

By: Ellis

S.B. No. 437

A BILL TO BE ENTITLED

AN ACT

relating to energy efficient products; providing a civil penalty.

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

SECTION 1. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 392 to read as follows:

Chapter 392. APPLIANCE EFFICIENCY STANDARDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 392.001. DEFINITIONS. In this chapter:

(1) "Bottle-type water dispenser" means a water dispenser that uses a bottle or reservoir as the source of potable water.

(2) "Commercial hot food holding cabinet" means a heated, fully enclosed compartment with one or more solid or glass doors that is designed to maintain the temperature of hot food that has been cooked in a separate appliance.

(3) "Compact audio product," also known as a mini, mid, micro, or shelf audio system, means an integrated audio system encased in a single housing that includes an amplifier and radio tuner with attached or separable speakers that can reproduce audio from magnetic tape, compact disc, DVD, or flash memory.

(4) "Digital versatile disc" or "DVD" means a laser-encoded plastic medium capable of storing a large amount of digital audio, video, or computer data.

(5) "DVD player" means a digital versatile disc player

1 that:

2 (A) is a commercially available electronic  
3 product encased in a single housing that includes an integral power  
4 supply; and

5 (B) is designed to decode digitized video signals  
6 on a DVD.

7 (6) "DVD recorder" means a digital versatile disc  
8 recorder that:

9 (A) is a commercially available electronic  
10 product encased in a single housing that includes an integral power  
11 supply; and

12 (B) is designed for the production or recording  
13 of digitized video signals on a DVD.

14 (7) "Energy Star Program" means the United States  
15 Environmental Protection Agency's Energy Star Program.

16 (8) "Portable electric spa" means a factory-built  
17 electric spa or hot tub, supplied with equipment for heating and  
18 circulating water.

19 (9) "Residential pool pump" means a pump used to  
20 circulate and filter residential swimming pool water to maintain  
21 the water's clarity and sanitation.

22 (10) "State-regulated incandescent reflector lamp"  
23 means a lamp that:

24 (A) is not colored or designed for rough or  
25 vibration service applications;

26 (B) has an inner reflective coating on the outer  
27 bulb to direct the light;

1                   (C) has a standard E26 (Edison 26 millimeter)  
2 medium screw base;

3                   (D) has a rated voltage or voltage range at least  
4 partially within the range of 115 to 130 volts; and

5                   (E) is one of the following types:

6                   (i) a blown parabolic aluminized reflector  
7 (BPAR) lamp, bulged reflector (BR) lamp, elliptical reflector (ER)  
8 lamp, or a lamp with a similar bulb shape with a diameter equal to or  
9 greater than 2.25 inches; or

10                   (ii) a reflector (R) lamp, a parabolic  
11 aluminized reflector (PAR) lamp, or a lamp with a similar bulb shape  
12 with a diameter of more than 2.25 inches and not more than 2.75  
13 inches.

14                   (11) "Water dispenser" means a factory-made assembly  
15 that mechanically cools and heats potable water and that dispenses  
16 the cooled or heated water by integral or remote means.

17                   Sec. 392.002. APPLICABILITY; EXEMPTIONS. (a) This chapter  
18 applies to the following new products sold, offered for sale, or  
19 installed in this state:

20                   (1) bottle-type water dispensers;

21                   (2) commercial hot food holding cabinets;

22                   (3) compact audio products;

23                   (4) DVD players and recorders;

24                   (5) portable electric spas;

25                   (6) residential pool pumps;

26                   (7) state-regulated incandescent reflector lamps; and

27                   (8) any other products that are designated by the

1 comptroller in accordance with Section 392.102.

2 (b) This chapter does not apply to:

3 (1) a new product manufactured in this state and sold  
4 outside the state;

5 (2) a new product manufactured outside this state and  
6 sold at wholesale inside the state for final retail sale and  
7 installation outside the state;

8 (3) a product installed in a mobile manufactured home  
9 at the time of the home's construction;

10 (4) a product designed expressly for installation and  
11 use in a recreational vehicle;

12 (5) a commercial heated glass merchandizing cabinet,  
13 drawer warmer, or cook-and-hold appliance for hot food;

14 (6) a compact audio product that:

15 (A) can be independently powered by internal  
16 batteries;

17 (B) has a powered external satellite antenna; or

18 (C) can provide a video output signal;

19 (7) a DVD recorder that has an electronic programming  
20 guide function that provides an interactive, onscreen menu of  
21 television listings and downloads program information from the  
22 vertical blanking interval of a regular television signal; or

23 (8) an incandescent reflector lamp that is rated at:

24 (A) 50 watts or less with a diameter of 30/8 or  
25 40/8 inches and is one of the following types: BR30, ER30, BR40, and  
26 ER40;

27 (B) 65 watts with a diameter of 30/8 or 40/8

1 inches and is one of the following types: BR30, BR40, and ER40; or

2 (C) 45 watts or less with a diameter of 20/8  
3 inches (R20 lamps).

