

THE HOUSE OF REPRESENTATIVES  
Thursday, February 28, 2008

Committee Substitute for  
**House Bill No. 3341**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3341 - By: THOMPSON AND DORMAN of the House and BARRINGTON of the Senate.

An Act relating to state government; enacting the Fire Safety Standard and Firefighter Protection Act; defining terms; prohibiting sale or offers for sale of certain cigarettes without certain prior testing; prescribing procedures for testing; prescribing requirements for cigarettes with lowered permeability bands; prescribing procedures for the Office of the State Fire Marshal with respect to certain cigarettes; requiring copies of reports by manufacturers; authorizing civil penalties; authorizing State Fire Marshal to adopt certain standards; requiring reports by State Fire Marshal; prescribing procedures for disposition of existing inventory; authorizing sale of cigarettes for certain consumer testing; providing for implementation of act in accordance with certain laws; requiring written 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 of act; providing certain cigarettes subject to forfeiture; authorizing civil actions; providing for remedies; authorizing seizure of certain cigarettes; prescribing procedures for disposition of seized cigarettes; authorizing State Fire Marshal to promulgate rules; authorizing certain inspections by Oklahoma Tax Commission; authorizing certain entities and law enforcement personnel to make examinations; requiring persons to provide means for facilitation of examinations; establishing the Cigarette Fire Safety Standard and Firefighter Protection Act Fund; providing for deposit of monies;

providing for expenditures; providing for construction of act; providing for cessation of effect for statutory provisions under certain circumstances; prescribing limitations upon local government entities; providing for codification; and providing effective dates.

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

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

4 This act shall be known and may be cited as the “Fire Safety Standard and  
5 Firefighter Protection Act”.

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

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

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

12 2. “Cigarette” means any roll for smoking, whether made wholly or in part of  
13 tobacco or any other substance, irrespective of size or shape, and whether or not such  
14 tobacco or substance is flavored, adulterated or mixed with any other ingredient, if the  
15 wrapper is in greater part made of any material except tobacco;

16 3. “Manufacturer” means:

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

11           4. “Quality control and quality assurance program” means the laboratory  
12     procedures implemented to ensure that operator bias, systematic and nonsystematic  
13     methodological errors, and equipment-related problems do not affect the results of the  
14     testing. Such a program ensures that the testing repeatability remains within the  
15     required repeatability values stated in paragraph 6 of subsection B of Section 3 of this  
16     act for all test trials used to certify cigarettes in accordance with this act;

17           5. “Repeatability” means the range of values within which the repeat results of  
18     cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the  
19     time;

20           6. “Retail dealer” means any person, other than a manufacturer or wholesale  
21     dealer, engaged in selling cigarettes;

1           7. “Sale” means any transfer of title or possession or both, exchange or barter,  
2 conditional or otherwise, in any manner or by any means whatever or any agreement  
3 therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes  
4 or gifts, and the exchanging of cigarettes for any consideration other than money, are  
5 considered sales;

6           8. “Sell” means to sell, or to offer or agree to do the same;

7           9. “Tax Commission” means the Oklahoma Tax Commission; and

8           10. “Wholesale dealer” means any person other than a manufacturer who sells  
9 cigarettes to retail dealers or other persons for purposes of resale, and any person who  
10 owns, operates or maintains one or more cigarette vending machines in, at or upon  
11 premises owned or occupied by any other person.

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

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

21           B. The following requirements shall be applicable:

1           1. Testing of cigarettes shall be conducted in accordance with the American Society  
2 of Testing and Materials (ASTM) standard E2187-04, “Standard Test Method for  
3 Measuring the Ignition Strength of Cigarettes”;

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

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

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

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

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

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

20          8. Testing performed or sponsored by the State Fire Marshal to determine a  
21 cigarette’s compliance with the performance standard required shall be conducted in  
22 accordance with this section.

