

SENATE AMENDMENTS

2nd Printing

By: King of Parker, Gallego

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 ultralight;

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 796.006 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.

ADOPTED

MAY 22 2007

Leta Spaw
Secretary of the Senate

By: King, P. / West

H.B. No. 2935

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

By: Denell

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 796.006 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 January 1, 2010.

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

ADOPTED

MAY 22 2007

Letae Davis
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Ryan West*

1 Amend C.S.H.B. No. 2935 (senate committee printing) as
2 follows:

3 (1) In SECTION 1 of the bill, in proposed Section
4 796.005(e), Health and Safety Code (page 3, line 32), between
5 "\$250" and the period, insert ", to be deposited only to the Texas
6 Department of Insurance operating account in the general revenue
7 fund".

8 (2) In SECTION 1 of the bill, in proposed Section
9 796.011(c), Health and Safety Code (page 5, line 11), between
10 "appropriated" and "to", insert "only".

27

ADOPTED

MAY 22 2007

Leta Spaw
Secretary of the Senate
BY:

Roger W. N.

FLOOR AMENDMENT NO. 2

1 Amend C.S.H.B. No. 2935 in SECTION 1 of the bill by striking
2 proposed Section 796.014, Health and Safety Code (senate committee
3 printing, page 5, lines 26 through 35), and substituting the
4 following:

5 Sec. 796.014. CONSUMER TESTING. This chapter does not
6 prohibit the sale of a cigarette solely for the purpose of the
7 cigarette's assessment conducted by a manufacturer, or under the
8 control and direction of a manufacturer, to evaluate consumer
9 acceptance of the cigarette by using only the quantity of
10 cigarettes that is reasonably necessary for the assessment.

28

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 18, 2007

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2935 by King, Phil (Relating to the regulation of cigarettes; providing a penalty.),
Committee Report 2nd House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for HB2935, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>GENERAL REVENUE FUND</i> 1	Probable (Cost) from <i>GENERAL REVENUE FUND</i> 1	Probable (Cost) from <i>INSURANCE MAINT TAX FEES</i> 8042	Probable Revenue Gain from <i>INSURANCE MAINT TAX FEES</i> 8042
2008	\$500	(\$500)	(\$119,840)	\$119,840
2009	\$49,750	(\$49,750)	(\$412,906)	\$412,906
2010	\$500	(\$500)	(\$422,275)	\$422,275
2011	\$1,000	(\$1,000)	(\$421,775)	\$421,775
2012	\$50,250	(\$50,250)	(\$375,525)	\$375,525

Fiscal Year	Change in Number of State Employees from FY 2007
2008	2.0
2009	9.0
2010	9.0
2011	9.0
2012	9.0

Fiscal Analysis

The bill would amend the Health and Safety Code to require testing to be conducted on cigarettes, prior to sale, to ensure that they meet certain performance standards related to fire safety. The bill would require cigarette manufacturers to certify to the State Fire Marshal's Office at the Texas Department of Insurance (TDI) that the cigarettes meet performance standards and the package must contain markings with this certification. Manufacturers would be required to pay the State Fire Marshal's Office a fee of \$250 for each cigarette certification. Certifications would be required to be renewed every three years. The State Fire Marshal's Office would be authorized to adopt and enforce rules and would be required to make reports relating to the effectiveness of the testing. The Attorney General would be authorized to seek injunctive relief and collect civil penalties.

The bill would take effect October 1, 2008.

Methodology

It is assumed the State Fire Marshal's Office at TDI would incur costs as a result of the bill. These costs would include salaries, benefits, and other operating expenses for 2 FTEs in fiscal year 2008, one Program Supervisor II and one Program Specialist II. These FTEs would write rules and reports, interact with the cigarette manufacturers, and provide approval of labs and standards. It is assumed costs in subsequent fiscal years would include salaries, benefits, and other operating expenses for an additional 7 FTEs, two Administrative Assistant III and five Inspector IV. These FTEs would perform fee collection and accounting and conduct field inspections and investigations.

