

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3341

6 By: Thompson

7 COMMITTEE SUBSTITUTE

8 An Act relating to state government; enacting the
9 Fire Safety Standard and Firefighter Protection Act;
10 defining terms; prohibiting sale or offers for sale
11 of certain cigarettes without certain prior testing;
12 prescribing procedures for testing; prescribing
13 requirements for cigarettes with lowered permeability
14 bands; prescribing procedures for the Office of the
15 State Fire Marshal with respect to certain
16 cigarettes; requiring copies of reports by
17 manufacturers; authorizing civil penalties;
18 authorizing State Fire Marshal to adopt certain
19 standards; requiring reports by State Fire Marshal;
20 prescribing procedures for disposition of existing
21 inventory; authorizing sale of cigarettes for certain
22 consumer testing; providing for implementation of act
23 in accordance with certain laws; requiring written
24 certifications and prescribing content thereof;
requiring description of cigarettes; providing
certifications to be made available to Attorney
General and to Oklahoma Tax Commission; requiring
State Fire Marshal to develop certain directory;
providing for effect of directory listing; requiring
recertification within certain period; imposing fee;
establishing Fire Safety Standard and Firefighter
Protection Act Enforcement Fund; providing for
deposit of monies; requiring retesting process under
certain conditions; requiring marking procedures;
prescribing requirements for markings; requiring
copies of certification to be provided by
manufacturers; imposing civil penalties for certain
actions with respect to cigarettes; imposing limits
on penalty amounts; imposing penalty for false
certifications; imposing penalty for other violations

1 of act; providing certain cigarettes subject to
2 forfeiture; authorizing civil actions; providing for
3 remedies; authorizing seizure of certain cigarettes;
4 prescribing procedures for disposition of seized
5 cigarettes; authorizing State Fire Marshal to
6 promulgate rules; authorizing certain inspections by
7 Oklahoma Tax Commission; authorizing certain entities
8 and law enforcement personnel to make examinations;
9 requiring persons to provide means for facilitation
10 of examinations; establishing the Cigarette Fire
11 Safety Standard and Firefighter Protection Act Fund;
12 providing for deposit of monies; providing for
13 expenditures; providing for construction of act;
14 providing for cessation of effect for statutory
15 provisions under certain circumstances; prescribing
16 limitations upon local government entities; providing
17 for codification; and providing effective dates.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 326.1 of Title 74, unless there
21 is created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Fire Safety
23 Standard and Firefighter Protection Act".

24 SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 326.2 of Title 74, unless there
is created a duplication in numbering, reads as follows:

As used in the Fire Safety Standard and Firefighter Protection
Act:

1. "Agent" means any person authorized by the Tax Commission to
purchase and affix stamps on packages of cigarettes;

1 2. "Cigarette" means any roll for smoking, whether made wholly
2 or in part of tobacco or any other substance, irrespective of size
3 or shape, and whether or not such tobacco or substance is flavored,
4 adulterated or mixed with any other ingredient, if the wrapper is in
5 greater part made of any material except tobacco;

6 3. "Manufacturer" means:

- 7 a. any entity which manufactures or otherwise produces
8 cigarettes or causes cigarettes to be manufactured or
9 produced anywhere that such manufacturer intends to be
10 sold in this state, including cigarettes intended to
11 be sold in the United States through an importer, or
12 b. the first purchaser anywhere that intends to resell in
13 the United States cigarettes manufactured anywhere
14 that the original manufacturer or maker does not
15 intend to be sold in the United States, or
16 c. any entity that becomes a successor of an entity
17 described in subparagraph a or b of this paragraph;

18 4. "Quality control and quality assurance program" means the
19 laboratory procedures implemented to ensure that operator bias,
20 systematic and nonsystematic methodological errors, and equipment-
21 related problems do not affect the results of the testing. Such a
22 program ensures that the testing repeatability remains within the
23 required repeatability values stated in paragraph 6 of subsection B
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1 of Section 3 of this act for all test trials used to certify
2 cigarettes in accordance with this act;

3 5. "Repeatability" means the range of values within which the
4 repeat results of cigarette test trials from a single laboratory
5 will fall ninety-five percent (95%) of the time;

6 6. "Retail dealer" means any person, other than a manufacturer
7 or wholesale dealer, engaged in selling cigarettes;

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

14 8. "Sell" means to sell, or to offer or agree to do the same;

15 9. "Tax Commission" means the Oklahoma Tax Commission; and

16 10. "Wholesale dealer" means any person other than a
17 manufacturer who sells cigarettes to retail dealers or other persons
18 for purposes of resale, and any person who owns, operates or
19 maintains one or more cigarette vending machines in, at or upon
20 premises owned or occupied by any other person.