1 C. Each cigarette listed in a certification submitted pursuant to Section 4 of this act  
2 that uses lowered permeability bands in the cigarette paper to achieve compliance with  
3 the performance standard set forth in this section shall have at least two nominally  
4 identical bands on the paper surrounding the tobacco column. At least one complete  
5 band shall be located at least fifteen (15) millimeters from the lighting end of the  
6 cigarette. For cigarettes on which the bands are positioned by design, there shall be at  
7 least two bands fully located at least fifteen (15) millimeters from the lighting end and  
8 ten (10) millimeters from the filter end of the tobacco column, or ten (10) millimeters  
9 from the labeled end of the tobacco column for nonfiltered cigarettes.

10 D. A manufacturer of a cigarette that the State Fire Marshal determines cannot be  
11 tested in accordance with the test method prescribed in paragraph 1 of subsection B of  
12 this section shall propose a test method and performance standard for the cigarette to  
13 the State Fire Marshal. Upon approval of the proposed test method and a determination  
14 by the State Fire Marshal that the performance standard proposed by the manufacturer  
15 is equivalent to the performance standard prescribed in paragraph 3 of subsection B of  
16 this section, the manufacturer may employ such test method and performance standard  
17 to certify such cigarette pursuant to Section 4 of this act. If the State Fire Marshal  
18 determines that another state has enacted reduced cigarette ignition propensity  
19 standards that include a test method and performance standard that are the same as  
20 those contained in this act, and the State Fire Marshal finds that the officials responsible  
21 for implementing those requirements have approved the proposed alternative test  
22 method and performance standard for a particular cigarette proposed by a manufacturer

1 as meeting the fire safety standards of that state's law or regulation under a legal  
2 provision comparable to this section, then the State Fire Marshal shall authorize that  
3 manufacturer to employ the alternative test method and performance standard to certify  
4 that cigarette for sale in this state, unless the State Fire Marshal demonstrates a  
5 reasonable basis why the alternative test should not be accepted under this act. All other  
6 applicable requirements of this section shall apply to the manufacturer.

7 E. Each manufacturer shall maintain copies of the reports of all tests conducted on  
8 all cigarettes offered for sale for a period of three (3) years, and shall make copies of these  
9 reports available to the State Fire Marshal and the Attorney General upon written  
10 request. Any manufacturer who fails to make copies of these reports available within  
11 sixty (60) days of receiving a written request shall be subject to a civil penalty not to  
12 exceed Ten Thousand 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 Test Method  
15 for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent  
16 method does not result in a change in the percentage of full-length burns exhibited by  
17 any tested cigarette when compared to the percentage of full-length burns the same  
18 cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and  
19 the performance standard in paragraph 3 of subsection B of this section.

20 G. The State Fire Marshal shall review the effectiveness of this section and report  
21 every three (3) years to the Legislature the State Fire Marshal's findings and, if  
22 appropriate, recommendations for legislation to improve the effectiveness of this act.

1 The report and legislative recommendations shall be submitted no later than June 30  
2 following the conclusion of each three-year period.

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

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

11 2. The sale of cigarettes solely for the purpose of consumer testing. For purposes of  
12 this subsection, the term "consumer testing" means an assessment of cigarettes that is  
13 conducted by a manufacturer or under the control and direction of a manufacturer, for  
14 the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the  
15 quantity of cigarettes that is reasonably necessary for such assessment.

16 I. This act shall be implemented in accordance with the implementation and  
17 substance of the laws of those states that have enacted reduced cigarette ignition  
18 propensity standards as of the effective date.

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

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

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

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

7 B. Each cigarette listed in the certification shall be described with the following  
8 information:

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

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

11 3. Length in millimeters;

12 4. Circumference in millimeters;

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

14 6. Filter or nonfilter;

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

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

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

19 10. The date that the testing occurred.

20 C. The certifications shall be made available to the Attorney General for purposes  
21 consistent with this act and the Tax Commission for the purposes of ensuring compliance  
22 with this section. No later than January 31, 2009, the Office of the Oklahoma State Fire

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

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

13 E. At the time it submits a written certification under this section, a manufacturer  
14 shall pay to the State Fire Marshal a fee of One Thousand Dollars (\$1,000.00) for each  
15 brand family of cigarettes listed in the certification. The fee paid shall apply to all  
16 cigarettes within the brand family certified, and shall include any new cigarette certified  
17 within the brand family during the three-year certification period.

