

EHB 3341

THE STATE SENATE
Monday, April 7, 2008

ENGROSSED

House Bill No. 3341

As Amended

ENGROSSED HOUSE BILL NO. 3341 - By: Thompson, Dorman, Shumate and Tibbs 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

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

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

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

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

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

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

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

25 2. "Cigarette" means any roll for smoking, whether made wholly
26 or in part of tobacco or any other substance, irrespective of size
27 or shape, and whether or not such tobacco or substance is flavored,

1 adulterated or mixed with any other ingredient, if the wrapper is in
2 greater part made of any material except tobacco;

3 3. "Manufacturer" means:

4 a. any entity which manufactures or otherwise produces
5 cigarettes or causes cigarettes to be manufactured or
6 produced anywhere that such manufacturer intends to be
7 sold in this state, including cigarettes intended to
8 be sold in the United States through an importer, or

9 b. the first purchaser anywhere that intends to resell in
10 the United States cigarettes manufactured anywhere
11 that the original manufacturer or maker does not
12 intend to be sold in the United States, or

13 c. any entity that becomes a successor of an entity
14 described in subparagraph a or b of this paragraph;

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

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

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

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

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

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

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

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

22 A. Except as provided in subsection H of this section, no
23 cigarettes may be sold or offered for sale in this state or offered

1 for sale or sold to persons located in this state unless the
2 cigarettes have been tested in accordance with the test method and
3 meet the performance standard specified in this section, a written
4 certification has been filed by the manufacturer with the State Fire
5 Marshal in accordance with Section 4 of this act, and the cigarettes
6 have been marked in accordance with Section 5 of this act.

7 B. The following requirements shall be applicable:

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

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

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

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

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

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

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

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

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

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

1 alternative test should not be accepted under this act. All other
2 applicable requirements of this section shall apply to the
3 manufacturer.

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

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

21 G. The State Fire Marshal shall review the effectiveness of
22 this section and report every three (3) years to the Legislature the
23 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;

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; **or**

1 **3. Wholesale or retail dealers from selling, until July 1,**
2 **2009, cigarettes manufactured in this state as determined by the**
3 **State Fire Marshal.**

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

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

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

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

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

17 B. Each cigarette listed in the certification shall be
18 described with the following information:

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

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

21 3. Length in millimeters;

22 4. Circumference in millimeters;

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

- 1 6. Filter or nonfilter;
- 2 7. Package description, such as soft pack or box;
- 3 8. Marking pursuant to Section 5 of this act;
- 4 9. The name, address and telephone number of the laboratory, if
- 5 different than the manufacturer that conducted the test; and
- 6 10. The date that the testing occurred.

7 C. The certifications shall be made available to the Attorney
8 General for purposes consistent with this act and the Tax Commission
9 for the purposes of ensuring compliance with this section. No later
10 than January 31, 2009, the Office of the Oklahoma State Fire Marshal
11 shall develop and make available for public inspection, on its web
12 site and in such other forms as the State Fire Marshal deems
13 appropriate, an Oklahoma Fire Safe Cigarette directory of all
14 certified cigarettes under this act. The State Fire Marshal's
15 directory shall be provided to the Attorney General no later than
16 January 31, 2009. The State Fire Marshal shall update the directory
17 as necessary to keep the directory current and in conformity with
18 the requirements of this act and shall provide all updates to the
19 Attorney General. **The directory shall also include a list of**
20 **cigarettes exempted pursuant to paragraph 3 of subsection H of**
21 **Section 3 of this act.** A wholesale or retail dealer shall consider
22 any cigarette listed on the State Fire Marshal's web site to be
23 lawful to sell in this state for purposes of the wholesale or retail

1 dealer's compliance with this act, unless the wholesale or retail
2 dealer has actual knowledge that the cigarette does not comply.

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

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

13 F. There is established in the State Treasury a separate,
14 nonlapsing fund to be known as the "Fire Safety Standard and
15 Firefighter Protection Act Enforcement Fund". The fund shall
16 consist of all certification fees submitted by manufacturers, and
17 shall, in addition to any other monies made available for such
18 purpose, be available to the State Fire Marshal solely to support
19 processing, testing, enforcement and oversight activities under this
20 act.