21 SECTION 3. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 326.3 of Title 74, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. Except as provided in subsection H of this section, no
2 cigarettes may be sold or offered for sale in this state or offered
3 for sale or sold to persons located in this state unless the
4 cigarettes have been tested in accordance with the test method and
5 meet the performance standard specified in this section, a written
6 certification has been filed by the manufacturer with the State Fire
7 Marshal in accordance with Section 4 of this act, and the cigarettes
8 have been marked in accordance with Section 5 of this act.

9 B. The following requirements shall be applicable:

10 1. Testing of cigarettes shall be conducted in accordance with
11 the American Society of Testing and Materials (ASTM) standard E2187-
12 04, "Standard Test Method for Measuring the Ignition Strength of
13 Cigarettes";

14 2. Testing shall be conducted on ten layers of filter paper;

15 3. No more than twenty-five percent (25%) of the cigarettes
16 tested in a test trial in accordance with this section shall exhibit
17 full-length burns. Forty replicate tests shall comprise a complete
18 test trial for each cigarette tested;

19 4. The performance standard required by this section shall only
20 be applied to a complete test trial;

21 5. Written certifications shall be based upon testing conducted
22 by a laboratory that has been accredited pursuant to standard
23 ISO/IEC 17025 of the International Organization for Standardization
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1 (ISO), or other comparable accreditation standard required by the
2 State Fire Marshal;

3 6. Laboratories conducting testing in accordance with this
4 section shall implement a quality control and quality assurance
5 program that includes a procedure that will determine the
6 repeatability of the testing results. The repeatability value shall
7 be no greater than nineteen-hundredths (0.19);

8 7. This section does not require additional testing if
9 cigarettes are tested consistent with this act for any other
10 purpose; and

11 8. Testing performed or sponsored by the State Fire Marshal to
12 determine a cigarette's compliance with the performance standard
13 required shall be conducted in accordance with this section.

14 C. Each cigarette listed in a certification submitted pursuant
15 to Section 4 of this act that uses lowered permeability bands in the
16 cigarette paper to achieve compliance with the performance standard
17 set forth in this section shall have at least two nominally
18 identical bands on the paper surrounding the tobacco column. At
19 least one complete band shall be located at least fifteen (15)
20 millimeters from the lighting end of the cigarette. For cigarettes
21 on which the bands are positioned by design, there shall be at least
22 two bands fully located at least fifteen (15) millimeters from the
23 lighting end and ten (10) millimeters from the filter end of the

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1 tobacco column, or ten (10) millimeters from the labeled end of the
2 tobacco column for nonfiltered cigarettes.

3 D. A manufacturer of a cigarette that the State Fire Marshal
4 determines cannot be tested in accordance with the test method
5 prescribed in paragraph 1 of subsection B of this section shall
6 propose a test method and performance standard for the cigarette to
7 the State Fire Marshal. Upon approval of the proposed test method
8 and a determination by the State Fire Marshal that the performance
9 standard proposed by the manufacturer is equivalent to the
10 performance standard prescribed in paragraph 3 of subsection B of
11 this section, the manufacturer may employ such test method and
12 performance standard to certify such cigarette pursuant to Section 4
13 of this act. If the State Fire Marshal determines that another
14 state has enacted reduced cigarette ignition propensity standards
15 that include a test method and performance standard that are the
16 same as those contained in this act, and the State Fire Marshal
17 finds that the officials responsible for implementing those
18 requirements have approved the proposed alternative test method and
19 performance standard for a particular cigarette proposed by a
20 manufacturer as meeting the fire safety standards of that state's
21 law or regulation under a legal provision comparable to this
22 section, then the State Fire Marshal shall authorize that
23 manufacturer to employ the alternative test method and performance
24 standard to certify that cigarette for sale in this state, unless

1 the State Fire Marshal demonstrates a reasonable basis why the
2 alternative test should not be accepted under this act. All other
3 applicable requirements of this section shall apply to the
4 manufacturer.