The bill would require manufacturers to pay a certification fee of \$250 for each new and renewal certification. Certification would be required to be renewed every three years. It is assumed 2 new certifications would be issued in fiscal year 2008, 199 new certifications would be issued in fiscal year 2009, 2 new certifications would be issued in fiscal year 2010, 2 renewal and 2 new certifications would be issued in fiscal year 2011, and 199 renewal and 2 new certifications would be issued in fiscal year 2012. This analysis assumes certification fee revenue would be deposited to General Revenue Fund and would be used to offset costs incurred by TDI to implement the provisions of the bill. Since TDI is required to generate revenues equivalent to its cost of operation under current law, this analysis assumes that all costs incurred in excess of revenues generated would be paid for from General Revenue - Insurance Companies Maintenance Tax and Insurance Department Fees.

The bill would create a new General Revenue - Dedicated Account - Fire Prevention and Public Safety, which would consist of civil penalties collected under the bill. The bill provides that funds in the account could be appropriated to the state fire marshal to support fire safety and prevention programs. The amount of penalties that would be collected under the bill are not estimated in this analysis. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

This analysis assumes that a federal reduced cigarette ignition propensity standard that preempts the provisions of the bill would not be adopted and become effective. If such a federal standard was adopted and became effective the costs identified in this analysis would be reduced to the extent that the provisions of the bill were preempted.

Based on the analysis of the Attorney General, duties and responsibilities at that agency associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Technology

There would be a impact at TDI of \$2,888 in fiscal year 2008 and \$17,733 in fiscal year 2009 for computer hardware and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

LBB Staff: JOB, KJG, CL, MW, SK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 16, 2007

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2935 by King, Phil (Relating to the regulation of cigarettes; providing a penalty.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2935, As Engrossed: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable (Cost) from <i>INSURANCE MAINT</i> <i>TAX FEES</i> 8042	Probable Revenue Gain from <i>INSURANCE MAINT</i> <i>TAX FEES</i> 8042
2008	\$500	(\$500)	(\$119,840)	\$119,840
2009	\$49,750	(\$49,750)	(\$412,906)	\$412,906
2010	\$500	(\$500)	(\$422,275)	\$422,275
2011	\$1,000	(\$1,000)	(\$421,775)	\$421,775
2012	\$50,250	(\$50,250)	(\$375,525)	\$375,525

Fiscal Year	Change in Number of State Employees from FY 2007
2008	2.0
2009	9.0
2010	9.0
2011	9.0
2012	9.0

Fiscal Analysis

The bill would amend the Health and Safety Code to require testing to be conducted on cigarettes, prior to sale, to ensure that they meet certain performance standards related to fire safety. The bill would require cigarette manufacturers to certify to the State Fire Marshal's Office at the Texas Department of Insurance (TDI) that the cigarettes meet performance standards and the package must contain markings with this certification. Manufacturers would be required to pay the State Fire Marshal's Office a fee of \$250 for each cigarette certification. Certifications would be required to be renewed every three years. The State Fire Marshal's Office would be authorized to adopt and enforce rules and would be required to make reports relating to the effectiveness of the testing. The Attorney General would be authorized to seek injunctive relief and collect civil penalties.

The bill would take effect October 1, 2008.

Methodology

It is assumed the State Fire Marshal's Office at TDI would incur costs as a result of the bill. These costs would include salaries, benefits, and other operating expenses for 2 FTEs in fiscal year 2008, one Program Supervisor II and one Program Specialist II. These FTEs would write rules and reports, interact with the cigarette manufacturers, and provide approval of labs and standards. It is assumed costs in subsequent fiscal years would include salaries, benefits, and other operating expenses for an additional 7 FTEs, two Administrative Assistant III and five Inspector IV. These FTEs would perform fee collection and accounting and conduct field inspections and investigations.

