

## **BILL ANALYSIS**

C.S.H.B. 2935  
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State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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.

The purpose of C.S.H.B. 2935 is to require cigarettes sold in Texas to meet testing requirements which 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**

It is the committee's opinion that rulemaking authority is expressly granted to the state fire marshal in SECTION 1 of this bill.

### **ANALYSIS**

SECTION 1. Subtitle C, Title 9, Health and Safety Code, is amended by adding Chapter 796, CIGARETTE FIRE SAFETY STANDARDS.

Sec. 796.001 defines agent, cigarette, manufacturer, retailer, sale, sell, and wholesale dealer.

Sec. 796.002 prohibits a cigarette from being sold or offered for sale in this state unless the cigarette has been tested in accordance with Section 796.003; the cigarette meets the performance standard under Section 796.003; a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 796.005; and the cigarette has been marked in accordance with Section 796.006.

Sec. 796.003 provides a list of conditions a manufacturer and a laboratory are required to meet to ensure that tests on cigarettes are conducted appropriately. The section 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 that not more than 25 percent of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns.

The section provides that certain characteristics must be present if a cigarette submitted for testing uses lowered permeability bands to comply with the performance standards under this section. The section does not require additional testing if a cigarette is tested in a manner that is consistent with this chapter for any other purpose. The section requires the state fire marshal to perform or sponsor testing in accordance with this section to determine a cigarette's compliance with the performance standard required under this section.

Sec. 796.004 provides that an alternate testing method be allowed for a manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with Section 796.003. The section sets forth the responsibilities of a manufacturer and the state fire marshal to establish an alternate testing method.

Sec. 796.005 provides that before a cigarette is authorized to be sold or offered for sale in this state, the cigarette's manufacturer must 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. The section provides a list of information that must be included with a filed certification. The section requires the state fire marshal to retain and provide a copy of the certification to the comptroller. The section requires a cigarette certification to be recertified every three years, a manufacturer to pay the state fire marshal \$250 for each cigarette included in a certification, and retesting if a certified cigarette is altered by the manufacturer.

Sec. 796.006 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. The marking must consist of a modification of the product Universal Product Code to include a visible mark printed at or around the area of the Universal Product Code and permanently stamped, engraved, embossed, or printed in conjunction with the Universal Product Code; a visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or other printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter. The section sets forth the actions necessary to have a marking of a package approved, distributed, and modified.

Sec. 796.007 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 make copies of the reports available to the state fire marshal on the state fire marshal's written request. The section provides that 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 is required to be subject to a civil penalty, imposed as provided by Section 796.010, in an amount not to exceed \$10,000 per violation. The section provides that each day that the manufacturer does not make the copies available is a separate violation.

Sec. 796.008. The state fire marshal is authorized to adopt rules to administer this chapter.

Sec. 796.009 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. The section authorizes the comptroller, in the course of an inspection under Chapter 154, Tax Code, to inspect cigarettes for a marking required under Section 793.006 and report the comptroller's findings to the state fire marshal.

Sec. 796.010 provides that a person who knowingly violates this chapter or a rule adopted under this chapter is subject to civil penalties.

The section authorizes the attorney general to bring a civil action in a district court 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. The section requires a civil penalty collected under this section to be deposited to the credit of the fire prevention and public safety account. The section 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.

Sec. 796.011 provides that the fire prevention and public safety account is a separate account in the general revenue fund and consists of civil penalties collected under Section 796.010. The section authorizes money in the account to be appropriated to the state fire marshal to support fire safety and prevention programs.

Sec. 796.012 provides that this chapter does not prohibit a person from manufacturing or selling cigarettes that do not meet the requirements of this chapter if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States; and the

person has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale in this state.

Sec. 796.013 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 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 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 provides that on and after the date that a federal reduced cigarette ignition propensity standard that preempts this chapter is adopted and becomes effective, this chapter has no effect.

Sec. 796.017 requires the state fire marshal 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 if appropriate, make recommendations to improve the effectiveness of this chapter, not later than January 1 of each odd-numbered year.

SECTION 2. (a) 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) A person may not sell or offer 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. This Act takes effect October 1, 2008.

#### **EFFECTIVE DATE**

October 1, 2008.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

##### SECTION 1.

Sec. 796.001. The substitute replaces the original language, "not a cigar," with language to make the definition of cigarette consistent with the definition of "cigarette" in the Federal Cigarette Labeling and Advertising Act.

Sec. 796.001. The substitute modifies the original by adding the definitions of "sale" and "sell" to clarify the scope of this legislation. The substitute makes conforming changes.

Sec. 796.002. The substitute adds the phrase "or offered for sale in this state" to the original to clarify the scope of this legislation.

Sec. 796.003. The substitute amends the original to read, "in a complete test trial of 40 replica tests," to clarify the scope and testing requirements of this legislation. The substitute replaces the

original language "labeled end" with "filter end" to clarify which end of the cigarette is being referenced. The substitute adds subsections (h) and (i) to read as follows:

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

Sec. 796.004. No changes.

Sec. 796.005. The substitute adds the phrase "offered for sale in this state" to the original to clarify the scope of this legislation. The sub also adds "or Section 796.004" to address a situation where a manufacturer certifies compliance using an alternative testing method. The substitute requires a manufacturer to pay \$250 for each cigarette included in a certification whereas the original allowed the state fire marshal to determine the amount to be paid.

Sec. 796.006. The substitute modifies the original by deleting, "The state fire marshal must approve any marking in use and approved for sale in another state." The substitute also adds, "The state fire marshal must 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."

Sec. 796.007. The substitute changes the original language, "\$10,000," to read "\$10,000 per violation".

Sec. 796.008. The substitute changes the original language "shall" to read "may."

Sec. 796.009. No changes.

Sec. 796.010. The substitute changes the original language "violates" to read "knowingly violates". The substitute modifies the original subdivision (1) and subdivision (2) to read:

(1) if the person is a manufacturer, wholesale dealer, or agent knowingly selling or offering to sell a cigarette in violation of this chapter, a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale, but not more than \$100,000 for all violations occurring within a 30-day period;

(2) if the person is a retailer knowingly selling or offering to sell a cigarette in violation of this chapter, a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale, but not more than \$25,000 for all violations occurring within a 30-day period;

The substitute deletes the original subdivision (3). The substitute makes conforming changes. The changes allow the penalties to be assessed based on the number of "packs" instead of "sales" involved. The substitute replaces the original language, "seized," with "forfeited" to ensure consistency with the language of this section.

Sec. 796.011. No changes.

Sec. 796.012. No changes.

Sec. 796.013. The substitute adds a new section titled "INTERPRETATION" and provides that this chapter is required 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. The substitute adds a new section titled, "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. The substitute replaces the original Sec. 796.013 to prohibit political subdivisions from adopting or enforcing any ordinance or other regulation that would be inconsistent with the state standard ascribed in this legislation.

Sec. 796.016. The substitute adds a new section titled, "FEDERAL REGULATION" and provides that on and after the date that a federal reduced cigarette ignition propensity standard that preempts this chapter is adopted and becomes effective, this chapter has no effect.

Sec. 796.017. The substitute replaces the original Sec. 796.014 to require the state fire marshal 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 if appropriate, make recommendations to improve the effectiveness of this chapter, not later than January 1 of each odd-numbered year.

## SECTION 2.

The substitute replaces the original SECTION 2 to provide that (a) 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) A person may not sell or offer 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.

The substitute replaces the original SECTION 3 language of September 1, 2007, with October 1, 2008, to allow more time for compliance with this legislation.