

SUBJECT: Regulating, testing and requiring sale of slow-burn cigarettes

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Swinford, Paxton, Van Arsdale, Christian, Farrar, Flynn, Parker, Veasey

0 nays

1 absent — B. Cook

WITNESSES: No public hearing

DIGEST: CSHB 2935 would create Health and Safety Code, ch. 796, to require that any cigarettes sold or offered for sale in Texas be tested, regulated, and certified as slow-burn cigarettes specially made to reduce their propensity to burn when left unattended. It would create penalties for manufacturers and retailers who violated the law.

The program would be interpreted and construed under the premise that it was designed be uniform with the laws of states that have enacted reduced cigarette ignition propensity (RCIP) laws. If the federal government created a standard for reduced ignition propensity cigarettes, that standard would preempt this program, which would have no effect once the federal program became effective. A political subdivision of Texas could adopt or enforce an ordinance or regulation that conflicted with or was preempted by a provision of this program or state policy expressed by this program.

Testing program. A cigarette manufacturer would have to ensure a cigarette test was conducted according to RCIP ignition strength standards. The bill would provide that the testing had to meet accreditation standards, that laboratory testing had to include a quality control and assurance system, and other specifications a cigarette would have to meet. At least three-quarters of cigarettes examined in a test trial could not exhibit full-length burns.

A manufacturer of a cigarette that the state fire marshal determined could not be tested under the aforementioned system would be allowed to propose a test method and performance standard for the cigarette to the

state fire marshal, who could decide whether the two tests were equivalent. Unless a reasonable basis for rejecting the alternative test was demonstrated, the manufacturer would be authorized to use that method to certify cigarettes if the fire marshal:

- found another state enacted RCIP standards using the same method; and
- determined the alternative test would meet fire safety standards.

A cigarette manufacturer would be required to maintain copies of all testing records for cigarettes sold in the prior three years that would be made available to the state fire marshal upon written request.

Certification. Any manufacturer selling or offering cigarettes for sale would have to certify in writing to the state fire marshal that the cigarette had been tested and had met performance standards and remit a \$250 fee for each cigarette included in the certification. The marshal would retain a copy of a certification and provide a copy to the comptroller to ensure compliance with this section. Cigarettes certified under this section would have to be recertified every three years. Any certified cigarette the manufacturer altered in a way that could affect its compliance with the new standards could not be sold or offered for sale in Texas without retesting and maintaining records on those tests as specified under this program.

Certification would require the following information:

- brand or trade name on the package;
- style, such as light or ultra light;
- length and circumference in millimeters;
- flavor, such as menthol or chocolate, if applicable;
- filter or non-filter;
- package description, such as soft pack or box;
- a marking approved under this program;
- the name, address, and telephone number of the laboratory, if different from the manufacturer that conducted the test; and
- the date that the testing occurred.

Other provisions. The bill would specify markings for a package of cigarettes certified under this program, including type size and text. The

state fire marshal would be required to approve certain markings, including packages marked “FSC,” or fire standards compliant.

The state fire marshal would be required, no later than January 1 of an odd-numbered year, to:

- review the effectiveness of the program;
- submit a report to the governor, the lieutenant governor, the speaker of the house, and the appropriate committees of the Legislature on the administration of the program; and
- recommend ways to improve the effectiveness of the program.

Enforcement and penalties. The state fire marshal would be allowed to inspect the stock and records of a manufacturer or retailer to ensure compliance with this program. The marshal also could establish any rules necessary to execute the program. The comptroller could, during an inspection under Tax Code, ch. 154 that ensured compliance with cigarette tax law, inspect cigarettes for markings required under this program and report those findings to the fire marshal.

A cigarette knowingly sold or offered for sale in violation of the program would subject:

- a manufacturer, wholesale dealer, or agent to a civil penalty up to \$100 for each pack of cigarettes sold or offered for sale, but not more than \$100,000 for all violations within a 30-day period; and
- a retailer to a civil penalty up to \$100 for each pack of cigarettes sold or offered for sale, but not more than \$25,000 for all violations within a 30-day period.

A manufacturer falsely certifying that a cigarette met performance standards would be subject to a civil penalty not to exceed \$75,000 for a first violation or \$250,000 for a second or subsequent violation.

