

State of Arkansas
85th General Assembly
Regular Session, 2005

A Bill

HOUSE BILL 1644

By: Representative D. Evans

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS CIGARETTE FIRE
SAFETY STANDARDS ACT; CONCERNING FIRE SAFETY
STANDARDS FOR CIGARETTES SOLD IN THE STATE OF
ARKANSAS; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO CREATE THE ARKANSAS CIGARETTE
FIRE SAFETY STANDARDS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 27 is amended to add an additional subchapter to read as follows:

20-27-1701. Title.

This subchapter shall be known and may be cited as the "Arkansas Cigarette Fire Safety Standards Act".

20-27-1702. Definitions.

As used in this subchapter:

(1) "Cigarette" means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco;

(2) "Person" means any individual, firm, association, company, partnership, corporation, joint-stock company, club, agency, syndicate, the State of Arkansas, county, municipal corporation, or other political subdivision of this state, receiver, trustee, fiduciary, or trade



1 association;

2 (3)(A) "Retailer" means any person who is engaged in this state
3 in the business of selling cigarettes at retail and includes any group of
4 persons, cooperative organizations, buying pools, and any other person or
5 group of retailers purchasing cigarettes on a cooperative basis from licensed
6 distributors or wholesalers.

7 (B) Any person placing a cigarette vending machine at, on,
8 or in any premises shall be deemed to be a retailer for each such vending
9 machine; and

10 (4) "Wholesaler" means the same as defined in § 4-75-702.

11
12
13 20-27-1703. Fire safety standards.

14 (a)(1) By July 1, 2007, the Arkansas Tobacco Control Board shall
15 promulgate fire safety standards for cigarettes sold or offered for sale in
16 this state.

17 (2)(A) The fire safety standards promulgated pursuant to this
18 subchapter shall become effective at the earliest practicable date by which
19 manufacturers of cigarettes may comply with the standards.

20 (B) However, the effective date of the rules shall be no
21 later than one hundred eighty (180) days after the date the rules are
22 promulgated.

23 (b) Standards promulgated pursuant to this subchapter shall ensure
24 that:

25 (1) Cigarettes sold in this state, if ignited, will stop burning
26 within a time period specified by the standards if the cigarettes are not
27 smoked during that period; and

28 (2) Cigarettes sold in this state meet performance standards
29 prescribed by the Arkansas Tobacco Control Board to limit the risk that
30 cigarettes will ignite household furnishings, including, but not limited to,
31 upholstered furniture and mattresses.

32 (c) In promulgating fire safety standards for cigarettes pursuant to
33 this subchapter, the Arkansas Tobacco Control Board, in consultation with the
34 Department of Health, shall consider whether cigarettes manufactured in
35 accordance with the standards may reasonably result in increased health risks
36 to consumers.

1 (d) The Arkansas Tobacco Control Board shall be responsible for
2 administering the provisions of this section.

3
4 20-27-1704. Written certification.

5 (a)(1)(A) Beginning on the effective date of the fire safety standards
6 promulgated under § 20-27-1703, no cigarettes shall be sold or offered for
7 sale in this state unless the manufacturer has certified in writing to the
8 Arkansas Tobacco Control Board that the cigarettes meet the performance
9 standards prescribed by the board pursuant to § 20-27-1703.

10 (B) However, nothing in this subchapter shall be construed
11 to prohibit any person or entity from selling cigarettes that have not been
12 certified with the manufacturer in accordance with § 20-27-1703 if the
13 cigarettes:

14 (i) Are or will be stamped for sale in another
15 state; or

16 (ii) Are packaged for sale outside the United
17 States.

18 (2) Copies of the written certifications shall be provided by
19 the certifying manufacturer to all wholesalers.

20 (b) The board shall prescribe procedures by which retailers are
21 notified of which cigarettes have been certified by manufacturers as meeting
22 the performance standards prescribed by the board.

23
24 20-27-1705. Civil penalties.

25 (a) Any wholesaler who knowingly sells cigarettes that are in
26 violation of the fire safety standards promulgated under this subchapter
27 shall be subject to a civil penalty not to exceed ten thousand dollars
28 (\$10,000) per sale of cigarettes.

29 (b) Any retailer who knowingly sells cigarettes that are in violation
30 of this subchapter shall be subject to:

31 (1) A civil penalty not to exceed five hundred dollars (\$500)
32 for each sale or offer for sale of cigarettes if the total number of
33 cigarettes sold or offered for sale does not exceed one thousand (1,000)
34 cigarettes; or

35 (2) A civil penalty not to exceed one thousand dollars (\$1,000)
36 per sale, if the total number of cigarettes sold or offered for sale exceeds

1 one thousand (1,000) cigarettes.

