

1-1 By: King of Parker, Gallego (Senate Sponsor - West) H.B. No. 2935
1-2 (In the Senate - Received from the House May 11, 2007;
1-3 May 15, 2007, read first time and referred to Committee on Health
1-4 and Human Services; May 18, 2007, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 7,
1-6 Nays 0; May 18, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2935 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of cigarettes; providing a penalty.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subtitle C, Title 9, Health and Safety Code, is
1-13 amended by adding Chapter 796 to read as follows:

1-14 CHAPTER 796. CIGARETTE FIRE SAFETY STANDARDS

1-15 Sec. 796.001. DEFINITIONS. In this chapter:

1-16 (1) "Agent" means a person licensed by the comptroller
1-17 to purchase and affix adhesive or meter stamps on packages of
1-18 cigarettes.

1-19 (2) "Cigarette" means a roll for smoking:

1-20 (A) that is made of tobacco or tobacco mixed with
1-21 another ingredient and wrapped or covered with a material other
1-22 than tobacco; or

1-23 (B) that is wrapped in any substance containing
1-24 tobacco that, because of the roll's appearance, the type of tobacco
1-25 used in the filler, or the roll's packaging and labeling, is likely
1-26 to be offered to or purchased by a consumer as a cigarette.

1-27 (3) "Manufacturer" means:

1-28 (A) a person that manufactures or otherwise
1-29 produces cigarettes for sale in this state, including cigarettes
1-30 intended to be sold through an importer; or

1-31 (B) the first purchaser that intends to resell in
1-32 this state cigarettes manufactured anywhere that the original
1-33 manufacturer does not intend to be sold in this state.

1-34 (4) "Retailer" means a person, other than a wholesale
1-35 dealer, engaged in selling cigarettes or tobacco products.

1-36 (5) "Sale" means any transfer of title or possession
1-37 or both, exchange or barter, conditional or otherwise, in any
1-38 manner or by any means or any agreement. The term includes, in
1-39 addition to sales using cash or credit, the giving of a cigarette as
1-40 a sample, prize, or gift and the exchange of a cigarette for any
1-41 consideration other than money.

1-42 (6) "Sell" means to sell or to offer or agree to sell.

1-43 (7) "Wholesale dealer" means a person who sells
1-44 cigarettes or tobacco products to retail dealers or other persons
1-45 for purposes of resale, including a person who owns, operates, or
1-46 maintains one or more cigarette or tobacco product vending machines
1-47 in premises owned or occupied by another person.

1-48 Sec. 796.002. REQUIREMENTS FOR SALE OF CIGARETTE. A
1-49 cigarette may not be sold or offered for sale in this state unless:

1-50 (1) the cigarette has been tested in accordance with
1-51 Section 796.003;

1-52 (2) the cigarette meets the performance standard under
1-53 Section 796.003;

1-54 (3) a written certification has been filed by the
1-55 manufacturer with the state fire marshal in accordance with Section
1-56 796.005; and

1-57 (4) the cigarette has been marked in accordance with
1-58 Section 796.006.

1-59 Sec. 796.003. TESTING. (a) A manufacturer of cigarettes
1-60 shall ensure that tests on cigarettes are conducted:

1-61 (1) in accordance with Standard Test Method for
1-62 Measuring the Ignition Strength of Cigarettes, E2187-04, by the
1-63 American Society of Testing and Materials, as that standard existed
1-64 on January 1, 2007;

2-1 (2) on 10 layers of filter paper; and
 2-2 (3) in a complete test trial of 40 replica tests.

2-3 (b) Not more than 25 percent of the cigarettes tested in a
 2-4 test trial in accordance with this section may exhibit full-length
 2-5 burns.

2-6 (c) The performance standard required by this section shall
 2-7 only be applied to a complete test trial.

2-8 (d) A written certification shall be based on testing
 2-9 conducted by a laboratory that has been accredited pursuant to
 2-10 standard ISO/IEC 17025 of the International Organization for
 2-11 Standardization, or another comparable accreditation standard
 2-12 required by the state fire marshal.

