



Texas Department of Insurance

State Fire Marshal's Office

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January 1, 2009

The Honorable Rick Perry, Governor
The Honorable David Dewhurst, Lieutenant Governor
The Honorable Tom Craddick, Speaker

Re: Report to the Legislature on HB 2935

Dear Governors and Speaker:

In accordance with the legislature's directions in HB 2935, 80th Legislature, Regular Session and pursuant to Section 796.017 of the Health and Safety Code, the State Fire Marshal submits the following report:

The purpose of HB 2935, authored by Representative Phil King and sponsored by Senator Royce West, was to reduce the number of fatalities resulting from fires caused by unattended cigarettes. In enacting HB 2935, the Legislature found that cigarettes are the leading cause of home fire fatalities in the United States, killing 700 to 900 people, smokers and nonsmokers alike, per year. According to the HB 2935 bill analysis, many victims of smoking-material fire fatalities are not the smokers whose cigarettes started the fire: 34 percent are children of the smokers; 25 percent are neighbors or friends; 14 percent are spouses or partners; and 13 percent are parents. HB 2935 prescribes standards relating to reduced ignition propensity cigarettes, more commonly referred to as "fire safe cigarettes" or as used herein, "fire standard compliant"(FSC) cigarettes. The Legislature found that there is technology available to produce a cigarette that has a reduced propensity to burn when left

unattended. (Texas House Health & Human Services Committee, Bill Analysis (Senate Committee Report), HB 2935, 80th Legislature, Regular Session (June 15, 2007). FSC cigarettes are cigarettes which have a reduced propensity to continue burning when left unattended. The most common fire-safe technology used by cigarette manufacturers is to wrap cigarettes with two or three thin bands of less-porous paper that act as “speed bumps” to slow down a burning cigarette. If an FSC cigarette is left unattended, the burning tobacco will reach one of these speed bumps and self-extinguish. All cigarettes entering the state after January 1, 2009 must meet the prescribed standard. Non-FSC compliant cigarettes may still be sold in the state in 2009. This allows for merchants to dispose of their non-compliant cigarettes during the year 2009. All cigarettes sold or offered for sale in Texas after January 1, 2010, must meet the prescribed standard.

There are currently thirty-six (36) states that have adopted similar legislation and seven (7) have pending legislation. Approximately eighty-one percent (81%) of the United States population is, or will soon be, living in jurisdictions requiring the sale of FSC cigarettes. New York’s law has been in effect since June 2004. According to a September 21, 2005, ABC News/Associated Press report, fewer people have died in smoking-related fires since New York became the first state to require that tobacco companies sell self-extinguishing cigarettes. All cigarettes sold in Canada are currently FSC compliant and all cigarettes sold across the European Union will have to be in

compliance by 2011. Both Liggett Group LLC and R.J. Reynolds Tobacco Company announced that they will manufacture all of their cigarette brands using the "fire-safe" technology by 2009. The legislature directed the State Fire Marshal to take note of existing laws and rules in effect in other states before adopting any rules implementing HB 2935. The State Fire Marshal rules adopted by the Commissioner of Insurance located at 28 TAC §§34.1201 – 34.1214 were developed and drafted with this directive in mind and included input from the cigarette manufacturing industry.

Beginning in January of 2009, all cigarettes shipped into the state must carry the "FSC" marking or label on all packaging, including boxes, cartons, or individual packs clearly identifying their compliance with the reduced propensity standard. All manufacturers must register their "FSC" marking or label, provide the name of each brand or type of cigarette they manufacture and intend to sell in the state, and certify that each identified cigarette meets the reduced propensity standard. The State Fire Marshal's Office is currently processing all such information. This information will be cross checked against data submitted and collected by the Comptroller of Public Accounts who maintains similar data as a result of their state cigarette tax collection responsibilities and authority. The State Fire Marshal's Office has met with the Comptroller's Office on numerous occasions to exchange information and obtain insight into the cigarette distribution process and the agency's oversight techniques. It is apparent that the vast majority of cigarettes are brought into the state through

several large distribution centers by Comptroller licensed “distributors” or “wholesalers”. The ability to inspect cigarettes for compliance at these facilities prior to their “first sale” would appear to facilitate the oversight process and reduce expenses. Communications with other state agencies regulating FSC cigarette programs indicates there is a high level of compliance since there is little incentive for non-compliance and the potential fines for non-compliance are substantial. The State Fire Marshal’s Office anticipates the majority of compliance audits and inspections can be focused on the major distribution and wholesale facilities to maximize the use of resources needed for oversight of the program. The State Fire Marshal’s Office has gathered insight into some areas of concern, particularly with counterfeit cigarettes, smaller manufacturers and products sold from Native American reservations.

The Appropriations Act for this legislation provides:

Sec. 19.94. Contingency Appropriation for House Bill 2935

Contingent on the passage of House Bill 2935 by the Eightieth Legislature, Regular Session, or similar legislation relating to the regulation of cigarettes, the Texas Department of Insurance is appropriated \$98,390 and 2.0 FTEs in fiscal year 2008 and \$380,557 and 9.0 FTEs in fiscal year 2009 in General Revenue–Dedicated Fund 36 funds to implement the provisions of the legislation. Also contingent on the passage of House Bill 2935 by the Eightieth Legislature, Regular Session, or similar legislation relating to the regulation of cigarettes, the Texas Department of Insurance is appropriated


any civil penalties collected and deposited to the General Revenue–Dedicated Fire Prevention and Public Safety Account under the provisions of the bill.

This appropriation funded two (2) FTE's designated as one (1) program manager and one (1) program specialist in fiscal 2008 and additional (7) FTEs in fiscal 2009 designated as (2) administrative assistants and (5) inspectors. The State Fire Marshal filled the program manager position in September of 2007 (fiscal 2008). Currently, there is an additional posting for a program specialist to function as a chief inspector and the State Fire Marshal anticipates retaining two other available inspector FTE's for possible use in the future.

The program will move forward in 2009. Existing funds may be reallocated to cover equipment cost and other possible unanticipated expenses. The State Fire Marshal's Office is determined to use available existing resources, both within the state and in partnership with other state jurisdictions, to secure adequate oversight of the program with minimal expense. Based on the projected nationwide movement to produce only FSC compliant cigarettes, it appears implementation and oversight of the program will be accomplished within the appropriated funds and with fewer FTEs.

Please contact either me or Carol Cates, Director of Government Relations, at 463-6651 if you have any questions or need any additional information regarding this required report.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Paul Maldonado".

Paul Maldonado
State Fire Marshal

cc: Mike Geeslin, Commissioner of Insurance
House Insurance Committee
House State Affairs Committee
Senate Health and Human Services Committee
Senate State Affairs Committee