

# House File 718 - Introduced

HOUSE FILE \_\_\_\_\_  
BY COMMITTEE ON HUMAN RESOURCES  
(SUCCESSOR TO HSB 182)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to cigarette fire safety standards, and providing  
2 penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1646HV 82  
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1 1 Section 1. NEW SECTION. 101B.1 SHORT TITLE.  
1 2 This chapter shall be known and may be cited as the  
1 3 "Cigarette Fire Safety Standards Act".  
1 4 Sec. 2. NEW SECTION. 101B.2 DEFINITIONS.  
1 5 As used in this chapter, unless the context otherwise  
1 6 requires:  
1 7 1. "Agent" means a distributor as defined in section  
1 8 453A.1 authorized by the department of revenue to purchase and  
1 9 affix stamps pursuant to section 453A.10.  
1 10 2. "Cigarette" means cigarette as defined in section  
1 11 453A.1.  
1 12 3. "Department" means the department of public safety.  
1 13 4. "Manufacturer" means any of the following:  
1 14 a. An entity that manufactures or otherwise produces  
1 15 cigarettes or causes cigarettes to be manufactured or  
1 16 produced, anywhere, which cigarettes the manufacturer intends  
1 17 to be sold in this state, including cigarettes intended to be  
1 18 sold in the United States through an importer.  
1 19 b. The first purchaser of cigarettes anywhere, that  
1 20 intends to resell in the United States, cigarettes  
1 21 manufactured or produced anywhere, that the original  
1 22 manufacturer did not intend to be sold in the United States.  
1 23 c. An entity that becomes a successor of an entity  
1 24 described in paragraph "a" or "b".  
1 25 5. "Quality control and quality assurance program" means  
1 26 the laboratory procedures implemented to ensure that operator  
1 27 bias, systematic and nonsystematic methodological errors, and  
1 28 equipment-related problems do not affect the results of the  
1 29 repeatability testing, and which program ensures that the  
1 30 testing repeatability remains within the required  
1 31 repeatability values specified in section 101B.4.  
1 32 6. "Repeatability" means the range of values within which  
1 33 the repeat results of cigarette test trials from a single  
1 34 laboratory will fall ninety-five percent of the time.  
1 35 7. "Retailer" means retailer as defined in section 453A.1.  
2 1 8. "Sale" means any transfer of title or possession,  
2 2 exchange or barter, in any manner or by any means or any  
2 3 agreement. In addition to cash and credit sales, the giving  
2 4 of cigarettes as a sample, prize, or gift or the exchanging of  
2 5 cigarettes for any consideration other than money is  
2 6 considered a sale.  
2 7 9. "Sell" means to sell, or to offer or agree to sell.  
2 8 10. "Wholesaler" means wholesaler as defined in section  
2 9 453A.1.  
2 10 Sec. 3. NEW SECTION. 101B.3 GENERAL REQUIREMENTS ==  
2 11 ADMINISTRATION.  
2 12 1. Beginning January 1, 2009, cigarettes shall not be sold  
2 13 or offered for sale to any person in this state unless:  
2 14 a. The cigarettes have been tested in accordance with the  
2 15 test method prescribed in section 101B.4.  
2 16 b. The cigarettes meet the performance standard specified  
2 17 in section 101B.4.  
2 18 c. A written certification has been filed by the

