

By: King of Parker

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; and

(B) that is not a cigar.

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

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

1 (5) "Wholesale dealer" means a person who sells
2 cigarettes or tobacco products to retail dealers or other persons
3 for purposes of resale, including a person who owns, operates, or
4 maintains one or more cigarette or tobacco product vending machines
5 in premises owned or occupied by another person.

6 Sec. 796.002. REQUIREMENTS FOR SALE OF CIGARETTE. A
7 cigarette may not be sold unless:

8 (1) the cigarette has been tested in accordance with
9 Section 796.003;

10 (2) the cigarette meets the performance standard under
11 Section 796.003;

12 (3) a written certification has been filed by the
13 manufacturer with the state fire marshal in accordance with Section
14 796.005; and

15 (4) the cigarette has been marked in accordance with
16 Section 796.006.

17 Sec. 796.003. TESTING. (a) A manufacturer of cigarettes
18 shall ensure that tests on cigarettes are conducted:

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

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

24 (3) in complete test trials of 40 replicate tests.

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

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

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

8 (e) A laboratory testing in accordance with this section
9 shall implement a quality control and quality assurance program to
10 ensure that operator bias, systematic and nonsystematic
11 methodological errors, and equipment-related problems do not
12 affect the results of the testing. The program must include a
13 procedure to determine the repeatability of the testing results.
14 The repeatability value may not be greater than 0.19. For purposes
15 of this subsection, "repeatability value" means the range of values
16 within which the repeat results of cigarette test trials from a
17 single laboratory will fall 95 percent of the time.

18 (f) The state fire marshal may adopt a subsequent ASTM
19 Standard Test Method for Measuring the Ignition Strength of
20 Cigarettes on finding that the subsequent method does not result in
21 a change in the percentage of full-length burns exhibited by any
22 tested cigarette when compared to the percentage of full-length
23 burns the same cigarette would exhibit when tested in accordance
24 with ASTM Standard E2187-04 and the performance standard in
25 Subsection (b).

26 (g) A cigarette submitted for testing that uses lowered
27 permeability bands in the cigarette paper to comply with the

1 performance standard under this section must have at least two
2 nominally identical bands on the paper surrounding the tobacco
3 column and at least one complete band not less than 15 millimeters
4 from the lighting end of the cigarette. A cigarette on which the
5 bands are positioned by design must have at least two bands located
6 not less than 15 millimeters from the lighting end and 10
7 millimeters from the labeled end of the tobacco column or 10
8 millimeters from the labeled end of the tobacco column for
9 nonfiltered cigarettes.

10 Sec. 796.004. ALTERNATIVE TEST METHODS. (a) A
11 manufacturer of a cigarette that the state fire marshal determines
12 cannot be tested in accordance with Section 796.003 shall propose a
13 test method and performance standard for the cigarette to the state
14 fire marshal. If the state fire marshal determines that the
15 performance standard proposed by the manufacturer is equivalent to
16 the performance standard under Section 796.003, the manufacturer
17 may use the proposed test method.

18 (b) Unless the state fire marshal demonstrates a reasonable
19 basis why an alternative test should not be accepted under this
20 chapter, the state fire marshal shall authorize a manufacturer to
21 employ the alternative test method and performance standard to
22 certify a cigarette for sale in this state if the state fire
23 marshal:

24 (1) determines that another state has enacted reduced
25 cigarette ignition propensity standards that include a test method
26 and performance standard that are the same as those contained in
27 this chapter; and

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

7 Sec. 796.005. CERTIFICATION. (a) Before a cigarette may be
8 sold in this state, the cigarette's manufacturer must certify in
9 writing to the state fire marshal that the cigarette has been tested
10 in accordance with and meets the performance standards in Section
11 769.003.

12 (b) A certification filed under this section must include
13 the following information:

14 (1) brand or trade name on the package;
15 (2) style, such as light or ultra light;
16 (3) length in millimeters;
17 (4) circumference in millimeters;
18 (5) flavor, such as menthol or chocolate, if
19 applicable;

20 (6) filter or nonfilter;
21 (7) package description, such as soft pack or box;
22 (8) marking approved in accordance with Section
23 796.006;

24 (9) the name, address, and telephone number of the
25 laboratory, if different from the manufacturer that conducted the
26 test; and

27 (10) the date that the testing occurred.

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

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

6 (e) For each cigarette included in a certification, a
7 manufacturer shall pay to the state fire marshal a fee in the amount
8 determined by the state fire marshal. The state fire marshal shall
9 set the fees collected under this chapter in amounts sufficient to
10 pay the actual costs of administering this chapter.