21 G. If a manufacturer has certified a cigarette pursuant to this
22 section, and thereafter makes any change to such cigarette that is
23 likely to alter its compliance with the reduced cigarette ignition

1 propensity standards required by this act, that cigarette shall not
2 be sold or offered for sale in this state until the manufacturer
3 retests the cigarette in accordance with the testing standards set
4 forth in Section 3 of this act and maintains records of that
5 retesting as required by Section 3 of this act. Any altered
6 cigarette which does not meet the performance standard set forth in
7 Section 3 of this act may not be sold in this state.

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

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

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

4 A. A manufacturer, wholesale dealer, agent or any other person
5 or entity who knowingly sells or offers to sell cigarettes, other
6 than through retail sale, in violation of Section 3 of this act,
7 shall be subject to a civil penalty not to exceed Five Hundred
8 Dollars (\$500.00) for each pack of such cigarettes sold or offered
9 for sale; provided, that in no case shall the penalty against any
10 such person or entity exceed One Hundred Thousand Dollars
11 (\$100,000.00) during any thirty-day period.

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

19 C. In addition to any penalty prescribed by law, any
20 corporation, partnership, sole proprietor, limited partnership or
21 association engaged in the manufacture of cigarettes that knowingly
22 makes a false certification pursuant to Section 4 of this act shall
23 be subject to a civil penalty of at least Seventy-five Thousand

1 Dollars (\$75,000.00) and not to exceed Two Hundred Fifty Thousand
2 Dollars (\$250,000.00) for each such false certification.

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

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

16 F. In addition to any other remedy provided by law, the State
17 Fire Marshal or Attorney General may file an action in the court of
18 competent jurisdiction for a violation of this act, including
19 petitioning for injunctive relief or to recover any costs or damages
20 suffered by the state because of a violation of this act, including
21 enforcement costs relating to the specific violation and attorney
22 fees. Each violation of this act or of rules adopted under this act

1 constitutes a separate civil violation for which the State Fire
2 Marshal or Attorney General may obtain relief.

3 G. Whenever any law enforcement personnel or duly authorized
4 representative of the State Fire Marshal shall discover any
5 cigarettes that have not been marked in the manner required by
6 Section 5 of this act, such personnel are hereby authorized and
7 empowered to seize and take possession of such cigarettes. Such
8 cigarettes shall be turned over to the Tax Commission, and shall be
9 forfeited to the state. Cigarettes seized pursuant to this section
10 shall be destroyed; provided, however, that prior to the destruction
11 of any cigarette seized pursuant to these provisions, the true
12 holder of the trademark rights in the cigarette brand shall be
13 permitted to inspect the cigarette.

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

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

20 B. The Tax Commission in the regular course of conducting
21 inspections of wholesale dealers, agents and retail dealers, as
22 authorized under Sections 301 through 325 of Title 68 of the
23 Oklahoma Statutes may inspect such cigarettes to determine if the

1 cigarettes are marked as required by Section 5 of this act. If the
2 cigarettes are not marked as required, the Tax Commission shall
3 notify the State Fire Marshal.

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

7 To enforce the provisions of this act, the Attorney General, the
8 Tax Commission and the State Fire Marshal, their duly authorized
9 representatives and other law enforcement personnel are hereby
10 authorized to examine the books, papers, invoices and other records
11 of any person in possession, control or occupancy of any premises
12 where cigarettes are placed, stored, sold or offered for sale, as
13 well as the stock of cigarettes on the premises. Every person in
14 the possession, control or occupancy of any premises where
15 cigarettes are placed, sold or offered for sale, is hereby directed
16 and required to give the Attorney General, the Tax Commission and
17 the State Fire Marshal, their duly authorized representatives and
18 other law enforcement personnel the means, facilities and
19 opportunity for the examinations authorized by this section.

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

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

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

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

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

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

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

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY AND HOMELAND
16 SECURITY, dated 4-1-08 - DO PASS, As Amended.