2 19 manufacturer with the department and in accordance with  
2 20 section 101B.5.  
2 21 d. The cigarettes have been marked in accordance with  
2 22 section 101B.7.  
2 23 2. This chapter shall not be construed to prohibit a  
2 24 wholesaler or retailer from selling the wholesaler's or  
2 25 retailer's inventory of cigarettes existing prior to January  
2 26 1, 2009, provided that the wholesaler or retailer is able to  
2 27 establish both of the following:  
2 28 a. Tax stamps were affixed to the cigarettes on inventory  
2 29 pursuant to section 453A.10 before January 1, 2009.  
2 30 b. The inventory of cigarettes was purchased before  
2 31 January 1, 2009, in comparable quantity to the amount of  
2 32 inventory of cigarettes purchased during the same period of  
2 33 the prior year.  
2 34 3. This chapter shall not be construed to prohibit any  
2 35 person from selling or offering for sale cigarettes that have  
3 1 not been certified by the manufacturer in accordance with  
3 2 section 101B.5 if the cigarettes are or will be stamped for  
3 3 sale in another state or are packaged for sale outside the  
3 4 United States.  
3 5 4. The department of public safety shall administer this  
3 6 chapter and may adopt rules pursuant to chapter 17A to  
3 7 administer this chapter. The rules adopted shall provide that  
3 8 this chapter is implemented in accordance with the  
3 9 implementation and substance of the New York fire safety  
3 10 standards for cigarettes.  
3 11 Sec. 4. NEW SECTION. 101B.4 TEST METHOD == PERFORMANCE  
3 12 STANDARD == TEST REPORTS.  
3 13 1. a. Testing of cigarettes shall be conducted in  
3 14 accordance with ASTM (American society for testing and  
3 15 materials) international standard E2187=04, standard test  
3 16 method for measuring the ignition strength of cigarettes.  
3 17 b. The department may adopt a subsequent ASTM standard  
3 18 test method for measuring the ignition strength of cigarettes  
3 19 upon a finding that the subsequent method does not result in a  
3 20 change in the percentage of full-length burns exhibited by any  
3 21 tested cigarette when compared to the percentage of  
3 22 full-length burns the same cigarette would exhibit when tested  
3 23 in accordance with ASTM international standard E2187=04 and  
3 24 the performance standard in this section.  
3 25 2. Testing shall be conducted on ten layers of filter  
3 26 paper.  
3 27 3. The performance standard shall require that no more  
3 28 than twenty-five percent of the cigarettes tested in a test  
3 29 trial shall exhibit full-length burns.  
3 30 4. Forty replicate tests shall comprise a complete test  
3 31 trial for each cigarette tested.  
3 32 5. The performance standard required by this section shall  
3 33 only be applied to a complete test trial.  
3 34 6. a. Testing shall be conducted by a laboratory that has  
3 35 been accredited pursuant to international organization for  
4 1 standardization/international electrotechnical commission  
4 2 standard 17025 or other comparable accreditation standard  
4 3 required by the department.  
4 4 b. Laboratories conducting testing in accordance with this  
4 5 section shall implement a quality control and quality  
4 6 assurance program that includes a procedure that will  
4 7 determine the repeatability of the testing results. The  
4 8 testing repeatability shall be no greater than nineteen  
4 9 one-hundredths.  
4 10 7. This section shall not require additional testing if  
4 11 cigarettes are tested consistent with this chapter for any  
4 12 other purpose.  
4 13 8. Each cigarette listed in a certification submitted in  
4 14 accordance with section 101B.5 that uses lowered permeability  
4 15 bands in the cigarette paper to achieve compliance with the  
4 16 performance standard pursuant to this section, shall have at  
4 17 least two nominally identical bands on the paper surrounding  
4 18 the tobacco column. At least one complete band shall be  
4 19 located at least fifteen millimeters from the lighting end of  
4 20 the cigarette. For cigarettes on which the bands are  
4 21 positioned by design, there shall be at least two bands fully  
4 22 located at least fifteen millimeters from the lighting end and  
4 23 either ten millimeters from the filter end of the tobacco  
4 24 column, or ten millimeters from the labeled end of the tobacco  
4 25 column for nonfiltered cigarettes.  
4 26 9. a. The manufacturer of a cigarette that the department  
4 27 determines cannot be tested in accordance with the test method  
4 28 prescribed in this section shall propose a test method and  
4 29 performance standard for the cigarette to the department.

4 30 Upon approval of the proposed test method and a determination  
4 31 by the department that the performance standard proposed by  
4 32 the manufacturer is equivalent to the performance standard  
4 33 prescribed in this section, the manufacturer may employ the  
4 34 test method and performance standard to certify the cigarette  
4 35 in accordance with section 101B.5.