5 E. Each manufacturer shall maintain copies of the reports of
6 all tests conducted on all cigarettes offered for sale for a period
7 of three (3) years, and shall make copies of these reports available
8 to the State Fire Marshal and the Attorney General upon written
9 request. Any manufacturer who fails to make copies of these reports
10 available within sixty (60) days of receiving a written request
11 shall be subject to a civil penalty not to exceed Ten Thousand
12 Dollars (\$10,000.00) for each day after the sixtieth day that the
13 manufacturer does not make such copies available.

14 F. The State Fire Marshal may adopt a subsequent ASTM Standard
15 Test Method for Measuring the Ignition Strength of Cigarettes upon a
16 finding that such subsequent method does not result in a change in
17 the percentage of full-length burns exhibited by any tested
18 cigarette when compared to the percentage of full-length burns the
19 same cigarette would exhibit when tested in accordance with ASTM
20 Standard E2187-04 and the performance standard in paragraph 3 of
21 subsection B of this section.

22 G. The State Fire Marshal shall review the effectiveness of
23 this section and report every three (3) years to the Legislature the
24 State Fire Marshal's findings and, if appropriate, recommendations

1 for legislation to improve the effectiveness of this act. The
2 report and legislative recommendations shall be submitted no later
3 than June 30 following the conclusion of each three-year period.

4 H. The requirements of subsection A of this section shall not
5 prohibit:

6 1. Wholesale or retail dealers from selling their existing
7 inventory of cigarettes on or after January 1, 2009, if the
8 wholesale or retail dealer can establish that state tax stamps were
9 affixed to the cigarettes prior to January 1, 2009, and the
10 wholesale or retail dealer can establish that the inventory was
11 purchased prior to January 1, 2009, in comparable quantity to the
12 inventory purchased during the same period of the prior year;
13 provided, that in no event may a wholesale or retail dealer sell or
14 offer for sale a cigarette in this state that does not comply with
15 this act after January 1, 2010; or

16 2. The sale of cigarettes solely for the purpose of consumer
17 testing. For purposes of this subsection, the term "consumer
18 testing" means an assessment of cigarettes that is conducted by a
19 manufacturer or under the control and direction of a manufacturer,
20 for the purpose of evaluating consumer acceptance of such
21 cigarettes, utilizing only the quantity of cigarettes that is
22 reasonably necessary for such assessment.

23 I. This act shall be implemented in accordance with the
24 implementation and substance of the laws of those states that have

1 enacted reduced cigarette ignition propensity standards as of the
2 effective date.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 326.4 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Each manufacturer shall submit to the State Fire Marshal a
7 written certification attesting that:

8 1. Each cigarette listed in the certification has been tested
9 in accordance with Section 3 of this act; and

10 2. Each cigarette listed in the certification meets the
11 performance standard set forth in Section 3 of this act.

12 B. Each cigarette listed in the certification shall be
13 described with the following information:

14 1. Brand, or trade name on the package;

15 2. Style, such as lights, ultralights, or low tar;

16 3. Length in millimeters;

17 4. Circumference in millimeters;

18 5. Flavor, such as menthol or chocolate, if applicable;

19 6. Filter or nonfilter;

20 7. Package description, such as soft pack or box;

21 8. Marking pursuant to Section 5 of this act;

22 9. The name, address and telephone number of the laboratory, if
23 different than the manufacturer that conducted the test; and

24 10. The date that the testing occurred.

1 C. The certifications shall be made available to the Attorney
2 General for purposes consistent with this act and the Tax Commission
3 for the purposes of ensuring compliance with this section. No later
4 than January 31, 2009, the Office of the Oklahoma State Fire Marshal
5 shall develop and make available for public inspection, on its web
6 site and in such other forms as the State Fire Marshal deems
7 appropriate, an Oklahoma Fire Safe Cigarette directory of all
8 certified cigarettes under this act. The State Fire Marshal's
9 directory shall be provided to the Attorney General no later than
10 January 31, 2009. The State Fire Marshal shall update the directory
11 as necessary to keep the directory current and in conformity with
12 the requirements of this act and shall provide all updates to the
13 Attorney General. A wholesale or retail dealer shall consider any
14 cigarette listed on the State Fire Marshal's web site to be lawful
15 to sell in this state for purposes of the wholesale or retail
16 dealer's compliance with this act, unless the wholesale or retail
17 dealer has actual knowledge that the cigarette does not comply.

