

1 STATE OF OKLAHOMA

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

3 SUBCOMMITTEE RECOMMENDATION
4 FOR

5 HOUSE BILL NO. 3341

6 By: Thompson

7 SUBCOMMITTEE RECOMMENDATION

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 New York Fire Safety Standards for
24 Cigarettes; 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 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 notice to State Fire Marshal of
markings; prescribing procedures for approval or
disapproval of markings; prohibiting modification of
markings without certain approval; requiring copies
of certification to be provided by manufacturers;
imposing civil penalties for certain actions with
respect to cigarettes; imposing limits on penalty

1 amounts; imposing penalty for false certifications;
2 imposing penalty for other violations of act;
3 providing certain cigarettes subject to forfeiture;
4 authorizing civil actions; providing for remedies;
5 authorizing seizure of certain cigarettes;
6 prescribing procedures for disposition of seized
7 cigarettes; authorizing State Fire Marshal to
8 promulgate rules; authorizing certain inspections by
9 Oklahoma Tax Commission; authorizing certain entities
10 and law enforcement personnel to make examinations;
11 requiring persons to provide means for facilitation
12 of examinations; establishing the Cigarette Fire
13 Safety Standard and Firefighter Protection Act Fund;
14 providing for deposit of monies; providing for
15 expenditures; providing for construction of act;
16 providing for cessation of effect for statutory
17 provisions under certain circumstances; prescribing
18 limitations upon local government entities; providing
19 for codification; and providing effective dates.
20

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

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

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

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:

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

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

3 2. "Cigarette" means any roll for smoking, whether made wholly
4 or in part of tobacco or any other substance, irrespective of size
5 or shape, and whether or not such tobacco or substance is flavored,
6 adulterated or mixed with any other ingredient, the wrapper or cover
7 of which is made of paper or any other substance or material, other
8 than leaf tobacco;

9 3. "Manufacturer" means:

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

21 4. "Quality control and quality assurance program" means the
22 laboratory procedures implemented to ensure that operator bias,
23 systematic and nonsystematic methodological errors, and equipment-
24 related problems do not affect the results of the testing. Such a

1 program ensures that the testing repeatability remains within the
2 required repeatability values stated in paragraph 6 of subsection B
3 of Section 3 of this act for all test trials used to certify
4 cigarettes in accordance with this act;

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

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

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

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

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

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

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

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

12 B. The following requirements shall be applicable:

13 1. Testing of cigarettes shall be conducted in accordance with
14 the American Society of Testing and Materials (ASTM) standard E2187-
15 04, "Standard Test Method for Measuring the Ignition Strength of
16 Cigarettes";

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

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

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

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

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

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

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

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

1 two bands fully located at least fifteen (15) millimeters from the
2 lighting end and ten (10) millimeters from the filter end of the
3 tobacco column, or ten (10) millimeters from the labeled end of the
4 tobacco column for nonfiltered cigarettes.

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

1 manufacturer to employ the alternative test method and performance
2 standard to certify that cigarette for sale in this state, unless
3 the State Fire Marshal demonstrates a reasonable basis why the
4 alternative test should not be accepted under this act. All other
5 applicable requirements of this section shall apply to the
6 manufacturer.

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

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

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1 G. The State Fire Marshal shall review the effectiveness of
2 this section and report every three (3) years to the Legislature the
3 State Fire Marshal's findings and, if appropriate, recommendations
4 for legislation to improve the effectiveness of this act. The
5 report and legislative recommendations shall be submitted no later
6 than June 30 following the conclusion of each three-year period.

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

9 1. Wholesale or retail dealers from selling their existing
10 inventory of cigarettes on or after the effective date of this act
11 if the wholesale or retail dealer can establish that state tax
12 stamps were affixed to the cigarettes prior to the effective date
13 and the wholesale or retail dealer can establish that the inventory
14 was purchased prior to the effective date in comparable quantity to
15 the inventory purchased during the same period of the prior year; 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.

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1 I. This act shall be implemented in accordance with the
2 implementation and substance of the New York Fire Safety Standards
3 for Cigarettes.

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

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

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

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

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

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

16 2. Style, such as light or ultralight;

17 3. Length in millimeters;

18 4. Circumference in millimeters;

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

20 6. Filter or nonfilter;

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

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

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

1 10. The date that the testing occurred.