2-13 (e) A laboratory testing in accordance with this section
 2-14 shall implement a quality control and quality assurance program to
 2-15 ensure that operator bias, systematic and nonsystematic
 2-16 methodological errors, and equipment-related problems do not
 2-17 affect the results of the testing. The program must include a
 2-18 procedure to determine the repeatability of the testing results.
 2-19 The repeatability value may not be greater than 0.19. For purposes
 2-20 of this subsection, "repeatability value" means the range of values
 2-21 within which the repeat results of cigarette test trials from a
 2-22 single laboratory will fall 95 percent of the time.

2-23 (f) The state fire marshal may adopt a subsequent ASTM
 2-24 Standard Test Method for Measuring the Ignition Strength of
 2-25 Cigarettes on finding that the subsequent method does not result in
 2-26 a change in the percentage of full-length burns exhibited by any
 2-27 tested cigarette when compared to the percentage of full-length
 2-28 burns the same cigarette would exhibit when tested in accordance
 2-29 with ASTM Standard E2187-04 and the performance standard in
 2-30 Subsection (b).

2-31 (g) A cigarette submitted for testing that uses lowered
 2-32 permeability bands in the cigarette paper to comply with the
 2-33 performance standard under this section must have at least two
 2-34 nominally identical bands on the paper surrounding the tobacco
 2-35 column and at least one complete band not less than 15 millimeters
 2-36 from the lighting end of the cigarette. A cigarette on which the
 2-37 bands are positioned by design must have at least two bands located
 2-38 not less than 15 millimeters from the lighting end and 10
 2-39 millimeters from the filter end of the tobacco column or 10
 2-40 millimeters from the labeled end of the tobacco column for
 2-41 nonfiltered cigarettes.

2-42 (h) This section does not require additional testing if a
 2-43 cigarette is tested in a manner that is consistent with this chapter
 2-44 for any other purpose.

2-45 (i) Testing performed or sponsored by the state fire marshal
 2-46 to determine a cigarette's compliance with the performance standard
 2-47 required under this section shall be conducted in accordance with
 2-48 this section.

2-49 Sec. 796.004. ALTERNATIVE TEST METHODS. (a) A
 2-50 manufacturer of a cigarette that the state fire marshal determines
 2-51 cannot be tested in accordance with Section 796.003 shall propose a
 2-52 test method and performance standard for the cigarette to the state
 2-53 fire marshal. If the state fire marshal determines that the
 2-54 performance standard proposed by the manufacturer is equivalent to
 2-55 the performance standard under Section 796.003, the manufacturer
 2-56 may use the proposed test method.

2-57 (b) Unless the state fire marshal demonstrates a reasonable
 2-58 basis why an alternative test should not be accepted under this
 2-59 chapter, the state fire marshal shall authorize a manufacturer to
 2-60 employ the alternative test method and performance standard to
 2-61 certify a cigarette for sale in this state if the state fire
 2-62 marshal:

2-63 (1) determines that another state has enacted reduced
 2-64 cigarette ignition propensity standards that include a test method
 2-65 and performance standard that are the same as those contained in
 2-66 this chapter; and

2-67 (2) finds that the officials responsible for
 2-68 implementing those requirements have approved an alternative test
 2-69 method and performance standard for a particular cigarette proposed

3-1 by a manufacturer as meeting the fire safety standards of that
3-2 state's law or regulation under a legal provision comparable to
3-3 this section.

3-4 Sec. 796.005. CERTIFICATION. (a) Before a cigarette may be
3-5 sold or offered for sale in this state, the cigarette's
3-6 manufacturer must certify in writing to the state fire marshal that
3-7 the cigarette has been tested in accordance with and meets the
3-8 performance standard in Section 796.003 or 796.004.