18 D. Each cigarette certified under this section shall be
19 recertified every three (3) years. Initial cigarette certifications
20 may be made at any time.

21 E. At the time it submits a written certification under this
22 section, a manufacturer shall pay to the State Fire Marshal a fee of
23 One Thousand Dollars (\$1,000.00) for each brand family of cigarettes
24 listed in the certification. The fee paid shall apply to all

1 cigarettes within the brand family certified, and shall include any
2 new cigarette certified within the brand family during the three-
3 year certification period.

4 F. There is established in the State Treasury a separate,
5 nonlapsing fund to be known as the "Fire Safety Standard and
6 Firefighter Protection Act Enforcement Fund". The fund shall
7 consist of all certification fees submitted by manufacturers, and
8 shall, in addition to any other monies made available for such
9 purpose, be available to the State Fire Marshal solely to support
10 processing, testing, enforcement and oversight activities under this
11 act.

12 G. If a manufacturer has certified a cigarette pursuant to this
13 section, and thereafter makes any change to such cigarette that is
14 likely to alter its compliance with the reduced cigarette ignition
15 propensity standards required by this act, that cigarette shall not
16 be sold or offered for sale in this state until the manufacturer
17 retests the cigarette in accordance with the testing standards set
18 forth in Section 3 of this act and maintains records of that
19 retesting as required by Section 3 of this act. Any altered
20 cigarette which does not meet the performance standard set forth in
21 Section 3 of this act may not be sold in this state.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 326.5 of Title 74, unless there
24 is created a duplication in numbering, reads as follows:

1 Cigarettes that are certified by a manufacturer in accordance
2 with Section 4 of this act shall be marked with the letters "FSC",
3 which signify Fire Standards Compliant, appearing in eight-point
4 type or larger and permanently printed, stamped, engraved or
5 embossed on the package at or near the UPC Code. Manufacturers
6 certifying cigarettes in accordance with Section 4 of this act shall
7 provide a copy of the certifications to all wholesale dealers and
8 agents to which they sell cigarettes. Wholesale dealers, agents and
9 retail dealers shall permit the State Fire Marshal, the Tax
10 Commission, the Attorney General, and their employees to inspect
11 markings of cigarette packaging marked in accordance with this
12 section.

13 SECTION 6. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 326.6 of Title 74, unless there
15 is created a duplication in numbering, reads as follows:

16 A. A manufacturer, wholesale dealer, agent or any other person
17 or entity who knowingly sells or offers to sell cigarettes, other
18 than through retail sale, in violation of Section 3 of this act,
19 shall be subject to a civil penalty not to exceed Five Hundred
20 Dollars (\$500.00) for each pack of such cigarettes sold or offered
21 for sale; provided, that in no case shall the penalty against any
22 such person or entity exceed One Hundred Thousand Dollars
23 (\$100,000.00) during any thirty-day period.

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1 B. A retail dealer who knowingly sells or offers to sell
2 cigarettes in violation of Section 3 of this act shall be subject to
3 a civil penalty not to exceed Five Hundred Dollars (\$500.00) for
4 each pack of such cigarettes sold or offered for sale; provided,
5 that in no case shall the penalty against any retail dealer exceed
6 Twenty-five Thousand Dollars (\$25,000.00) for sales or offers to
7 sell during any thirty-day period.

8 C. In addition to any penalty prescribed by law, any
9 corporation, partnership, sole proprietor, limited partnership or
10 association engaged in the manufacture of cigarettes that knowingly
11 makes a false certification pursuant to Section 4 of this act shall
12 be subject to a civil penalty of at least Seventy-five Thousand
13 Dollars (\$75,000.00) and not to exceed Two Hundred Fifty Thousand
14 Dollars (\$250,000.00) for each such false certification.

15 D. Any person violating any other provision in this act shall
16 be subject to a civil penalty for a first offense not to exceed One
17 Thousand Dollars (\$1,000.00), and for a subsequent offense subject
18 to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00)
19 for each such violation.

20 E. Any cigarettes that have been sold or offered for sale that
21 do not comply with the performance standard required by Section 3 of
22 this act shall be considered contraband and subject to forfeiture.
23 Cigarettes forfeited pursuant to this section shall be destroyed;
24 provided, however, that prior to the destruction of any cigarette

1 forfeited pursuant to these provisions, the true holder of the
2 trademark rights in the cigarette brand shall be permitted to
3 inspect the cigarette.