5 1 b. If the department determines that another state has  
5 2 enacted reduced cigarette ignition propensity standards that  
5 3 include a test method and performance standard that are the  
5 4 same as those contained in this chapter and the department  
5 5 finds that the officials responsible for implementing those  
5 6 requirements have approved the proposed alternative test  
5 7 method and performance standard for a particular cigarette  
5 8 proposed by a manufacturer as meeting the fire safety  
5 9 standards of that state's law or regulation under a legal  
5 10 provision comparable to this subsection, the department shall  
5 11 authorize that manufacturer to employ the alternative test  
5 12 method and performance standard to certify that cigarette for  
5 13 sale in this state, unless the department demonstrates a  
5 14 reasonable basis why the alternative test should not be  
5 15 accepted under this chapter. All other applicable  
5 16 requirements of this chapter shall apply to the manufacturer.

5 17 10. A manufacturer shall maintain copies of the reports of  
5 18 all tests conducted on all cigarettes offered for sale for a  
5 19 period of three years and shall make copies of the reports  
5 20 available to the department and the office of the attorney  
5 21 general upon written request.

5 22 11. Testing performed or sponsored by the department to  
5 23 determine a cigarette's compliance with the performance  
5 24 standard required by this section shall be conducted in  
5 25 accordance with this section.

5 26 Sec. 5. NEW SECTION. 101B.5 CERTIFICATION.

5 27 1. Each manufacturer shall submit a written certification  
5 28 to the department attesting to all of the following:

5 29 a. Each cigarette listed in the certification has been  
5 30 tested in accordance with section 101B.4.

5 31 b. Each cigarette listed in the certification meets the  
5 32 performance standard pursuant to section 101B.4.

5 33 2. Each cigarette listed in the certification shall be  
5 34 described with the following information:

5 35 a. The brand or trade name on the package.

6 1 b. The style of cigarette, such as light or ultra light.

6 2 c. The length of the cigarette in millimeters.

6 3 d. The circumference of the cigarette in millimeters.

6 4 e. The flavor of the cigarette, such as menthol or  
6 5 chocolate, if applicable.

6 6 f. Whether the cigarette is filtered or nonfiltered.

6 7 g. The type of cigarette package, such as soft pack or  
6 8 box.

6 9 h. The marking approved in accordance with section 101B.7.

6 10 i. The name, address, and telephone number of the  
6 11 laboratory, if different than the manufacturer, that conducted  
6 12 the test.

6 13 j. The date the testing was performed.

6 14 3. Each cigarette certified under this section shall be  
6 15 recertified every three years.

6 16 4. The manufacturer shall, upon request, make a copy of  
6 17 the written certification available to the office of the  
6 18 attorney general and the department of revenue for purposes of  
6 19 ensuring compliance with this chapter.

6 20 5. For each cigarette listed in a certification, a  
6 21 manufacturer shall pay a fee of one hundred dollars to the  
6 22 department.

6 23 6. If a manufacturer has certified a cigarette pursuant to  
6 24 this section, and makes any change to the cigarette thereafter  
6 25 that is likely to alter the cigarette's compliance with the  
6 26 reduced cigarette ignition propensity standards mandated by  
6 27 this chapter, prior to the cigarette being sold or offered for  
6 28 sale in this state, the manufacturer shall retest the  
6 29 cigarette in accordance with the testing standards specified  
6 30 in section 101B.4 and shall maintain records of the retesting  
6 31 as required pursuant to section 101B.4. Any altered cigarette  
6 32 that does not meet the performance standard specified in  
6 33 section 101B.4 shall not be sold in this state.

6 34 Sec. 6. NEW SECTION. 101B.6 NOTIFICATION OF  
6 35 CERTIFICATION.

7 1 1. A manufacturer certifying cigarettes in accordance with  
7 2 section 101B.5 shall provide a copy of the certification to  
7 3 all wholesalers and agents to whom the manufacturer sells  
7 4 cigarettes, and shall also provide sufficient copies of an  
7 5 illustration of the cigarette packaging marking used by the

7 6 manufacturer in accordance with section 101B.7 for each  
7 7 retailer to whom the wholesalers or agents sell cigarettes.  
7 8 2. A wholesaler or agent shall provide a copy of the  
7 9 cigarette packaging markings received from a manufacturer to  
7 10 all retailers to whom the wholesaler or agent sells  
7 11 cigarettes. A wholesaler, agent, or retailer shall permit the  
7 12 state fire marshal, department of revenue, or the office of  
7 13 the attorney general to inspect markings of cigarette  
7 14 packaging marked in accordance with section 101B.7.