2 C. The certifications shall be made available to the Attorney
3 General for purposes consistent with this act and the Tax Commission
4 for the purposes of ensuring compliance with this section.

5 D. Each cigarette certified under this section shall be
6 recertified every three (3) years.

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

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

22 G. If a manufacturer has certified a cigarette pursuant to this
23 section, and thereafter makes any change to such cigarette that is
24 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 A. Cigarettes that are certified by a manufacturer in
12 accordance with Section 4 of this act shall be marked to indicate
13 compliance with the requirements of Section 3 of this act. The
14 marking shall be in eight (8) point type or larger and consist of:

15 1. Modification of the product UPC Code to include a visible
16 mark printed at or around the area of the UPC Code. The mark may
17 consist of alphanumeric or symbolic characters permanently stamped,
18 engraved, embossed or printed in conjunction with the UPC Code;

19 2. Any visible combination of alphanumeric or symbolic
20 characters permanently stamped, engraved or embossed upon the
21 cigarette package or cellophane wrap; or

22 3. Printed, stamped, engraved or embossed text that indicates
23 that the cigarettes meet the standards of this act.

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

5 C. The State Fire Marshal shall be notified as to the marking
6 that is selected.

7 D. Prior to the certification of any cigarette, a manufacturer
8 shall present its proposed marking to the State Fire Marshal for
9 approval. Upon receipt of the request, the State Fire Marshal shall
10 approve or disapprove the marking offered, except that the State
11 Fire Marshal shall approve:

12 1. Any marking in use and approved for sale in New York
13 pursuant to the New York Fire Safety Standards for Cigarettes; or

14 2. The letters "FSC", which signify Fire Standards Compliant,
15 appearing in eight-point type or larger and permanently printed,
16 stamped, engraved or embossed on the package at or near the UPC
17 Code.

18 Proposed markings shall be deemed approved if the State Fire
19 Marshal fails to act within ten (10) business days of receiving a
20 request for approval.

21 E. No manufacturer shall modify its approved marking unless the
22 modification has been approved by the State Fire Marshal in
23 accordance with this section.

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1 F. Manufacturers certifying cigarettes in accordance with
2 Section 4 of this act shall provide a copy of the certifications to
3 all wholesale dealers and agents to which they sell cigarettes, and
4 shall also provide sufficient copies of an illustration of the
5 package marking utilized by the manufacturer pursuant to this
6 section for each retail dealer to which the wholesale dealers or
7 agents sell cigarettes. Wholesale dealers and agents shall provide
8 a copy of these package markings received from manufacturers to all
9 retail dealers to which they sell cigarettes. Wholesale dealers,
10 agents and retail dealers shall permit the State Fire Marshal, the
11 Tax Commission, the Attorney General, and their employees to inspect
12 markings of cigarette packaging marked in accordance with this
13 section.

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

17 A. A manufacturer, wholesale dealer, agent or any other person
18 or entity who knowingly sells or offers to sell cigarettes, other
19 than through retail sale, in violation of Section 3 of this act,
20 shall be subject to a civil penalty not to exceed One Hundred
21 Dollars (\$100.00) for each pack of such cigarettes sold or offered
22 for sale; provided, that in no case shall the penalty against any
23 such person or entity exceed One Hundred Thousand Dollars
24 (\$100,000.00) during any thirty-day period.

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 One Hundred Dollars (\$100.00) for each
4 pack of such cigarettes sold or offered for sale; provided, that in
5 no case shall the penalty against any retail dealer exceed Twenty-
6 five Thousand Dollars (\$25,000.00) for sales or offers to sell
7 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 subject to forfeiture. Cigarettes forfeited
23 pursuant to this section shall be destroyed; provided, however, that
24 prior to the destruction of any cigarette forfeited pursuant to

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

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

12 G. Whenever any law enforcement personnel or duly authorized
13 representative of the State Fire Marshal shall discover any
14 cigarettes that have not been marked in the manner required by
15 Section 5 of this act, such personnel are hereby authorized and
16 empowered to seize and take possession of such cigarettes. Such
17 cigarettes shall be turned over to the Tax Commission, and shall be
18 forfeited to the state. Cigarettes seized pursuant to this section
19 shall be destroyed; provided, however, that prior to the destruction
20 of any cigarette seized pursuant to these provisions, the true
21 holder of the trademark rights in the cigarette brand shall be
22 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 July 31, 2009.

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