

BILL SUMMARY

- MEASURE:** HB3341 (Committee Substitute)
- AUTHOR:** Representative Thompson
- SUBJECT:** An act relating to state government; short title; Fire Safety Standard and Firefighter Protection Act; cigarettes; testing; marking; procedures; penalties; codification; effective date.
- PROVISIONS:**
- Section 1. NEW LAW Creating and naming the “Fire Safety Standard and Firefighter Protection Act”.
- Section 2. NEW LAW Providing definitions for the act:
1. Agent – any person authorized to purchase and affix stamps on cigarettes;
 2. Cigarette – tobacco wrapped in paper;
 3. Manufacturer – cigarette manufacture, purchaser of non-U.S. cigarettes for resale in U.S., or successor of either of the previous;
 4. Quality control and quality assurance program – lab procedure outlined in act used to certify cigarettes in accordance with act;
 5. Repeatability – results in test trials repeat 95% of the time;
 6. Retail dealer – any one other than manufacturer or wholesaler who sells cigarettes;
 7. Sale – transfer of title and/or possession, including cigarettes given as samples, prizes or gifts;
 8. Sell – sell;
 9. Tax Commission – Oklahoma Tax Commission;
 10. Wholesale dealer – any person other than a manufacturer who sells cigarettes to retail dealers or others for the purposes of resale, including vending machine owners.
- Section 3. NEW LAW A. No cigarettes may be sold in Oklahoma unless the cigarettes have been tested and certified by the manufacturer with the State Fire Marshal according to Section 4, and the cigarettes have been marked according to Section 5.
- B. The following requirements shall apply:
1. Testing of cigarettes shall be conducted according to specified American Society of Testing and Materials standard;
 2. Testing shall be conducted on ten layers of filter paper;
 3. No more than 25% of cigarettes tested shall exhibit full-length burns, 40 replicate tests shall be considered a complete test for each cigarette tested;

4. The performance standard required shall only be applied to complete test trial;
5. Written certification shall be based upon testing conducted by a lab that has been accredited pursuant to specified standard of the International Organization for Standardization or other comparable standard required by the State Fire Marshal;
6. Labs conducting testing shall implement a quality control and quality assurance program that includes a procedure to determine repeatability of the results, repeatability value shall be no greater than .19;
7. This section does not require additional testing if cigarettes are tested consistent with this act for any other purpose; and
8. Testing performed or sponsored by the State Fire Marshal to determine compliance shall be conducted according to this section.

C. Each cigarette listed in a certification submitted according to Section 4 that uses lower permeability bands in the paper to achieve compliance shall have at least 2 nominally identical bands on the paper. At least one band shall be located 15 mm from the lighting end. For cigarettes on which the bands are positioned by design, there shall be at least 2 bands fully located at least 15 mm from lighting end and 10 mm from the filter end of the tobacco column, or 10 mm from the labeled end of the tobacco column for nonfiltered cigarettes.

D. A manufacturer that the Fire Marshal determines cannot be tested according to the method prescribed shall propose a test method and performance standard for the cigarette. Upon approval of the proposed test method and determination by Fire Marshal that the proposed performance standard is equal, the manufacturer may use such test method and standard to certify such cigarette according to Section 4. If the Fire Marshal determines that another state has enacted reduced cigarette ignition standards that include a test and performance standard same as this act, and the Fire Marshal finds that the officials responsible for implementing requirements have approved alternative testing and standards for a particular cigarette, then the Fire Marshal shall authorize that manufacturer to employ the alternative test and performance standard to certify that cigarette for sale in Oklahoma, unless the Fire Marshal demonstrates a reason why the alternative method should not be accepted. All other applicable requirements of this section apply to the manufacturer.

E. Manufacturers are required to maintain copies of reports on all tests on cigarettes offered for sale for a period of 3 years and copies shall be available to the State Fire Marshal and Attorney General upon written request. Failure of a manufacturer to provide these copies within 60 days of a written request shall be subject to a civil penalty not to exceed \$10,000 for each day the copies are not made available.

F. The State Fire Marshal may adopt an ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon finding that such a method does change the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in paragraph 3 of subsection B of this section.

G. Every 3 years the state Fire Marshall shall review the effectiveness of this section and report the findings to the legislature in addition to any recommendations and submit this information no later than June 30 after each 3-year period.

