

BILL ANALYSIS

Senate Research Center

H.B. 2935
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Cigarettes are the leading cause of home fire fatalities in the United States, killing 700 to 900 people, smokers and nonsmokers alike, per year. One-quarter of victims of smoking-material fire fatalities are not the smokers whose cigarettes started the fire: 34 percent are children of the smokers; 25 percent are neighbors or friends; 14 percent are spouses or partners; and 13 percent are parents. There is technology available to produce a cigarette that has been termed a fire-safe cigarette. A fire-safe cigarette has a reduced propensity to burn when left unattended. The most common fire-safe technology used by cigarette manufacturers is to wrap cigarettes with two or three thin bands of less-porous paper that act as "speed bumps" to slow down a burning cigarette. If a fire-safe cigarette is left unattended, the burning tobacco will reach one of these speed bumps and self-extinguish.

H.B. 2935 requires cigarettes sold in Texas to meet testing requirements that are in accordance with the Standard Test Method for Measuring the Ignition Strength of Cigarettes, E2187-04, by the American Society of Testing and Materials.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the state fire marshal in SECTION 1 (Section 796.008, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 9, Health and Safety Code, by adding Chapter 796, as follows:

CHAPTER 796. CIGARETTE FIRE SAFETY STANDARDS

Sec. 796.001. DEFINITIONS. Defines "agent," "cigarette," "manufacturer," "retailer," "sale," "sell," and "wholesale dealer."

Sec. 796.002. REQUIREMENTS FOR SALE OF CIGARETTE. Prohibits a cigarette from being sold or offered for sale in this state unless it meets certain requirements.

Sec. 796.003. TESTING. (a) Requires a manufacturer of cigarettes to ensure that tests on cigarettes are conducted in a certain manner.

(b) Provides that not more than 25 percent of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns.

(c) Requires the performance standard required by this section to only be applied to a complete test trial.

(d) Requires a written certification to be based on testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization, or another comparable accreditation standard required by the state fire marshal.

(e) Requires a laboratory testing in accordance with this section to implement a quality control and quality assurance program to ensure that operator bias,

systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Requires the program to include a procedure to determine the repeatability of the testing results. Prohibits the repeatability value from being greater than 0.19. Defines "repeatability value."

(f) Authorizes the state fire marshal to adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes on finding that the subsequent method does not result in a change in 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 Subsection (b).

(g) Requires a cigarette submitted for testing that uses lowered permeability bands in the cigarette paper to comply with the performance standard under this section to have at least two nominally identical bands on the paper surrounding the tobacco column and at least one complete band not less than 15 millimeters from the lighting end of the cigarette. Requires a cigarette on which the bands are positioned by design to have at least two bands located not less than 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(h) Provides that this section does not require additional testing if a cigarette is tested in a manner that is consistent with this chapter for any other purpose.

(i) Requires testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required under this section to be conducted in accordance with this section.

Sec. 796.004. ALTERNATIVE TEST METHODS. (a) Requires a manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with Section 796.003 to propose a test method and performance standard for the cigarette to the state fire marshal. Authorizes a manufacturer to use the proposed test method if the state fire marshal determines that the performance standard proposed by the manufacturer is equivalent to the performance standard under Section 796.003.

(b) Requires the state fire marshal to authorize a manufacturer to employ the alternative test method and performance standard to certify a cigarette for sale in this state if the state fire marshal makes certain determinations unless the state fire marshal demonstrates a reasonable basis why an alternative test should not be accepted under this chapter.

Sec. 796.005. CERTIFICATION. (a) Requires a cigarette's manufacturer, before the cigarette may be sold or offered for sale in this state, to certify in writing to the state fire marshal that the cigarette has been tested in accordance with and meets the performance standard in Section 796.003 or 796.004.

(b) Requires certification filed under this section to include certain information.

(c) Requires the state fire marshal to retain a copy of a certification and provide a copy to the comptroller to ensure compliance with this chapter.

(d) Requires a cigarette certified under this section to be recertified every three years.

(e) Requires a manufacturer, for each cigarette included in a certification, to pay to the state fire marshal a fee in the amount of \$250.

(f) Prohibits a cigarette certified under this section that is altered by the manufacturer in a way likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter from being sold or offered

for sale in this state unless the manufacturer retests the cigarette in accordance with Section 796.003 or 796.004 and maintains the records required by Section 796.007.

Sec. 796.006. MARKING OF PACKAGE. (a) Requires a manufacturer to mark, in eight-point or larger type, cigarettes certified by the manufacturer in accordance with Section 796.005 to indicate compliance with the requirements of Section 796.003. Sets forth certain information to which the marking is required to consist.

(b) Requires a manufacturer to present its proposed marking to the state fire marshal for approval. Provides that proposed markings are considered approved if the state fire marshal fails to disapprove the proposed markings on or before the 10th business day after the date the proposed markings are received. Requires the state fire marshal to approve a marking in use and approved for sale in another state, or with the letters "FSC" for Fire Standards Compliant appearing in eight-point or larger type and permanently printed, stamped, engraved, or embossed on the package at or near the Universal Product Code.

(c) Requires a manufacturer to use only one type of marking and apply the marking uniformly to all packages, including packs, cartons, and cases, and brands marketed by the manufacturer in this state.