7 15 Sec. 7. NEW SECTION. 101B.7 MARKING OF CIGARETTE  
7 16 PACKAGING.

7 17 1. Cigarettes that have been certified by a manufacturer  
7 18 in accordance with section 101B.5 shall be marked to indicate  
7 19 compliance with the requirements of this chapter. The marking  
7 20 shall be in eight point type or larger and consist of one of  
7 21 the following:

7 22 a. Modification of the product's universal product code to  
7 23 include a visible mark printed at or around the area of the  
7 24 universal product code. The mark may consist of an  
7 25 alphanumeric or symbolic character or characters permanently  
7 26 stamped, engraved, embossed, or printed in conjunction with  
7 27 the universal product code.

7 28 b. Any visible alphanumeric or symbolic character or  
7 29 combination of alphanumeric or symbolic characters permanently  
7 30 stamped, engraved, or embossed upon the cigarette package or  
7 31 cellophane wrap.

7 32 c. Printed, stamped, engraved, or embossed text that  
7 33 indicates that the cigarettes meet the standards of this  
7 34 chapter.

7 35 2. A manufacturer shall use only one marking, and shall  
8 1 apply the marking uniformly for all packages including but not  
8 2 limited to packs, cartons, and cases and to brands marketed by  
8 3 that manufacturer.

8 4 3. The manufacturer shall notify the department of the  
8 5 marking selected.

8 6 4. Prior to the certification of any cigarette, a  
8 7 manufacturer shall present its proposed marking to the  
8 8 department for approval. Upon receipt of the request, the  
8 9 department shall approve or disapprove the marking offered. A  
8 10 marking in use and approved for the sale of cigarettes in the  
8 11 state of New York shall be deemed approved. A proposed  
8 12 marking shall be deemed approved if the department fails to  
8 13 act within ten business days of receiving a request for  
8 14 approval.

8 15 5. A manufacturer shall not modify its approved marking  
8 16 until the modification has been approved by the department in  
8 17 accordance with this section.

8 18 Sec. 8. NEW SECTION. 101B.8 PENALTIES == ENFORCEMENT.

8 19 1. A manufacturer, wholesaler, agent, or other person who  
8 20 knowingly sells cigarettes at wholesale in violation of  
8 21 section 101B.3 is subject to the following:

8 22 a. For a first offense, a civil penalty not to exceed five  
8 23 thousand dollars for each sale of the cigarettes.

8 24 b. For each subsequent offense, a civil penalty not to  
8 25 exceed ten thousand dollars for each sale of the cigarettes,  
8 26 provided that the total penalty assessed against any such  
8 27 person shall not exceed fifty thousand dollars in any  
8 28 thirty-day period.

8 29 2. A retailer who knowingly sells cigarettes in violation  
8 30 of section 101B.3, is subject to the following:

8 31 a. For a first offense, a civil penalty not to exceed five  
8 32 hundred dollars for each sale or offer for sale of the  
8 33 cigarettes, and for each subsequent offense a civil penalty  
8 34 not to exceed two thousand dollars for each sale or offer for  
8 35 sale of the cigarettes, provided that the total number of  
9 1 cigarettes sold or offered for sale in such sale does not  
9 2 exceed one thousand cigarettes.

9 3 b. For a first offense, a civil penalty not to exceed one  
9 4 thousand dollars for each sale or offer for sale of the  
9 5 cigarettes, and for each subsequent offense a civil penalty  
9 6 not to exceed five thousand dollars for each sale or offer for  
9 7 sale of the cigarettes, provided that the total number of  
9 8 cigarettes sold or offered for sale in such sale exceeds one  
9 9 thousand cigarettes, and provided that the penalty against the  
9 10 retailer does not exceed twenty-five thousand dollars in any  
9 11 thirty-day period.

