must be paid no later than sixty days following the member's date of death.

(2) The member's entire interest in the plan must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary.

(3) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution prior to the member's death.

(4) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within five years of the member's death. The five-year payment rules do not apply to any portion of the member's interest which is payable to a surviving spouse payable over the life or life expectancy of the spouse and which begins no later than the date the member would have reached age seventy and one-half.

(5) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

8. Actuarial equivalence - Optional forms of benefit. To determine the amount of the monthly payment under the life-only and certain and life optional forms permitted under subsection 5, multiply the normal monthly benefit amount by the following factors:

Life-only benefit: 1.043

Certain and life benefit: 1.030

To determine the amount of the monthly payment under the alternative joint and survivor optional forms permitted under subsection 5, multiply the normal monthly benefit amount by the following factors based on the difference in age between the member and the member's spouse, using the member's and spouse's ages as of the member's and spouse's most recent birthdays.

If the member is the same age as the spouse, use the following factors:

Joint and seventy-five percent survivor: 0.980

Joint and one hundred percent survivor: 0.960

If the spouse is not the same age as the member, use the following factors:

If the Spouse Is Younger: Age Difference	Joint and Survivor 75%	Joint and Survivor 100%	If the Spouse Is Older: Age Difference	Joint and Survivor 75%	Joint and Survivor 100%
1	0.979	0.959	1	0.980	0.960
2	0.978	0.957	2	0.981	0.962
3	0.977	0.956	3	0.981	0.964
4	0.976	0.954	4	0.982	0.965
5	0.976	0.952	5	0.983	0.967
6	0.975	0.951	6	0.984	0.969
7	0.974	0.949	7	0.985	0.970
8	0.973	0.948	8	0.986	0.972
9	0.973	0.947	9	0.986	0.973
10	0.972	0.945	10	0.987	0.975
11	0.971	0.944	11	0.988	0.976
12	0.971	0.943	12	0.989	0.978
13	0.970	0.942	13	0.989	0.979
14	0.969	0.940	14	0.990	0.980
15	0.969	0.939	15	0.991	0.982

Approved April 9, 2009
Filed April 13, 2009

CHAPTER 196

HOUSE BILL NO. 1368

(Representatives Kroeber, Glassheim, Hofstad, Nelson)
(Senators Lyson, Robinson)

AN ACT to create and enact chapter 18-13 of the North Dakota Century Code, relating to reduced ignition propensity standards for cigarettes; to provide a penalty; to provide an appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

18-13-01. 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. 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 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 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. 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. 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. 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. 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. 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. 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. 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. 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.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund in the state treasury, not otherwise appropriated, the sum of $200,000, or so much of the sum as may be necessary, to the attorney general to be made available to the state fire marshal for the purpose of processing, testing, enforcement, and oversight activities in this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the fire prevention and public safety fund, not otherwise appropriated, the sum of $25,000, or so much of the sum as may be necessary, to the attorney general to be made available to the state fire marshal for the purpose of supporting fire safety and prevention programs, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 4. EFFECTIVE DATE - EXPIRATION DATE. This Act becomes effective August 1, 2010, however, this Act becomes ineffective on the date the state fire marshal certifies to the legislative council that a federal reduced cigarette ignition propensity standard has been adopted and has become effective.

Approved May 1, 2009
Filed May 5, 2009

CHAPTER 197

HOUSE BILL NO. 1124

(Natural Resources Committee)
(At the request of the State Board of Higher Education and State Forester)

AN ACT to create and enact a new chapter to title 18 of the North Dakota Century Code, relating to approval of a compact with other states to promote effective prevention and control of forest fires.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 18 of the North Dakota Century Code is created and enacted as follows:

Interstate compact for the prevention and control of wildland fires. This compact for the prevention and control of wildland fires is entered into and enacted into law. The governor may execute a compact on behalf of the state with any one or more states who may by their legislative bodies, authorize a compact, in form substantially as follows:

ARTICLE I

The purpose of this compact is to promote effective prevention and control of forest fires in the great plains region of the United States by the maintenance of adequate forest fire fighting services by the member states, and by providing for reciprocal aid in fighting forest fires among the compacting states of the region, including South Dakota, North Dakota, Wyoming, Colorado, and any adjoining state of a current member state.

ARTICLE II

This compact is operative immediately as to those states ratifying it if any two or more of the member states have ratified it.

ARTICLE III

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control may act as compact administrator for that state and may consult with like officials of the other member states and may implement cooperation between the states in forest fire prevention and control. The compact administrators of the member states may organize to coordinate the services of the member states and provide administrative integration in carrying out the purpose of this compact. Each member state may formulate and put in effect a forest fire plan for that state.

ARTICLE IV

If the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling, or preventing forest fires, the state forest fire control agency of that state may render all possible aid to the requesting agency, consonant with the maintenance of protection at home.

ARTICLE V

If the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of the state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges, and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact is liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with rendering the outside aid.

All liability, except as otherwise provided in this compact, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving the aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request. However, nothing in this compact prevents any assisting member state from assuming such loss, damage, expense, or other cost or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall assure that workers compensation benefits in conformity with the minimum legal requirements of the state are available to all employees and contract firefighters sent to a requesting state pursuant to this compact.

For the purposes of this compact the term, employee, includes any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws of the aiding state.

The compact administrators may formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

ARTICLE VI

Ratification of this compact does not affect any existing statute so as to authorize or permit curtailment or diminution of the forest fighting forces, equipment, services, or facilities of any member state.

Nothing in this compact authorizes or permits any member state to curtail or diminish its forest fire fighting forces, equipment, services, or facilities. Each member state shall maintain adequate forest fighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.

Nothing in this compact limits or restricts the powers of any state ratifying the compact to provide for the prevention, control, and extinguishment of forest fires, or

to prohibit the enactment or enforcement of state laws, rules, or regulations intended to aid in the prevention, control, and extinguishment in the state.

Nothing in this compact affects any existing or future cooperative relationship or arrangement between the United States forest service and a member state or states.

ARTICLE VII

Representatives of the United States forest service may attend meetings of the compact administrators.

ARTICLE VIII

The provisions of Articles IV and V of this compact that relate to reciprocal aid in combating, controlling, or preventing forest fires are operative as between any state party to this compact and any other state which is party to this compact and any other state that is party to a regional forest fire protection compact in another region if the legislature of the other state has given its assent to the mutual aid provisions of this compact.

ARTICLE IX

This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of the state takes action to withdraw from the compact. Such action is not effective until six months after notice of the withdrawal has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

Approved April 16, 2009
Filed April 17, 2009