The bill would require manufacturers to pay a certification fee of \$250 for each new and renewal certification. Certification would be required to be renewed every three years. It is assumed 2 new certifications would be issued in fiscal year 2008, 199 new certifications would be issued in fiscal year 2009, 2 new certifications would be issued in fiscal year 2010, 2 renewal and 2 new certifications would be issued in fiscal year 2011, and 199 renewal and 2 new certifications would be issued in fiscal year 2012. This analysis assumes certification fee revenue would be deposited to General Revenue Fund and would be used to offset costs incurred by TDI to implement the provisions of the bill. Since TDI is required to generate revenues equivalent to its cost of operation under current law, this analysis assumes that all costs incurred in excess of revenues generated would be paid for from General Revenue - Insurance Companies Maintenance Tax and Insurance Department Fees.

The bill would create a new General Revenue - Dedicated Account - Fire Prevention and Public Safety, which would consist of civil penalties collected under the bill. The bill provides that funds in the account could be appropriated to the state fire marshal to support fire safety and prevention programs. The amount of penalties that would be collected under the bill are not estimated in this analysis. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

This analysis assumes that a federal reduced cigarette ignition propensity standard that preempts the provisions of the bill would not be adopted and become effective. If such a federal standard was adopted and became effective the costs identified in this analysis would be reduced to the extent that the provisions of the bill were preempted.

Based on the analysis of the Attorney General, duties and responsibilities at that agency associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Technology

There would be a impact at TDI of \$2,888 in fiscal year 2008 and \$17,733 in fiscal year 2009 for computer hardware and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

LBB Staff: JOB, CL, KJG, MW, SK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 27, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2935 by King, Phil (Relating to the regulation of cigarettes; providing a penalty.),
Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for HB2935, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable (Cost) from <i>INSURANCE MAINT</i> <i>TAX FEES</i> 8042	Probable Revenue Gain from <i>INSURANCE MAINT</i> <i>TAX FEES</i> 8042
2008	\$500	(\$500)	(\$119,840)	\$119,840
2009	\$49,750	(\$49,750)	(\$412,906)	\$412,906
2010	\$500	(\$500)	(\$422,275)	\$422,275
2011	\$1,000	(\$1,000)	(\$421,775)	\$421,775
2012	\$50,250	(\$50,250)	(\$375,525)	\$375,525

Fiscal Year	Change in Number of State Employees from FY 2007
2008	2.0
2009	9.0
2010	9.0
2011	9.0
2012	9.0

Fiscal Analysis

The bill would amend the Health and Safety Code to require testing to be conducted on cigarettes, prior to sale, to ensure that they meet certain performance standards related to fire safety. The bill would require cigarette manufacturers to certify to the State Fire Marshal's Office at the Texas Department of Insurance (TDI) that the cigarettes meet performance standards and the package must contain markings with this certification. Manufacturers would be required to pay the State Fire Marshal's Office a fee of \$250 for each cigarette certification. Certifications would be required to be renewed every three years. The State Fire Marshal's Office would be authorized to adopt and enforce rules and would be required to make reports relating to the effectiveness of the testing. The Attorney General would be authorized to seek injunctive relief and collect civil penalties.

The bill would take effect October 1, 2008.

Methodology

It is assumed the State Fire Marshal's Office at TDI would incur costs as a result of the bill. These costs would include salaries, benefits, and other operating expenses for 2 FTEs in fiscal year 2008, one Program Supervisor II and one Program Specialist II. These FTEs would write rules and reports, interact with the cigarette manufacturers, and provide approval of labs and standards. It is assumed costs in subsequent fiscal years would include salaries, benefits, and other operating expenses for an additional 7 FTEs, two Administrative Assistant III and five Inspector IV. These FTEs would perform fee collection and accounting and conduct field inspections and investigations.

The bill would require manufacturers to pay a certification fee of \$250 for each new and renewal certification. Certification would be required to be renewed every three years. It is assumed 2 new certifications would be issued in fiscal year 2008, 199 new certifications would be issued in fiscal year 2009, 2 new certifications would be issued in fiscal year 2010, 2 renewal and 2 new certifications would be issued in fiscal year 2011, and 199 renewal and 2 new certifications would be issued in fiscal year 2012. This analysis assumes certification fee revenue would be deposited to General Revenue Fund and would be used to offset costs incurred by TDI to implement the provisions of the bill. Since TDI is required to generate revenues equivalent to its cost of operation under current law, this analysis assumes that all costs incurred in excess of revenues generated would be paid for from General Revenue - Insurance Companies Maintenance Tax and Insurance Department Fees.

