

By: King of Parker, Gallego

H.B. No. 2935

Substitute the following for H.B. No. 2935:

By: Swinford

C.S.H.B. No. 2935

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of cigarettes; providing a penalty.

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

SECTION 1. Subtitle C, Title 9, Health and Safety Code, is amended by adding Chapter 796 to read as follows:

CHAPTER 796. CIGARETTE FIRE SAFETY STANDARDS

Sec. 796.001. DEFINITIONS. In this chapter:

(1) "Agent" means a person licensed by the comptroller to purchase and affix adhesive or meter stamps on packages of cigarettes.

(2) "Cigarette" means a roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; or

(B) that is wrapped in any substance containing tobacco that, because of the roll's appearance, the type of tobacco used in the filler, or the roll's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(3) "Manufacturer" means:

(A) a person that manufactures or otherwise produces cigarettes for sale in this state, including cigarettes intended to be sold through an importer; or

(B) the first purchaser that intends to resell in this state cigarettes manufactured anywhere that the original

1 manufacturer does not intend to be sold in this state.

2 (4) "Retailer" means a person, other than a wholesale  
3 dealer, engaged in selling cigarettes or tobacco products.

4 (5) "Sale" means any transfer of title or possession  
5 or both, exchange or barter, conditional or otherwise, in any  
6 manner or by any means or any agreement. The term includes, in  
7 addition to sales using cash or credit, the giving of a cigarette as  
8 a sample, prize, or gift and the exchange of a cigarette for any  
9 consideration other than money.

10 (6) "Sell" means to sell or to offer or agree to sell.

11 (7) "Wholesale dealer" means a person who sells  
12 cigarettes or tobacco products to retail dealers or other persons  
13 for purposes of resale, including a person who owns, operates, or  
14 maintains one or more cigarette or tobacco product vending machines  
15 in premises owned or occupied by another person.

16 Sec. 796.002. REQUIREMENTS FOR SALE OF CIGARETTE. A  
17 cigarette may not be sold or offered for sale in this state unless:

18 (1) the cigarette has been tested in accordance with  
19 Section 796.003;

20 (2) the cigarette meets the performance standard under  
21 Section 796.003;

22 (3) a written certification has been filed by the  
23 manufacturer with the state fire marshal in accordance with Section  
24 796.005; and

25 (4) the cigarette has been marked in accordance with  
26 Section 796.006.

27 Sec. 796.003. TESTING. (a) A manufacturer of cigarettes

1 shall ensure that tests on cigarettes are conducted:

2 (1) in accordance with Standard Test Method for  
3 Measuring the Ignition Strength of Cigarettes, E2187-04, by the  
4 American Society of Testing and Materials, as that standard existed  
5 on January 1, 2007;

6 (2) on 10 layers of filter paper; and

7 (3) in a complete test trial of 40 replica tests.

8 (b) Not more than 25 percent of the cigarettes tested in a  
9 test trial in accordance with this section may exhibit full-length  
10 burns.

11 (c) The performance standard required by this section shall  
12 only be applied to a complete test trial.

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

18 (e) A laboratory testing in accordance with this section  
19 shall implement a quality control and quality assurance program to  
20 ensure that operator bias, systematic and nonsystematic  
21 methodological errors, and equipment-related problems do not  
22 affect the results of the testing. The program must include a  
23 procedure to determine the repeatability of the testing results.  
24 The repeatability value may not be greater than 0.19. For purposes  
25 of this subsection, "repeatability value" means the range of values  
26 within which the repeat results of cigarette test trials from a  
27 single laboratory will fall 95 percent of the time.

1       (f) The state fire marshal may adopt a subsequent ASTM  
2 Standard Test Method for Measuring the Ignition Strength of  
3 Cigarettes on finding that the subsequent method does not result in  
4 a change in the percentage of full-length burns exhibited by any  
5 tested cigarette when compared to the percentage of full-length  
6 burns the same cigarette would exhibit when tested in accordance  
7 with ASTM Standard E2187-04 and the performance standard in  
8 Subsection (b).

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

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

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

27       Sec. 796.004. ALTERNATIVE TEST METHODS. (a) A

1 manufacturer of a cigarette that the state fire marshal determines  
2 cannot be tested in accordance with Section 796.003 shall propose a  
3 test method and performance standard for the cigarette to the state  
4 fire marshal. If the state fire marshal determines that the  
5 performance standard proposed by the manufacturer is equivalent to  
6 the performance standard under Section 796.003, the manufacturer  
7 may use the proposed test method.

8 (b) Unless the state fire marshal demonstrates a reasonable  
9 basis why an alternative test should not be accepted under this  
10 chapter, the state fire marshal shall authorize a manufacturer to  
11 employ the alternative test method and performance standard to  
12 certify a cigarette for sale in this state if the state fire  
13 marshal:

14 (1) determines that another state has enacted reduced  
15 cigarette ignition propensity standards that include a test method  
16 and performance standard that are the same as those contained in  
17 this chapter; and

18 (2) finds that the officials responsible for  
19 implementing those requirements have approved an alternative test  
20 method and performance standard for a particular cigarette proposed  
21 by a manufacturer as meeting the fire safety standards of that  
22 state's law or regulation under a legal provision comparable to  
23 this section.