11 (f) A cigarette certified under this section that is altered
12 by the manufacturer in a way likely to alter its compliance with the
13 reduced cigarette ignition propensity standards required by this
14 chapter may not be sold or offered for sale in this state unless the
15 manufacturer retests the cigarette in accordance with Section
16 796.003 and maintains the records required by Section 796.007.

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

22 (1) modification of the product Universal Product Code
23 to include a visible mark printed at or around the area of the
24 Universal Product Code and permanently stamped, engraved,
25 embossed, or printed in conjunction with the Universal Product
26 Code;

27 (2) a visible combination of alphanumeric or symbolic

1 characters permanently stamped, engraved, or embossed upon the
2 cigarette package or cellophane wrap; or

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

6 (b) A manufacturer shall present its proposed marking to the
7 state fire marshal for approval. The state fire marshal must
8 approve any marking in use and approved for sale in another state.
9 Proposed markings are considered approved if the state fire marshal
10 fails to disapprove the proposed markings on or before the 10th
11 business day after the date the proposed markings are received.

12 (c) A manufacturer shall use only one type of marking and
13 shall apply the marking uniformly to all packages, including packs,
14 cartons, and cases, and brands marketed by the manufacturer in this
15 state.

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

18 (e) A manufacturer shall provide sufficient copies of an
19 illustration of the package marking to a wholesale dealer and agent
20 to which the manufacturer sells cigarettes and provide sufficient
21 copies of an illustration of the package marking used by the
22 manufacturer under this section for each retailer to which the
23 wholesale dealers or agents will sell cigarettes. A wholesale
24 dealer and an agent shall provide a copy of package markings
25 received from a manufacturer to a retail dealer to which the
26 wholesale dealer or agent sells cigarettes. A wholesale dealer,
27 agent, and retail dealer shall permit the state fire marshal, the

1 comptroller, and the attorney general to inspect markings of
2 cigarette packaging marked in accordance with this section.

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

8 (b) A manufacturer that fails to make copies of the reports
9 available not later than 60 days after the date the manufacturer
10 receives a written request shall be subject to a civil penalty,
11 imposed as provided by Section 796.010, in an amount not to exceed
12 \$10,000. Each day that the manufacturer does not make the copies
13 available is a separate violation.

14 Sec. 796.008. RULES. The state fire marshal shall adopt
15 rules to administer this chapter.

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

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

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

27 (1) if the person is a manufacturer, wholesale dealer,

1 or agent selling a cigarette in violation of this chapter, a civil
2 penalty not to exceed \$10,000 for a first violation or \$25,000 for a
3 second or subsequent violation, but not more than \$100,000 for all
4 violations occurring within a 30-day period;

5 (2) if the person is a retailer selling fewer than
6 1,000 cigarettes in violation of this chapter, a civil penalty not
7 to exceed \$500 for a first violation or \$2,000 for a second or
8 subsequent violation;

9 (3) if the person is a retailer selling 1,000
10 cigarettes or more in violation of this chapter, a civil penalty not
11 to exceed \$1,000 for a first violation or \$5,000 for a second or
12 subsequent violation;

13 (4) if the person knowingly makes a false
14 certification under Section 796.005, a civil penalty not to exceed
15 \$75,000 for a first violation or \$250,000 for a second or subsequent
16 violation; and

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

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

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

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

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

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

8 (d) A civil penalty collected under this section shall be
9 deposited to the credit of the fire prevention and public safety
10 account.

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

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

14 (b) The account consists of civil penalties collected under
15 Section 796.010.

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

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

21 (1) the cigarettes are or will be stamped for sale in
22 another state or are packaged for sale outside the United States;
23 and

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

27 Sec. 796.013. LOCAL REGULATION. A political subdivision

1 may regulate the fire safety of cigarettes only if the regulation is
2 more stringent than the requirements of this chapter and the rules
3 adopted under this chapter.

4 Sec. 796.014. REPORTS. Not later than January 1 of each
5 odd-numbered year, the state fire marshal shall:

6 (1) review the effectiveness of the testing conducted
7 under this chapter;

8 (2) submit a report to the governor, the lieutenant
9 governor, the speaker of the house of representatives, and the
10 appropriate committees of the legislature on the state fire
11 marshal's administration of this chapter; and

12 (3) make recommendations to improve the effectiveness
13 of cigarette testing under this chapter, if appropriate.

14 SECTION 2. The change in law made by Chapter 796, Health and
15 Safety Code, does not apply to cigarettes with state tax stamps
16 affixed to the cigarettes before the effective date of this Act.

17 SECTION 3. This Act takes effect September 1, 2007.