4 F. In addition to any other remedy provided by law, the State
5 Fire Marshal or Attorney General may file an action in the court of
6 competent jurisdiction for a violation of this act, including
7 petitioning for injunctive relief or to recover any costs or damages
8 suffered by the state because of a violation of this act, including
9 enforcement costs relating to the specific violation and attorney
10 fees. Each violation of this act or of rules adopted under this act
11 constitutes a separate civil violation for which the State Fire
12 Marshal or Attorney General may obtain relief.

13 G. Whenever any law enforcement personnel or duly authorized
14 representative of the State Fire Marshal shall discover any
15 cigarettes that have not been marked in the manner required by
16 Section 5 of this act, such personnel are hereby authorized and
17 empowered to seize and take possession of such cigarettes. Such
18 cigarettes shall be turned over to the Tax Commission, and shall be
19 forfeited to the state. Cigarettes seized pursuant to this section
20 shall be destroyed; provided, however, that prior to the destruction
21 of any cigarette seized pursuant to these provisions, the true
22 holder of the trademark rights in the cigarette brand shall be
23 permitted to inspect the cigarette.

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1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 326.7 of Title 74, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The State Fire Marshal may promulgate rules, pursuant to the
5 Administrative Procedures Act, necessary to effectuate the purposes
6 of this act.

7 B. The Tax Commission in the regular course of conducting
8 inspections of wholesale dealers, agents and retail dealers, as
9 authorized under Sections 301 through 325 of Title 68 of the
10 Oklahoma Statutes may inspect such cigarettes to determine if the
11 cigarettes are marked as required by Section 5 of this act. If the
12 cigarettes are not marked as required, the Tax Commission shall
13 notify the State Fire Marshal.

14 SECTION 8. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 326.8 of Title 74, unless there
16 is created a duplication in numbering, reads as follows:

17 To enforce the provisions of this act, the Attorney General, the
18 Tax Commission and the State Fire Marshal, their duly authorized
19 representatives and other law enforcement personnel are hereby
20 authorized to examine the books, papers, invoices and other records
21 of any person in possession, control or occupancy of any premises
22 where cigarettes are placed, stored, sold or offered for sale, as
23 well as the stock of cigarettes on the premises. Every person in
24 the possession, control or occupancy of any premises where

1 cigarettes are placed, sold or offered for sale, is hereby directed
2 and required to give the Attorney General, the Tax Commission and
3 the State Fire Marshal, their duly authorized representatives and
4 other law enforcement personnel the means, facilities and
5 opportunity for the examinations authorized by this section.

6 SECTION 9. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 326.9 of Title 74, unless there
8 is created a duplication in numbering, reads as follows:

9 There is hereby established in the State Treasury a special fund
10 to be known as the "Cigarette Fire Safety Standard and Firefighter
11 Protection Act Fund". The fund shall consist of all monies
12 recovered as penalties under Section 6 of this act. The monies
13 shall be deposited to the credit of the fund and shall, in addition
14 to any other monies made available for such purpose, be made
15 available to the state entity responsible for administering the
16 provisions of this act to support fire safety and prevention
17 programs.

18 SECTION 10. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 326.10 of Title 74, unless there
20 is created a duplication in numbering, reads as follows:

21 Nothing in this act shall be construed to prohibit any person or
22 entity from manufacturing or selling cigarettes that do not meet the
23 requirements of Section 3 of this act if the cigarettes are or will
24 be stamped for sale in another state or are packaged for sale

1 outside the United States and that person or entity has taken
2 reasonable steps to ensure that such cigarettes will not be sold or
3 offered for sale to persons located in this state.

4 SECTION 11. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 326.11 of Title 74, unless there
6 is created a duplication in numbering, reads as follows:

7 A. This act shall cease to have the force and effect of law if
8 a federal reduced cigarette ignition propensity standard that
9 preempts this act is adopted and becomes effective.

10 B. Notwithstanding any other provision of law, the local
11 governmental units of this state may neither enact nor enforce any
12 ordinance or other local law or regulation conflicting with, or
13 preempted by, any provision of this act or with any policy of this
14 state expressed by this act, whether that policy be expressed by
15 inclusion of a provision in the act or by exclusion of that subject
16 from the act.

17 SECTION 12. Section 11 of this act shall become effective
18 September 1, 2008.

19 SECTION 13. Sections 1 through 10 of this act shall become
20 effective January 1, 2009.

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