2 (c) In addition to any penalty prescribed by law, any corporation,
 3 partnership, sole proprietor, limited partnership, or association engaged in
 4 the manufacture of cigarettes that knowingly makes a written certification
 5 pursuant to § 20-27-1704 that is false shall be subject to a civil penalty
 6 not to exceed ten thousand dollars (\$10,000) for each false certification.

7
 8 20-27-1706. Arkansas Cigarette Fire Safety Standards Act Fund.

9 (a) There is created on the books of the Treasurer of State, the
 10 Auditor of State, and the Chief Fiscal Officer of the State a special revenue
 11 fund to be known as the Arkansas Cigarette Fire Safety Standards Act Fund.

12 (b)(1) All moneys collected under § 20-27-1705 shall be deposited into
 13 the State Treasury to the credit of the fund as special revenues.

14 (2) The fund shall also consist of any other revenues as may be
 15 authorized by law.

16 (c)(1) The fund shall be used by the Arkansas Tobacco Control Board
 17 for the purpose of fire safety and prevention programs.

18 (2) Moneys from the fund used for the purpose of fire safety and
 19 prevention programs shall supplement other appropriations for that purpose.

20
 21 SECTION 2. Arkansas Code § 26-57-256 is amended to read as follows:

22 26-57-256. Powers of the Arkansas Tobacco Control Board.

23 (a) The Arkansas Tobacco Control Board shall:

24 (1) Promulgate regulations for the proper enforcement and
 25 implementation of the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201
 26 et seq., ~~and~~ the Unfair Cigarette Sales Act, § 4-75-701 et seq., and the
 27 Arkansas Cigarette Fire Safety Standards Act, § 20-27-1701 et seq., subject
 28 to the restrictions in § 26-57-212(d);

29 (2) Receive applications for and issue, refuse, suspend, and
 30 revoke licenses and permits listed in § 26-57-219;

31 (3) Prescribe forms of applications for permits and licenses
 32 under this subchapter;

33 (4)(A) Cooperate with the Revenue Division of the Department of
 34 Finance and Administration in the enforcement of the tax laws affecting the
 35 sale of tobacco products in this state and in the enforcement of all other
 36 state and local tax laws.

(B) To facilitate efforts to cooperate with the division concerning the enforcement of all other state and local tax laws, the board shall immediately require that the following additional information be provided by all applicants for permit issuance or renewal:

(i) Federal tax identification numbers issued by the Internal Revenue Service;

(ii) Social Security numbers; and

(iii) State sales tax account numbers assigned by the Department of Finance and Administration, if applicable.

(C) Beginning January 1, 2002, and each year thereafter, the board shall provide a list of all applicants for the issuance or renewal of all tobacco permits and licenses to the Director of the Department of Finance and Administration. This list shall contain the identifying information required by subdivision (a)(4)(B) of this section as well as the name of the permittee and the permittee's current business address.

(5) Conduct public hearings, where appropriate, regarding any permit and license authorized by this subchapter or in violation of this subchapter, the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227, the Arkansas Cigarette Fire Safety Standards Act, § 20-27-1701 et seq., or any other federal, state, or local statute, ordinance, rule, or regulation concerning the sale of tobacco products to minors or the rules and regulations promulgated by the board. After a notice and hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board finds a violation of this subchapter, the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., the Unfair Cigarette Sales Act, § 4-75-701 et seq., the Arkansas Cigarette Fire Safety Standards Act, § 20-27-1701 et seq., or the rules and regulations promulgated by the board, the board may suspend, revoke, or not renew any or all permits and licenses issued by the board to any person or entity and, in addition, the board may levy a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation against any person or entity found to be in violation, except as provided in § 20-27-1704. Each day of the violation shall be deemed a separate violation, except as provided in § 20-27-1704. In that regard, the board is authorized to examine or cause to be examined under oath any witness and the books and records of any licensee, person, or entity; and

1 (6) When requested by the written petition of at least three (3)
2 interested parties, conduct public hearings to receive testimony on the facts
3 relevant to the issuance of any license or permit under this subchapter.

4 (b) Unless the civil penalty assessed under this section is paid
5 within fifteen (15) days following the date for an appeal from the order, the
6 Director of the Arkansas Tobacco Control Board shall have the power to
7 institute a civil action in the Circuit Court of Pulaski County to recover
8 the civil penalties assessed pursuant to the provisions of this subchapter.

9 (c) The board shall have no authority in criminal prosecutions or the
10 assessment or collection of any taxes or penalties related to the taxing of
11 tobacco products. However, the board shall refuse to issue, suspend, revoke,
12 or refuse renewal of any permit or license issued by the board for the
13 failure to pay taxes or fees imposed on tobacco products or any permit or
14 license fees imposed by this subchapter or any other state and local taxes.