The bill would create a new General Revenue - Dedicated Account - Fire Prevention and Public Safety, which would consist of civil penalties collected under the bill. The bill provides that funds in the account could be appropriated to the state fire marshal to support fire safety and prevention programs. The amount of penalties that would be collected under the bill are not estimated in this analysis. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

This analysis assumes that a federal reduced cigarette ignition propensity standard that preempts the provisions of the bill would not be adopted and become effective. If such a federal standard was adopted and became effective the costs identified in this analysis would be reduced to the extent that the provisions of the bill were preempted.

Based on the analysis of the Attorney General, duties and responsibilities at that agency associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Technology

There would be a impact at TDI of \$2,888 in fiscal year 2008 and \$17,733 in fiscal year 2009 for computer hardware and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

LBB Staff: JOB, KJG, MW, SK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 25, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2935 by King, Phil (Relating to the regulation of cigarettes; providing a penalty.), As Introduced

Estimated Two-year Net Impact to General Revenue Related Funds for HB2935, As Introduced: a positive impact of \$409,712 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$819,422
2009	(\$409,710)
2010	(\$409,710)
2011	\$796,532
2012	(\$398,266)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>GENERAL REVENUE FUND</i> 1	Probable (Cost) from <i>GENERAL REVENUE FUND</i> 1	Change in Number of State Employees from FY 2007
2008	\$1,286,869	(\$467,447)	9.0
2009	\$13,065	(\$422,775)	9.0
2010	\$13,065	(\$422,775)	9.0
2011	\$1,219,307	(\$422,775)	9.0
2012	\$24,509	(\$422,775)	9.0

Fiscal Analysis

The bill would amend the Health and Safety Code to require testing to be conducted on cigarettes, prior to sale, to ensure that they meet certain performance standards related to fire safety. The bill would require cigarette manufacturers to certify to the State Fire Marshall's Office at the Texas Department of Insurance (TDI) that the cigarettes meet performance standards and the package must contain markings with this certification. Manufacturers would be required to maintain copies of reports of all testing conducted on cigarettes. The State Fire Marshall's Office would be authorized to adopt and enforce rules and would be required to make reports relating to the effectiveness of the testing. The Attorney General would be authorized to seek injunctive relief and collect civil penalties.

The bill would take effect September 1, 2007.

Methodology

It is assumed that the State Fire Marshall's Office at TDI would incur costs as a result of the bill. These costs would include salaries for 9 FTEs, two Program Specialist II, two Administrative Assistant III, and five Inspector IV in the amount of \$290,206 with associated benefit costs of \$82,099 each fiscal year. Other operating costs, including travel, telephone, and training costs, would be \$50,470 each fiscal year. There would be a one-time equipment cost in fiscal year 2008 of \$44,672.

The bill would require manufacturers to pay a certification fee for each new and renewal certification. Certification would be required to be renewed every three years. It is assumed the new and renewal certification fee would be set at an amount sufficient to cover the costs of implementing the bill and that fee revenue would be deposited to General Revenue. This analysis assumes that, based on estimates from TDI, 197 new certifications would be issued in fiscal year 2008, 2 new certifications would be issued each year in fiscal years 2009 and 2010, 197 renewal and 2 new certifications would be issued in fiscal year 2011, and 2 renewal and 2 new certifications would be issued in fiscal year 2012.

The bill would establish a General Revenue Account - Fire Prevention and Public Safety, which would consist of civil penalties collected under the bill. The bill provides that funds in the account could be appropriated to the state fire marshal to support fire safety and prevention programs. The amount of penalties that would be collected under the bill are not estimated in this analysis. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Based on the analysis of the Attorney General, duties and responsibilities at that agency associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Technology

There would be a one-time technology impact at TDI of \$16,021 in fiscal year 2008 for computer hardware and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 454 Department of Insurance

LBB Staff: JOB, KJG, SK