9 12 3. A manufacturer who fails to maintain test reports or  
9 13 who fails to make copies of the reports available to the  
9 14 department or the office of the attorney general within sixty  
9 15 days of receiving a written request pursuant to section  
9 16 101B.4, is subject to a civil penalty not to exceed ten

9 17 thousand dollars for each day beyond the sixtieth day that the  
9 18 manufacturer fails to provide the test reports.

9 19 4. In addition to any penalty prescribed by law, any  
9 20 corporation, partnership, sole proprietorship, limited  
9 21 partnership, or association engaged in the manufacture of  
9 22 cigarettes that knowingly makes a false certification pursuant  
9 23 to section 101B.5 is subject to the following:

9 24 a. For a first offense, a civil penalty of at least  
9 25 twenty-five thousand dollars.

9 26 b. For a second or subsequent offense, a civil penalty not  
9 27 to exceed one hundred thousand dollars for each false  
9 28 certification.

9 29 5. Any person violating any other provision of this  
9 30 chapter is subject to the following:

9 31 a. For a first offense, a civil penalty not to exceed one  
9 32 thousand dollars.

9 33 b. For a second or subsequent offense, a civil penalty not  
9 34 to exceed five thousand dollars for each violation.

9 35 6. Any cigarettes that have been sold or offered for sale  
10 1 that do not comply with the performance standard required  
10 2 pursuant to section 101B.4 shall be subject to forfeiture.  
10 3 However, prior to the destruction of any cigarettes seized,  
10 4 the holder of the trademark rights in the cigarette brand  
10 5 shall be permitted to inspect the cigarettes.

10 6 7. In addition to any other remedy provided by law, the  
10 7 department of public safety or the office of the attorney  
10 8 general may file an action in district court for a violation  
10 9 of this chapter, including petitioning for injunctive relief  
10 10 or to recover any costs or damages suffered by the state  
10 11 because of a violation of this chapter, including enforcement  
10 12 costs relating to the specific violation and attorney fees.  
10 13 Each violation of the chapter or of rules adopted under this  
10 14 chapter constitutes a separate civil violation for which the  
10 15 department of public safety or the office of the attorney  
10 16 general may seek relief.

10 17 8. The department of revenue in the regular course of  
10 18 conducting inspections of a wholesaler, agent, or retailer may  
10 19 inspect cigarettes in the possession or control of the  
10 20 wholesaler, agent, or retailer or on the premises of any  
10 21 wholesaler, agent, or retailer to determine if the cigarettes  
10 22 are marked as required pursuant to section 101B.7. If the  
10 23 cigarettes are not marked as required, the department of  
10 24 revenue shall notify the department of public safety.

10 25 9. To enforce the provisions of this chapter, the  
10 26 department of public safety and the office of the attorney  
10 27 general may examine the books, papers, invoices, and other  
10 28 records of any person in possession, control, or occupancy of  
10 29 any premises where cigarettes are placed, sold, or offered for  
10 30 sale, including the stock of cigarettes on the premises.

10 31 Sec. 9. NEW SECTION. 101B.9 CIGARETTE FIRE SAFETY  
10 32 STANDARD FUND.

10 33 A cigarette fire safety standard fund is created as a  
10 34 special fund in the state treasury under the control of the  
10 35 department of public safety. The fund shall consist of all  
11 1 moneys recovered from the assessment of civil penalties or  
11 2 certification fees under this chapter. The moneys in the fund  
11 3 shall, in addition to any moneys made available for such  
11 4 purpose, be available, subject to appropriation, to the  
11 5 department of public safety for the purpose of fire safety and  
11 6 prevention programs, including for entry level fire fighter  
11 7 training, equipment, and operations.

11 8 Sec. 10. NEW SECTION. 101B.10 APPLICABILITY ==  
11 9 PREEMPTION.