3-9 (b) A certification filed under this section must include
3-10 the following information:

- 3-11 (1) brand or trade name on the package;
- 3-12 (2) style, such as light or ultra light;
- 3-13 (3) length in millimeters;
- 3-14 (4) circumference in millimeters;
- 3-15 (5) flavor, such as menthol or chocolate, if
3-16 applicable;
- 3-17 (6) filter or nonfilter;
- 3-18 (7) package description, such as soft pack or box;
- 3-19 (8) marking approved in accordance with Section
3-20 796.006;
- 3-21 (9) the name, address, and telephone number of the
3-22 laboratory, if different from the manufacturer that conducted the
3-23 test; and
- 3-24 (10) the date that the testing occurred.

3-25 (c) The state fire marshal shall retain a copy of a
3-26 certification and provide a copy to the comptroller to ensure
3-27 compliance with this chapter.

3-28 (d) A cigarette certified under this section shall be
3-29 recertified every three years.

3-30 (e) For each cigarette included in a certification, a
3-31 manufacturer shall pay to the state fire marshal a fee in the amount
3-32 of \$250.

3-33 (f) A cigarette certified under this section that is altered
3-34 by the manufacturer in a way likely to alter its compliance with the
3-35 reduced cigarette ignition propensity standards required by this
3-36 chapter may not be sold or offered for sale in this state unless the
3-37 manufacturer retests the cigarette in accordance with Section
3-38 796.003 or 796.004 and maintains the records required by Section
3-39 796.007.

3-40 Sec. 796.006. MARKING OF PACKAGE. (a) A manufacturer shall
3-41 mark, in eight-point or larger type, cigarettes certified by the
3-42 manufacturer in accordance with Section 796.005 to indicate
3-43 compliance with the requirements of Section 796.003. The marking
3-44 must consist of:

- 3-45 (1) modification of the product Universal Product Code
3-46 to include a visible mark printed at or around the area of the
3-47 Universal Product Code and permanently stamped, engraved,
3-48 embossed, or printed in conjunction with the Universal Product
3-49 Code;
- 3-50 (2) a visible combination of alphanumeric or symbolic
3-51 characters permanently stamped, engraved, or embossed upon the
3-52 cigarette package or cellophane wrap; or
- 3-53 (3) other printed, stamped, engraved, or embossed text
3-54 that indicates that the cigarettes meet the standards of this
3-55 chapter.

3-56 (b) A manufacturer shall present its proposed marking to the
3-57 state fire marshal for approval. Proposed markings are considered
3-58 approved if the state fire marshal fails to disapprove the proposed
3-59 markings on or before the 10th business day after the date the
3-60 proposed markings are received. The state fire marshal must
3-61 approve a marking:

- 3-62 (1) in use and approved for sale in another state; or
- 3-63 (2) with the letters "FSC" for Fire Standards
3-64 Compliant appearing in eight-point or larger type and permanently
3-65 printed, stamped, engraved, or embossed on the package at or near
3-66 the Universal Product Code.

3-67 (c) A manufacturer shall use only one type of marking and
3-68 shall apply the marking uniformly to all packages, including packs,
3-69 cartons, and cases, and brands marketed by the manufacturer in this

4-1 state.

4-2 (d) A manufacturer may not modify its approved marking
 4-3 unless the state fire marshal has approved the modification.

4-4 (e) A manufacturer shall provide sufficient copies of an
 4-5 illustration of the package marking to a wholesale dealer and agent
 4-6 to which the manufacturer sells cigarettes and provide sufficient
 4-7 copies of an illustration of the package marking used by the
 4-8 manufacturer under this section for each retailer to which the
 4-9 wholesale dealers or agents will sell cigarettes. A wholesale
 4-10 dealer and an agent shall provide a copy of package markings
 4-11 received from a manufacturer to a retail dealer to which the
 4-12 wholesale dealer or agent sells cigarettes. A wholesale dealer,
 4-13 agent, and retail dealer shall permit the state fire marshal, the
 4-14 comptroller, and the attorney general to inspect markings of
 4-15 cigarette packaging marked in accordance with this section.

