

By: Driver

H.B. No. 1421

A BILL TO BE ENTITLED

AN ACT

relating to the creation and prosecution of the offense of manufacture or sale of counterfeit or gray market cigarettes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 32, Penal Code, is amended by adding Section 32.235 to read as follows:

Sec. 32.235. MANUFACTURE OR SALE OF COUNTERFEIT OR GRAY MARKET CIGARETTES. (a) In this section:

(1) "Cigarette" means a roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco. The term does not include a cigar.

(2) "Counterfeit cigarette" means a cigarette in an individual package of cigarettes or other container that has a:

(A) false manufacturing label; or

(B) counterfeit stamp.

(3) "Counterfeit cigarette paper" means a cigarette paper that has a false manufacturing label or that has not been printed, manufactured, or made by authority of the trademark owner.

(4) "Gray market cigarette" means a cigarette in a package that bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend for the cigarette to be sold, distributed, or used in the United States, including a label stating:

1 (A) "For Export Only";

2 (B) "U.S. Tax Exempt"; or

3 (C) "For Use Outside U.S."

4 (5) "Gray market cigarette paper" means a cigarette
5 paper in a package that bears any statement, label, stamp, sticker,
6 or notice indicating that the manufacturer did not intend for the
7 cigarette paper to be sold, distributed, or used in the United
8 States, including a label stating:

9 (A) "For Export Only";

10 (B) "U.S. Tax Exempt"; or

11 (C) "For Use Outside U.S."

12 (b) A person commits an offense if the person intentionally:

13 (1) manufactures, displays, advertises, distributes,
14 offers for sale, sells, or possesses with intent to sell or
15 distribute a counterfeit cigarette or counterfeit cigarette paper;
16 or

17 (2) displays, advertises, distributes, offers for
18 sale, sells, or possesses with intent to sell or distribute a gray
19 market cigarette or gray market cigarette paper.

20 (c) An offense under this section is a:

21 (1) Class C misdemeanor if the retail value of the item
22 that is the object of the offense is less than \$20;

23 (2) Class B misdemeanor if the retail value of the item
24 that is the object of the offense is \$20 or more but less than \$500;

25 (3) Class A misdemeanor if the retail value of the item
26 that is the object of the offense is \$500 or more but less than
27 \$1,500;

1 (4) state jail felony if the retail value of the item
2 that is the object of the offense is \$1,500 or more but less than
3 \$20,000;

4 (5) felony of the third degree if the retail value of
5 the item that is the object of the offense is \$20,000 or more but
6 less than \$100,000;

7 (6) felony of the second degree if the retail value of
8 the item that is the object of the offense is \$100,000 or more but
9 less than \$200,000; or

10 (7) felony of the first degree if the retail value of
11 the item that is the object of the offense is \$200,000 or more.

12 (d) For the purposes of Subsection (c), when items are the
13 subject of a violation of this section pursuant to one scheme or
14 continuing course of conduct, the conduct may be considered as one
15 offense and the retail value of the items aggregated in determining
16 the grade of offense.

17 (e) If conduct that constitutes an offense under this
18 section also constitutes an offense under any other law, the actor
19 may be prosecuted under this section, the other law, or both.

20 SECTION 2. This Act takes effect September 1, 2007.