4 [Sections 392.003-392.050 reserved for expansion]

5 SUBCHAPTER B. EFFICIENCY STANDARDS

6 Sec. 392.051. MINIMUM EFFICIENCY STANDARDS FOR CERTAIN  
7 APPLIANCES. Not later than September 1, 2010, the comptroller, in  
8 consultation with the state energy conservation office, shall adopt  
9 rules establishing minimum efficiency standards for each type of  
10 new product described by Section 392.002(a).

11 Sec. 392.052. NEW OR INCREASED EFFICIENCY STANDARDS. (a)  
12 The comptroller may adopt rules to establish increased efficiency  
13 standards for a product listed in Section 392.002(a) or to  
14 establish standards for a product not listed in that subsection.

15 (b) In considering new or increased standards, the  
16 comptroller, in consultation with the state energy conservation  
17 office, shall prescribe new or increased efficiency standards if  
18 the comptroller determines that the standards would:

19 (1) serve to promote energy conservation in this  
20 state; and

21 (2) be cost-effective for consumers who purchase and  
22 use the new product.

23 Sec. 392.053. EFFECTIVE DATE OF STANDARDS. A standard  
24 established under this subchapter takes effect on the first  
25 anniversary of the date the rule establishing the standard is  
26 adopted.

27 Sec. 392.054. BOTTLE-TYPE WATER DISPENSERS. A bottle-type

1 water dispenser designed for dispensing both hot and cold water may  
2 not have standby energy consumption greater than 1.2 kilowatt-hours  
3 per day, as measured in accordance with the test criteria contained  
4 in version 1 of the "Energy Star Program Requirements for Bottled  
5 Water Coolers," except that Section D, "Timer Usage," of those test  
6 criteria may not be used to test units with an integral, automatic  
7 timer.

8 Sec. 392.055. COMMERCIAL HOT FOOD HOLDING CABINETS. (a) A  
9 commercial hot food holding cabinet must have a maximum idle energy  
10 rate of not greater than 40 watts per cubic foot of interior volume,  
11 as determined by the "idle energy rate-dry test" in ASTM F2140-01,  
12 "Standard Test Method for Performance of Hot Food Holding  
13 Cabinets," copyright 2007 ASTM International.

14 (b) Interior volume must be measured in accordance with the  
15 method shown in the "Energy Star Program Requirements for  
16 Commercial Hot Food Holding Cabinets" as in effect on August 15,  
17 2003.

18 Sec. 392.056. COMPACT AUDIO PRODUCTS. A compact audio  
19 product may not use more than two watts in standby-passive mode for  
20 a product without a permanently illuminated clock display and four  
21 watts in standby-passive mode for a product with a permanently  
22 illuminated clock display, as measured in accordance with  
23 International Electrotechnical Commission (IEC) test method  
24 62087:2002-2003(E), "Methods of measurement for the power  
25 consumption of audio, video, and related equipment."

26 Sec. 392.057. DVD PLAYERS OR RECORDERS. A DVD player or  
27 recorder may not use more than three watts in standby-passive mode,

1 as measured in accordance with International Electrotechnical  
2 Commission (IEC) test method 62087:2002-2003(E), "Methods of  
3 measurement for the power consumption of audio, video, and related  
4 equipment."

5 Sec. 392.058. PORTABLE ELECTRIC SPAS. A portable electric  
6 spa may not have a standby power greater than  $5(V^{2/3})$  watts where V  
7 equals the total volume in gallons. Standby power must be measured  
8 in accordance with the test method for portable electric spas  
9 contained in Section 1604, Title 20, California Code of  
10 Regulations, as of December 2006.

11 Sec. 392.059. RESIDENTIAL POOL PUMP MOTORS. (a) A  
12 residential pool pump motor may not be a split-phase or capacitor  
13 start-induction run type motor.