11 10 1. This chapter shall cease to be applicable if federal  
11 11 fire safety standards for cigarettes that preempt this chapter  
11 12 are enacted and take effect subsequent to January 1, 2009, and  
11 13 the state fire marshal shall notify the secretary of state and  
11 14 the Code editor if such federal fire safety standards for  
11 15 cigarettes are enacted.

11 16 2. Notwithstanding any law to the contrary, political  
11 17 subdivisions shall not adopt or enforce any ordinance, rule,  
11 18 or regulation that conflicts with any provision of this  
11 19 chapter, or with any policy of the state expressed by this  
11 20 chapter, whether the policy is expressed by inclusion of or  
11 21 exclusion from this chapter.

11 22 EXPLANATION

11 23 This bill relates to cigarette fire safety standards.  
11 24 Beginning January 1, 2009, the bill prohibits cigarettes from  
11 25 being sold or offered for sale in the state unless: (1) The  
11 26 cigarettes have been tested in accordance with the test method  
11 27 prescribed in the bill; (2) the cigarettes meet the

11 28 performance standard specified in the bill; (3) a written  
11 29 certification has been filed by the manufacturer with the  
11 30 department of public safety in accordance with the bill; and  
11 31 (4) the cigarettes have been marked as specified in the bill.  
11 32 A wholesaler or retailer who has inventory of cigarettes  
11 33 existing prior to January 1, 2009, is not prohibited from  
11 34 selling the cigarettes if the wholesaler or retailer affixed  
11 35 tax stamps to the cigarettes on inventory pursuant to Code  
12 1 section 453A.10 before January 1, 2009, and the inventory of  
12 2 cigarettes was purchased before January 1, 2009, in comparable  
12 3 quantity to the amount of inventory of cigarettes purchased  
12 4 during the same period of the prior year. A person may also  
12 5 sell or offer for sale cigarettes that have not been certified  
12 6 by the manufacturer in accordance with the chapter if the  
12 7 cigarettes are or will be stamped for sale in another state or  
12 8 are packaged for sale outside the United States.

12 9 The bill establishes a test method and performance standard  
12 10 for cigarettes, requires maintenance on file of the test  
12 11 reports by the manufacturer for a period of three years,  
12 12 requires each manufacturer to submit a written certification  
12 13 to the department of public safety attesting to certain  
12 14 details regarding the manufacturer's cigarettes, requires a  
12 15 manufacturer certifying cigarettes to provide a copy of any  
12 16 certification to all wholesalers and agents to whom the  
12 17 manufacturer sells cigarettes and to provide sufficient copies  
12 18 of an illustration of the cigarette packaging marking used by  
12 19 the manufacturer for each retailer to whom the wholesalers or  
12 20 agents sell cigarettes, requires a wholesaler or agent to  
12 21 provide a copy of the cigarette packaging markings received  
12 22 from a manufacturer to all retailers to whom the wholesaler or  
12 23 agent sells cigarettes, and requires that cigarettes certified  
12 24 by a manufacturer be marked to indicate compliance with the  
12 25 requirements of the bill.

12 26 The bill provides civil penalties for violations of the  
12 27 bill and creates a cigarette fire safety standard fund as a  
12 28 special fund in the state treasury. The fund consists of all  
12 29 moneys recovered from the assessment of civil penalties  
12 30 authorized under the bill and certification fees collected  
12 31 pursuant to the bill and the moneys in the fund are to be made  
12 32 available, subject to appropriation, to the department of  
12 33 public safety for the purpose of fire safety and prevention  
12 34 programs including for entry level fire fighter training,  
12 35 equipment, and operations.

13 1 The bill directs the department of public safety to  
13 2 administer the bill and provides that the provisions of the  
13 3 bill cease to be applicable if federal fire safety standards  
13 4 for cigarettes that preempt the bill are enacted and take  
13 5 effect subsequent to January 1, 2009, and the department of  
13 6 public safety is directed to notify the secretary of state and  
13 7 the Code editor if such federal fire safety standards for  
13 8 cigarettes are enacted. The bill also prohibits political  
13 9 subdivisions from adopting or enforcing any ordinance, rule,  
13 10 or regulation that conflicts with the bill or with any policy  
13 11 of the state expressed by the bill.

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