18 F. There is established in the State Treasury a separate, nonlapsing fund to be  
19 known as the "Fire Safety Standard and Firefighter Protection Act Enforcement Fund".  
20 The fund shall consist of all certification fees submitted by manufacturers, and shall, in  
21 addition to any other monies made available for such purpose, be available to the State

1 Fire Marshal solely to support processing, testing, enforcement and oversight activities  
2 under this act.

3 G. If a manufacturer has certified a cigarette pursuant to this section, and  
4 thereafter makes any change to such cigarette that is likely to alter its compliance with  
5 the reduced cigarette ignition propensity standards required by this act, that cigarette  
6 shall not be sold or offered for sale in this state until the manufacturer retests the  
7 cigarette in accordance with the testing standards set forth in Section 3 of this act and  
8 maintains records of that retesting as required by Section 3 of this act. Any altered  
9 cigarette which does not meet the performance standard set forth in Section 3 of this act  
10 may not be sold in this state.

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

14 Cigarettes that are certified by a manufacturer in accordance with Section 4 of this  
15 act shall be marked with the letters "FSC", which signify Fire Standards Compliant,  
16 appearing in eight-point type or larger and permanently printed, stamped, engraved or  
17 embossed on the package at or near the UPC Code. Manufacturers certifying cigarettes  
18 in accordance with Section 4 of this act shall provide a copy of the certifications to all  
19 wholesale dealers and agents to which they sell cigarettes. Wholesale dealers, agents  
20 and retail dealers shall permit the State Fire Marshal, the Tax Commission, the  
21 Attorney General, and their employees to inspect markings of cigarette packaging  
22 marked in accordance with this section.

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

4 A. A manufacturer, wholesale dealer, agent or any other person or entity who  
5 knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of  
6 Section 3 of this act, shall be subject to a civil penalty not to exceed Five Hundred Dollars  
7 (\$500.00) for each pack of such cigarettes sold or offered for sale; provided, that in no case  
8 shall the penalty against any such person or entity exceed One Hundred Thousand  
9 Dollars (\$100,000.00) during any thirty-day period.

10 B. A retail dealer who knowingly sells or offers to sell cigarettes in violation of  
11 Section 3 of this act shall be subject to a civil penalty not to exceed Five Hundred Dollars  
12 (\$500.00) for each pack of such cigarettes sold or offered for sale; provided, that in no case  
13 shall the penalty against any retail dealer exceed Twenty-five Thousand Dollars  
14 (\$25,000.00) for sales or offers to sell during any thirty-day period.

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

21 D. Any person violating any other provision in this act shall be subject to a civil  
22 penalty for a first offense not to exceed One Thousand Dollars (\$1,000.00), and for a

1 subsequent offense subject to a civil penalty not to exceed Five Thousand Dollars  
2 (\$5,000.00) for each such violation.

3 E. Any cigarettes that have been sold or offered for sale that do not comply with the  
4 performance standard required by Section 3 of this act shall be considered contraband  
5 and subject to forfeiture. Cigarettes forfeited pursuant to this section shall be destroyed;  
6 provided, however, that prior to the destruction of any cigarette forfeited pursuant to  
7 these provisions, the true holder of the trademark rights in the cigarette brand shall be  
8 permitted to inspect the cigarette.

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

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

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**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

1 General, the Tax Commission and the State Fire Marshal, their duly authorized  
2 representatives and other law enforcement personnel the means, facilities and  
3 opportunity for the examinations authorized by this section.

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

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

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

16 Nothing in this act shall be construed to prohibit any person or entity from  
17 manufacturing or selling cigarettes that do not meet the requirements of Section 3 of this  
18 act if the cigarettes are or will be stamped for sale in another state or are packaged for  
19 sale outside the United States and that person or entity has taken reasonable steps to  
20 ensure that such cigarettes will not be sold or offered for sale to persons located in this  
21 state.

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

13 SECTION 13. Sections 1 through 10 of this act shall become effective January 1,  
14 2009.

15 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND  
16 FINANCIAL SERVICES, dated 02-27-08 - DO PASS, As Amended and Coauthored.

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