A manufacturer that failed to make copies of testing reports available to a state fire marshal within 60 days of written request would be subject to a civil penalty up to \$10,000 per violation. Each day the copies were not made available would be considered a separate violation.

A violation of any other provisions under this program or rules adopted under the program would subject the offender to a civil penalty up to

\$1,000 for a first violation or \$5,000 for a second or subsequent violation. A cigarette sold or offered for sale in violation of this chapter would be subject to forfeiture, but the true holder of the trademark rights in the cigarette brand would have to be permitted to inspect the cigarette before it could be destroyed.

The attorney general would be empowered to decide or adhere to the request of the state fire marshal to bring civil action against a person who had violated, was violating, or threatened to violate this statute or a rule established under it for:

- injunctive relief to restrain the person from continuing the violation or threat of violation;
- assessment of a civil penalty; or
- both injunctive relief and a civil penalty.

Civil penalties collected under this program would be deposited to the credit of the fire prevention and public safety account, a separate account in the general revenue fund that could be appropriated to the state fire marshal to support fire safety and prevention programs.

Effective date. This bill would take effect October 1, 2008, but would not prohibit an authorized vendor from selling existing inventory of cigarettes on or after that date, as long as the vendor could establish the state tax stamps had been affixed to the package before the effective date, and the quantity of cigarettes in the inventory was comparable to the amount in stock in the previous year. A vendor would be required to sell cigarettes certified under this program after October 1, 2009.

**SUPPORTERS
SAY:**

CSHB 2935 is, at its essence, a fire safety bill that would be geared toward attacking the leading cause of home fire fatalities in the United States – cigarettes. The bill would regulate cigarettes to ensure that a safer product, self-extinguishing cigarettes, was used in Texas. It would not create a safer product as it relates to the health of the user but would create a product that could save the lives of smokers and nonsmokers alike. Canada and 10 states have enacted similar legislation, and even anti-smoking groups back this measure because of its pervasive safety benefits.

On an annual basis, fires ignited by smoking devices kill 700 to 900 Americans, one-fourth of whom are not smokers themselves. Elderly people and children are most likely to fall into that category because of

their inability in some cases to independently evacuate the premises, but neighbors and other family members also run the risk of perishing in a fire caused by an unattended cigarette.

Cigarette manufacturers have the technology to create a self-extinguishing cigarette by applying special ultra-thin bands of paper to traditional cigarette paper. These bands create a “speed bump” effect by slowing down and subsequently extinguishing an unattended lit cigarette. Although known in some arenas as “fire-safe” cigarettes, nothing that burns can truly be categorized as fire safe if it is handled carelessly.

These cigarettes, however, have been shown to be safer. In New York, which became the first government entity in the world to institute this regulation in 2004, deaths from fires caused by cigarettes dropped on a monthly basis over the first year and have dropped 30 percent since the law was enacted. Ten states representing about one-third of the country’s population regulate cigarette manufacturing, and CSHB 2935 was written largely to mirror that language and maintain the established uniform standards.

A 2005 Harvard School of Public Health study examined the effects of these cigarettes on consumers and found no significant difference from the standard model in the impact they have on consumers’ health and use. Although the study noted a slight variation between the type of emissions between the two, one of the researchers noted the difference in health effects between the two lethal products is akin to opting to jump out of the window of the 10th floor instead of the 11th floor. Based on data culled from New York, consumer purchases were unaffected, as were resulting taxes stemming from those purchases. Studies have consistently shown smokers cannot tell the difference between the products. Although costs associated with production are about one cent higher per cigarette, cigarette prices also were found to be unchanged.

This bill would not preclude the federal government from adopting standards that would govern Texas, and in fact provides for such a scenario. Because Congress has been slow to act on this issue, the hope is that passing this bill would add to the collective pressure placed on the federal government to act.

OPPONENTS
SAY:

Although the intent of the bill is laudable, regulating cigarette manufacturing and sales should not be a state function. A state-by-state effort would create a patchwork of potentially conflicting laws that would place onerous burdens on cigarette manufacturers. Also, the intent of this bill would be subverted because Texans could still smoke less safe cigarettes bought in other states. Many residents living near neighboring states obtain their cigarettes outside the state because, with the recent imposition of additional taxes, Texas' cigarette taxes are the highest in the region.