14 (b) A residential pool pump motor with a capacity of one  
15 horsepower or more must have the capability of operating at more  
16 than one speed with a low speed having a rotation rate that is not  
17 more than one-half of the motor's maximum rotation rate.

18 (c) Pool pump motor controls must have the capability of  
19 operating the pool pump at more than one speed. The pump's default  
20 circulation speed must be the lowest speed, and the pump's high  
21 speed override capability must be governed by a control device that  
22 allows the higher circulation speed to operate only for a temporary  
23 period not to exceed one normal cycle.

24 Sec. 392.060. STATE-REGULATED INCANDESCENT REFLECTOR  
25 LAMPS. A state-regulated incandescent reflector lamp must meet the  
26 minimum average lamp efficacy requirements for federally regulated  
27 incandescent reflector lamps contained in 42 U.S.C. Section

1 6295(i)(1)(B), as in effect on January 1, 2008.

2 [Sections 392.061-392.100 reserved for expansion]

3 SUBCHAPTER C. IMPLEMENTATION AND MODIFICATION OF EFFICIENCY

4 STANDARDS

5 Sec. 392.101. PRODUCT COMPLIANCE. (a) A new product  
6 described by Section 392.002(a) may not be sold or offered for sale  
7 in this state unless the efficiency of the new product meets or  
8 exceeds the applicable efficiency standards prescribed by the rules  
9 adopted under Subchapter B.

10 (b) On or after the first anniversary of the date the sale or  
11 offering for sale of a new product becomes subject to an efficiency  
12 standard adopted under this chapter, that product may not be  
13 installed for compensation in this state unless the efficiency of  
14 the product meets or exceeds the applicable efficiency standards  
15 prescribed by the rules adopted under Subchapter B.

16 Sec. 392.102. APPLICATION FOR WAIVER. For purposes of this  
17 chapter, the comptroller may apply for a waiver of federal  
18 preemption in accordance with federal procedures under 42 U.S.C.  
19 Section 6297(d) to authorize state efficiency standards for a  
20 product regulated by the federal government.

21 [Sections 392.103-392.150 reserved for expansion]

22 SUBCHAPTER D. TESTING, CERTIFICATION, LABELING, AND ENFORCEMENT

23 Sec. 392.151. PRODUCT TESTING. (a) The manufacturer of a  
24 new product subject to an efficiency standard adopted under this  
25 chapter shall test samples of the product in accordance with the  
26 test procedures adopted under this chapter.

27 (b) The comptroller, in consultation with the State Energy



1 Conservation Office, by rule shall adopt test procedures for  
2 determining a product's energy efficiency if Subchapter B does not  
3 provide for the procedures. The comptroller shall adopt test  
4 methods approved by the United States Department of Energy or, in  
5 the absence of those test methods, other appropriate nationally  
6 recognized test methods.

7 (c) The comptroller may adopt revised test procedures when  
8 new versions of test procedures become available.

9 Sec. 392.152. PRODUCT CERTIFICATION. (a) The manufacturer  
10 of a new product subject to an efficiency standard adopted under  
11 this chapter shall certify to the comptroller that the product is in  
12 compliance with that standard according to test results.

13 (b) The comptroller shall adopt rules governing the  
14 certification of products under this section and shall coordinate  
15 certification by this state with the certification programs of  
16 other states and federal agencies with similar standards.

17 Sec. 392.153. PRODUCT LABELING. (a) The manufacturer of a  
18 new product subject to an efficiency standard adopted under this  
19 chapter shall identify each product offered for sale or  
20 installation in this state as being in compliance with this chapter  
21 by means of a mark, label, or tag on the product and packaging at the  
22 time of sale or installation.

23 (b) The comptroller shall adopt rules governing the  
24 identification of products and packaging under this section. The  
25 rules must to the greatest practical extent be coordinated with the  
26 labeling programs of other states and federal agencies with  
27 equivalent efficiency standards. The comptroller shall allow the

1 use of existing marks, labels, or tags that connote compliance with  
2 the efficiency requirements of this chapter.