24 Sec. 796.005. CERTIFICATION. (a) Before a cigarette may be  
25 sold or offered for sale in this state, the cigarette's  
26 manufacturer must certify in writing to the state fire marshal that  
27 the cigarette has been tested in accordance with and meets the

1 performance standard in Section 796.003 or 796.004.

2 (b) A certification filed under this section must include  
3 the following information:

4 (1) brand or trade name on the package;

5 (2) style, such as light or ultra light;

6 (3) length in millimeters;

7 (4) circumference in millimeters;

8 (5) flavor, such as menthol or chocolate, if  
9 applicable;

10 (6) filter or nonfilter;

11 (7) package description, such as soft pack or box;

12 (8) marking approved in accordance with Section  
13 796.006;

14 (9) the name, address, and telephone number of the  
15 laboratory, if different from the manufacturer that conducted the  
16 test; and

17 (10) the date that the testing occurred.

18 (c) The state fire marshal shall retain a copy of a  
19 certification and provide a copy to the comptroller to ensure  
20 compliance with this chapter.

21 (d) A cigarette certified under this section shall be  
22 recertified every three years.

23 (e) For each cigarette included in a certification, a  
24 manufacturer shall pay to the state fire marshal a fee in the amount  
25 of \$250.

26 (f) A cigarette certified under this section that is altered  
27 by the manufacturer in a way likely to alter its compliance with the

1 reduced cigarette ignition propensity standards required by this  
2 chapter may not be sold or offered for sale in this state unless the  
3 manufacturer retests the cigarette in accordance with Section  
4 796.003 or 796.004 and maintains the records required by Section  
5 796.007.

6 Sec. 796.006. MARKING OF PACKAGE. (a) A manufacturer shall  
7 mark, in eight-point or larger type, cigarettes certified by the  
8 manufacturer in accordance with Section 796.005 to indicate  
9 compliance with the requirements of Section 796.003. The marking  
10 must consist of:

11 (1) modification of the product Universal Product Code  
12 to include a visible mark printed at or around the area of the  
13 Universal Product Code and permanently stamped, engraved,  
14 embossed, or printed in conjunction with the Universal Product  
15 Code;

16 (2) a visible combination of alphanumeric or symbolic  
17 characters permanently stamped, engraved, or embossed upon the  
18 cigarette package or cellophane wrap; or

19 (3) other printed, stamped, engraved, or embossed text  
20 that indicates that the cigarettes meet the standards of this  
21 chapter.

22 (b) A manufacturer shall present its proposed marking to the  
23 state fire marshal for approval. Proposed markings are considered  
24 approved if the state fire marshal fails to disapprove the proposed  
25 markings on or before the 10th business day after the date the  
26 proposed markings are received. The state fire marshal must  
27 approve a marking:

1           (1) in use and approved for sale in another state; or

2           (2) with the letters "FSC" for Fire Standards  
3 Compliant appearing in eight-point or larger type and permanently  
4 printed, stamped, engraved, or embossed on the package at or near  
5 the Universal Product Code.

6           (c) A manufacturer shall use only one type of marking and  
7 shall apply the marking uniformly to all packages, including packs,  
8 cartons, and cases, and brands marketed by the manufacturer in this  
9 state.

10           (d) A manufacturer may not modify its approved marking  
11 unless the state fire marshal has approved the modification.

12           (e) A manufacturer shall provide sufficient copies of an  
13 illustration of the package marking to a wholesale dealer and agent  
14 to which the manufacturer sells cigarettes and provide sufficient  
15 copies of an illustration of the package marking used by the  
16 manufacturer under this section for each retailer to which the  
17 wholesale dealers or agents will sell cigarettes. A wholesale  
18 dealer and an agent shall provide a copy of package markings  
19 received from a manufacturer to a retail dealer to which the  
20 wholesale dealer or agent sells cigarettes. A wholesale dealer,  
21 agent, and retail dealer shall permit the state fire marshal, the  
22 comptroller, and the attorney general to inspect markings of  
23 cigarette packaging marked in accordance with this section.

24           Sec. 796.007. MANUFACTURER RECORDS AND REPORTING. (a) A  
25 manufacturer shall maintain copies of the reports of all tests  
26 conducted on all cigarettes offered for sale for the previous three  
27 years and shall make copies of the reports available to the state



1 fire marshal on the state fire marshal's written request.

2 (b) A manufacturer that fails to make copies of the reports  
3 available not later than 60 days after the date the manufacturer  
4 receives a written request shall be subject to a civil penalty,  
5 imposed as provided by Section 796.010, in an amount not to exceed  
6 \$10,000 per violation. Each day that the manufacturer does not make  
7 the copies available is a separate violation.