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

1. Wholesale or retail dealers from selling existing inventory of cigarettes on or after the effective date of this act if the dealer can establish that both the state tax stamps were affixed to the cigarettes and that they were purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year; or
2. The sale of cigarettes solely for the purpose of consumer testing; the term “consumer testing” means an assessment of cigarettes that is conducted by a manufacturer or under their control and direction, for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

I. This act shall be implemented in accordance with the New York Fire Safety Standards for Cigarettes.

Section 4. NEW LAW Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

1. Each cigarette listed in the certification has been tested in accordance with Section 3 of this act; and
2. Each cigarette meets the performance standard set forth in Section 3 of this act;

B. Each cigarette shall be described with the following information:

1. Brand, or trade name on the package;
2. Style;
3. Length in millimeters;
4. Circumference in millimeters;
5. Flavor;
6. Filter or nonfilter;
7. Soft pack or box;
8. Marking pursuant to Section 5 of this act;

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

C. The certifications shall be made available to the Attorney General and the Tax Commission.

D. Each cigarette certified under this section shall be recertified every 3 years.

E. At the time a manufacture submits a written certification, it shall pay a \$1,000 fee to the State Fire Marshal for each brand family of cigarettes listed in the certification. The fee will apply to all cigarettes within the brand family certified and include any new cigarette certified within the brand family during the 3-year certification period.

F. A separate, nonlapsing fund known as the “Fire Safety Standard and Firefighter Protection Act Enforcement Fund” shall be established in the State Treasury; it shall consist of all certification fees from manufacturers and shall be available to the State Fire Marshal solely to support this act.

G. If a manufacturer has certified a cigarette pursuant to the regulations and guidelines outlined in this act, and then alters its composition so that it no longer is certified, it shall not be sold or offered in Oklahoma until the cigarette is retested by the manufacturer as outlined by this act.

Section 5. NEW LAW Cigarettes certified according to section 4 shall be marked with “FSC” to indicate compliance. The marking shall be in 8-point type or larger and include and permanently printed with the UPC code. Manufacturers certifying cigarettes according to Section 4 shall provide a copy of certifications to wholesalers to which they sell cigarettes. Wholesalers and retailers shall allow the Fire Marshal, OTC, the AG and their employees to inspect markings of cigarette packaging.

Section 6. NEW LAW A. A manufacturer or anyone who sells cigarettes in violation of Section 3 is subject to a penalty not to exceed \$500 for each pack sold; provided in no case shall the penalty exceed \$100,000 during any 30-day period.

B. A retailer who sells cigarettes in violation of Section 3 shall be subject to a penalty not to exceed \$500 for each pack sold; provided in no case shall the penalty exceed \$25,000 during any 30-day period.

C. In addition to any penalty, any manufacturer that knowingly makes a false certification is subject to a civil penalty of at least \$75,000 and not exceeding \$250,000 for each false certification.

D. Any person violating any other provision in this act shall be subject to civil penalty for 1st offense not to exceed \$1,000, and for subsequent offense not to exceed \$5,000 per violation.

E. Any cigarettes sold that do not comply with the performance standard are subject to forfeiture. Cigarettes forfeited will be destroyed; but prior to destruction the true holder of the trademark rights in the brand are allowed to inspect the cigarette.

F. The Fire Marshal or AG may also file an action in court for violations of this act, including petition for injunctive relief to recover costs or damages. Each violation of the act is a separate civil violation.

G. When any law enforcement personnel discovers cigarettes that have not been marked according to Section 5, such personnel are empowered to seize the cigarettes. Property is given to OTC and forfeited to the state.

Section 7. NEW LAW A. The Fire Marshal may adopt rules necessary.

B. The OTC in conducting inspections may inspect cigarettes to determine if they are marked as required by Section 5. If not compliant, the OTC shall notify the Fire Marshal.

Section 8. NEW LAW The AG, OTC, Fire Marshal and their representatives are authorized to examine any records in possession or control of any premises where cigarettes are placed, stored or sold, as well as the stock of cigarettes. Person in control of such premises are required to give authorities the means for such examination.

Section 9. NEW LAW The “Cigarette Fire Safety Standard and Firefighter Protection Act Fund” shall be established in the State Treasury. The fund shall consist of penalties recovered and be made available to state entity responsible for administering this act to support fire safety and prevention programs.

Section 10. NEW LAW Nothing in this act shall prohibit any person from manufacturing cigarettes that do not meet the standards if the cigarettes will be stamped for sale in another state or outside the U.S. and that person has taken reasonable steps to ensure such cigarettes will not be sold in Oklahoma.

Section 11. NEW LAW A. This act shall expire if a federal reduced cigarette ignition propensity standard that preempts this act is adopted and becomes effective.

B. Local governmental units of this state may not enact any local regulations in conflict with, or preempted by, any provision of this act or with any policy of this state expressed by this act, whether that policy be expressed by inclusion of a provision or by exclusion of the subject from this act.

EFFECTIVE

DATE: Last section (Section 11), effective September 1, 2008
All other sections effective July 31, 2009

PREPARED BY: Arnella Karges

DATE: March 5, 2008