(d) Prohibits a manufacturer from modifying its approved marking unless the state fire marshal has approved the modification.

(e) Requires a manufacturer to provide sufficient copies of an illustration of the package marking to a wholesale dealer and agent to which the manufacturer sells cigarettes and provide sufficient copies of an illustration of the package marking used by the manufacturer under this section for each retailer to which the wholesale dealers or agents will sell cigarettes. Requires a wholesale dealer and an agent to provide a copy of package markings received from a manufacturer to a retail dealer to which the wholesale dealer or agent sells cigarettes. Requires a wholesale dealer, agent, and retail dealer to permit the state fire marshal, the comptroller, and the attorney general to inspect markings of cigarette packaging marked in accordance with this section.

Sec. 796.007. MANUFACTURER RECORDS AND REPORTING. (a) Requires a manufacturer to maintain copies of the reports of all tests conducted on all cigarettes offered for sale for the previous three years and to make copies of the reports available to the state fire marshal on the state fire marshal's written request.

(b) Requires a manufacturer that fails to make copies of the reports available not later than 60 days after the date the manufacturer receives a written request to be subject to a civil penalty, imposed as provided by Section 796.010, in an amount not to exceed \$10,000 per violation. Provides that each day that the manufacturer does not make the copies available is a separate violation.

Sec. 796.008. RULES. Authorizes the state fire marshal to adopt rules to administer this chapter.

Sec. 796.009. INSPECTION. (a) Authorizes the state fire marshal to inspect the records and the stock of cigarettes of a person who manufactures, stores, or sells cigarettes to establish whether the person is complying with this chapter.

(b) Authorizes the comptroller of public accounts (comptroller), in the course of an inspection under Chapter 154, Tax Code, to inspect cigarettes for a marking required under Section 796.006 and report the comptroller's findings to the state fire marshal.

Sec. 796.010. CIVIL PENALTY; INJUNCTION. (a) Provides that a person who knowingly violates this chapter or a rule adopted under this chapter is subject to a civil penalty in certain amounts.

(b) Authorizes the attorney general, as determined by the attorney general or on request of the state fire marshal, to bring a civil action in a district court for certain actions if it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule or order adopted under this chapter.

(c) Provides that a cigarette sold or offered for sale in violation of this chapter is subject to forfeiture under Chapter 154, Tax Code, except that before a forfeited cigarette may be destroyed, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

(d) Requires a civil penalty collected under this section to be deposited to the credit of the fire prevention and public safety account.

Sec. 796.011. FIRE PREVENTION AND PUBLIC SAFETY ACCOUNT. (a) Provides that the fire prevention and public safety account is a separate account in the general revenue fund.

(b) Provides that the account consists of civil penalties collected under Section 796.010.

(c) Authorizes money in the account to be appropriated to the state fire marshal to support fire safety and prevention programs.

Sec. 796.012. SALE OUTSIDE OF TEXAS. Provides that this chapter does not prohibit a person from manufacturing or selling cigarettes that do not meet the requirements of this chapter under certain circumstances.

Sec. 796.013. INTERPRETATION. Requires this chapter to be so interpreted and construed as to effectuate its general purpose to make uniform this chapter with the laws of those states that have enacted reduced cigarette ignition propensity laws.

Sec. 796.014. CONSUMER TESTING. Provides that this chapter does not prohibit the sale of a cigarette solely for the purpose of the cigarette's assessment conducted by a manufacturer, or under the control and direction of a manufacturer to evaluate consumer acceptance of the cigarette by using only the quantity of cigarettes that is reasonably necessary for the assessment, and in a controlled setting in which the cigarettes are either consumed on-site or returned to the testing administrators at the conclusion of the testing.

Sec. 796.015. LOCAL REGULATION. Prohibits a political subdivision of this state from adopting or enforcing any ordinance or other regulation conflicting with, or preempted by, any provision of this chapter or with any policy of this state expressed by this chapter, whether that policy be expressed by inclusion of a provision in the chapter or by exclusion of that subject from the chapter.

Sec. 796.016. FEDERAL REGULATION. Provides that this chapter has no effect on and after the date that a federal reduced cigarette ignition propensity standard that preempts this chapter is adopted and becomes effective.

Sec. 796.017. REPORTS. Requires the state fire marshal, not later than January 1 of each odd-numbered year, to review the effectiveness of this chapter, submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate committees of the legislature on the state fire marshal's administration of this chapter, and make recommendations to improve the effectiveness of this chapter, if appropriate.

SECTION 2. (a) Provides that Subject to Subsection (b) of this section, the change in law made by Chapter 796, Health and Safety Code, as added by this Act, does not prohibit a wholesale

dealer or retailer from selling the person's existing inventory of cigarettes on or after the effective date of this Act if the person can establish that state tax stamps were affixed to the cigarettes before the effective date of this Act in a quantity that is comparable to the quantity of cigarettes purchased by the person during the previous year.

(b) Prohibits a person from selling or offering for sale a cigarette in this state that does not comply with Chapter 796, Health and Safety Code, as added by this Act, after October 1, 2009.

SECTION 3. Effective date: October 1, 2008.