8 Sec. 796.008. RULES. The state fire marshal may adopt rules  
9 to administer this chapter.

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

14 (b) The comptroller may, in the course of an inspection  
15 under Chapter 154, Tax Code, inspect cigarettes for a marking  
16 required under Section 793.006 and report the comptroller's  
17 findings to the state fire marshal.

18 Sec. 796.010. CIVIL PENALTY; INJUNCTION. (a) A person who  
19 knowingly violates this chapter or a rule adopted under this  
20 chapter is subject to a civil penalty in the following amounts:

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

26 (2) if the person is a retailer knowingly selling or  
27 offering to sell a cigarette in violation of this chapter, a civil

1 penalty not to exceed \$100 for each pack of cigarettes sold or  
2 offered for sale, but not more than \$25,000 for all violations  
3 occurring within a 30-day period;

4 (3) if the person knowingly makes a false  
5 certification under Section 796.005, a civil penalty not to exceed  
6 \$75,000 for a first violation or \$250,000 for a second or subsequent  
7 violation; and

8 (4) if the person violates another provision of this  
9 chapter, other than Section 796.007(b), or another rule adopted  
10 under this chapter, a civil penalty not to exceed \$1,000 for a first  
11 violation or \$5,000 for a second or subsequent violation.

12 (b) If it appears that a person has violated, is violating,  
13 or is threatening to violate this chapter or a rule or order adopted  
14 under this chapter, the attorney general, as determined by the  
15 attorney general or on request of the state fire marshal, may bring  
16 a civil action in a district court for:

17 (1) injunctive relief to restrain the person from  
18 continuing the violation or threat of violation;

19 (2) the assessment of a civil penalty; or

20 (3) both injunctive relief and a civil penalty.

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

26 (d) A civil penalty collected under this section shall be  
27 deposited to the credit of the fire prevention and public safety

1 account.

2 Sec. 796.011. FIRE PREVENTION AND PUBLIC SAFETY ACCOUNT.

3 (a) The fire prevention and public safety account is a separate  
4 account in the general revenue fund.

5 (b) The account consists of civil penalties collected under  
6 Section 796.010.

7 (c) Money in the account may be appropriated to the state  
8 fire marshal to support fire safety and prevention programs.

9 Sec. 796.012. SALE OUTSIDE OF TEXAS. This chapter does not  
10 prohibit a person from manufacturing or selling cigarettes that do  
11 not meet the requirements of this chapter if:

12 (1) the cigarettes are or will be stamped for sale in  
13 another state or are packaged for sale outside the United States;  
14 and

15 (2) the person has taken reasonable steps to ensure  
16 that the cigarettes will not be sold or offered for sale in this  
17 state.

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

22 Sec. 796.014. CONSUMER TESTING. This chapter does not  
23 prohibit the sale of a cigarette solely for the purpose of the  
24 cigarette's assessment conducted by a manufacturer, or under the  
25 control and direction of a manufacturer:

26 (1) to evaluate consumer acceptance of the cigarette  
27 by using only the quantity of cigarettes that is reasonably

1 necessary for the assessment; and

2 (2) in a controlled setting in which the cigarettes  
3 are either consumed on-site or returned to the testing  
4 administrators at the conclusion of the testing.

5 Sec. 796.015. LOCAL REGULATION. A political subdivision of  
6 this state may not adopt or enforce any ordinance or other  
7 regulation conflicting with, or preempted by, any provision of this  
8 chapter or with any policy of this state expressed by this chapter,  
9 whether that policy be expressed by inclusion of a provision in the  
10 chapter or by exclusion of that subject from the chapter.

11 Sec. 796.016. FEDERAL REGULATION. On and after the date  
12 that a federal reduced cigarette ignition propensity standard that  
13 preempts this chapter is adopted and becomes effective, this  
14 chapter has no effect.

15 Sec. 796.017. REPORTS. Not later than January 1 of each  
16 odd-numbered year, the state fire marshal shall:

17 (1) review the effectiveness of this chapter;

18 (2) submit a report to the governor, the lieutenant  
19 governor, the speaker of the house of representatives, and the  
20 appropriate committees of the legislature on the state fire  
21 marshal's administration of this chapter; and

22 (3) make recommendations to improve the effectiveness  
23 of this chapter, if appropriate.

24 SECTION 2. (a) Subject to Subsection (b) of this section,  
25 the change in law made by Chapter 796, Health and Safety Code, as  
26 added by this Act, does not prohibit a wholesale dealer or retailer  
27 from selling the person's existing inventory of cigarettes on or

1 after the effective date of this Act if the person can establish  
2 that state tax stamps were affixed to the cigarettes before the  
3 effective date of this Act in a quantity that is comparable to the  
4 quantity of cigarettes purchased by the person during the previous  
5 year.

6 (b) A person may not sell or offer for sale a cigarette in  
7 this state that does not comply with Chapter 796, Health and Safety  
8 Code, as added by this Act, after October 1, 2009.

9 SECTION 3. This Act takes effect October 1, 2008.