4-16 Sec. 796.007. MANUFACTURER RECORDS AND REPORTING. (a) A
 4-17 manufacturer shall maintain copies of the reports of all tests
 4-18 conducted on all cigarettes offered for sale for the previous three
 4-19 years and shall make copies of the reports available to the state
 4-20 fire marshal on the state fire marshal's written request.

4-21 (b) A manufacturer that fails to make copies of the reports
 4-22 available not later than 60 days after the date the manufacturer
 4-23 receives a written request shall be subject to a civil penalty,
 4-24 imposed as provided by Section 796.010, in an amount not to exceed
 4-25 \$10,000 per violation. Each day that the manufacturer does not make
 4-26 the copies available is a separate violation.

4-27 Sec. 796.008. RULES. The state fire marshal may adopt rules
 4-28 to administer this chapter.

4-29 Sec. 796.009. INSPECTION. (a) The state fire marshal may
 4-30 inspect the records and the stock of cigarettes of a person who
 4-31 manufactures, stores, or sells cigarettes to establish whether the
 4-32 person is complying with this chapter.

4-33 (b) The comptroller may, in the course of an inspection
 4-34 under Chapter 154, Tax Code, inspect cigarettes for a marking
 4-35 required under Section 796.006 and report the comptroller's
 4-36 findings to the state fire marshal.

4-37 Sec. 796.010. CIVIL PENALTY; INJUNCTION. (a) A person who
 4-38 knowingly violates this chapter or a rule adopted under this
 4-39 chapter is subject to a civil penalty in the following amounts:

4-40 (1) if the person is a manufacturer, wholesale dealer,
 4-41 or agent knowingly selling or offering to sell a cigarette in
 4-42 violation of this chapter, a civil penalty not to exceed \$100 for
 4-43 each pack of cigarettes sold or offered for sale, but not more than
 4-44 \$100,000 for all violations occurring within a 30-day period;

4-45 (2) if the person is a retailer knowingly selling or
 4-46 offering to sell a cigarette in violation of this chapter, a civil
 4-47 penalty not to exceed \$100 for each pack of cigarettes sold or
 4-48 offered for sale, but not more than \$25,000 for all violations
 4-49 occurring within a 30-day period;

4-50 (3) if the person knowingly makes a false
 4-51 certification under Section 796.005, a civil penalty not to exceed
 4-52 \$75,000 for a first violation or \$250,000 for a second or subsequent
 4-53 violation; and

4-54 (4) if the person violates another provision of this
 4-55 chapter, other than Section 796.007(b), or another rule adopted
 4-56 under this chapter, a civil penalty not to exceed \$1,000 for a first
 4-57 violation or \$5,000 for a second or subsequent violation.

4-58 (b) If it appears that a person has violated, is violating,
 4-59 or is threatening to violate this chapter or a rule or order adopted
 4-60 under this chapter, the attorney general, as determined by the
 4-61 attorney general or on request of the state fire marshal, may bring
 4-62 a civil action in a district court for:

4-63 (1) injunctive relief to restrain the person from
 4-64 continuing the violation or threat of violation;

4-65 (2) the assessment of a civil penalty; or

4-66 (3) both injunctive relief and a civil penalty.

4-67 (c) A cigarette sold or offered for sale in violation of
 4-68 this chapter is subject to forfeiture under Chapter 154, Tax Code,
 4-69 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) A civil penalty collected under this section shall be deposited to the credit of the fire prevention and public safety account.

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

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

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

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

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

(2) 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. INTERPRETATION. This chapter shall 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. 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:

(1) to evaluate consumer acceptance of the cigarette by using only the quantity of cigarettes that is reasonably necessary for the assessment; and

(2) 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. A political subdivision of this state may not adopt or enforce 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. 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. REPORTS. Not later than January 1 of each odd-numbered year, the state fire marshal shall:

(1) review the effectiveness of this chapter;

(2) 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

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

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 January 1, 2010.

SECTION 3. This Act takes effect January 1, 2009.

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