3 Sec. 392.154. COMPTROLLER TESTING FOR EFFICIENCY STANDARDS  
4 COMPLIANCE. The comptroller may test products subject to an  
5 efficiency standard adopted under this chapter for compliance with  
6 the applicable efficiency standards. If a product tested is found  
7 not to be in compliance with the standards, the comptroller shall:

8 (1) impose against the manufacturer of the product an  
9 assessment in an amount sufficient to recover the costs of  
10 purchasing and testing the product; and

11 (2) make information available to the public on any  
12 product found to be not in compliance with the standards.

13 Sec. 392.155. INSPECTIONS. The comptroller may have  
14 periodic inspections conducted of a distributor or retailer of new  
15 products covered by Section 392.002 subject to an efficiency  
16 standard adopted under this chapter to determine compliance with  
17 this chapter. The inspections must be conducted at reasonable and  
18 convenient hours. Notice must be given before an inspection may be  
19 conducted.

20 Sec. 392.156. COMPLAINTS. The comptroller shall  
21 investigate a complaint received concerning a violation of this  
22 chapter and shall report the results of the investigation to the  
23 attorney general.

24 Sec. 392.157. ATTORNEY GENERAL ENFORCEMENT. The attorney  
25 general may institute proceedings to enforce this chapter.

26 Sec. 392.158. VIOLATIONS AND PENALTIES. (a) The  
27 comptroller shall issue a warning to a person for the person's first

1 violation of this chapter.

2 (b) A person's second and subsequent violations are subject  
3 to a civil penalty of not more than \$250.

4 (c) Each violation constitutes a separate violation, and  
5 each day that a violation continues constitutes a separate  
6 violation.

7 (d) A penalty assessed under this section is in addition to  
8 costs assessed under Section 392.154.

9 Sec. 392.159. RULES FOR IMPLEMENTATION AND ENFORCEMENT.

10 The comptroller may adopt additional rules necessary to ensure the  
11 proper implementation and enforcement of this chapter.

12 SECTION 2. Sections 151.333(b) and (c), Tax Code, are  
13 amended to read as follows:

14 (b) This section applies only to the following  
15 energy-efficient products:

16 (1) an air conditioner [~~the sales price of which does~~  
17 ~~not exceed \$6,000~~];

18 (2) a clothes washer;

19 (3) a ceiling fan;

20 (4) a dehumidifier;

21 (5) a dishwasher;

22 (6) a light-emitting diode bulb [~~an incandescent~~] or a  
23 fluorescent lightbulb;

24 (7) a programmable thermostat; [~~and~~]

25 (8) a refrigerator the sales price of which does not  
26 exceed \$2,000;

27 (9) a commercial hot food holding cabinet;

1           (10) a water heater;

2           (11) a pool pump;

3           (12) a cordless telephone, a telephone answering  
4 machine, or a combined cordless telephone and telephone answering  
5 machine unit;

6           (13) a digital-to-analog converter box;

7           (14) a home audio compact disc player, receiver, or  
8 speaker;

9           (15) a television, digital video disc player, or  
10 videocassette player, or a single unit that performs the functions  
11 of two or more of those products;

12           (16) a desktop or notebook computer;

13           (17) a computer monitor; and

14           (18) a photocopy machine, facsimile machine, document  
15 scanner, or computer printer, or a single unit that performs the  
16 functions of two or more of those products.

17           (c) The sale of an energy-efficient product to which this  
18 section applies is exempted from the taxes imposed by this chapter  
19 if the sale takes place during a period beginning at 12:01 a.m. on  
20 the Friday [~~Saturday~~] preceding the last Monday in May (Memorial  
21 Day) and ending at 11:59 p.m. on the Tuesday after the last Monday  
22 in May.

23           SECTION 3. (a) The efficiency standards prescribed by  
24 rules adopted under Subchapter B, Chapter 392, Health and Safety  
25 Code, as added by this Act, apply only to the sale or offer of sale  
26 of a new product to which that chapter applies that occurs on or  
27 after January 1, 2011.

1           (b) Notwithstanding Subsection (a) of this section, a new  
2 residential pool pump that does not meet the efficiency standards  
3 contained in Sections 392.059(b) and (c), Health and Safety Code,  
4 as added by this Act, may be sold in this state through December 31,  
5 2011.

6           SECTION 4. The change in law made by this Act does not  
7 affect taxes imposed before the effective date of this Act, and the  
8 law in effect before the effective date of this Act is continued in  
9 effect for purposes of the liability for and collection of those  
10 taxes.

11           SECTION 5. This Act takes effect September 1, 2009.