

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2154
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Finance
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas has a shortage of health care providers, effectively denying access to health care for Texans living in rural, border, and inner-city communities. For several years, the Office of the Comptroller of Public Accounts has had to set aside millions of dollars for refunds because of the ambiguity created by an ad valorem tax method on smokeless tobacco. This bill addresses this loophole in the state's smokeless tobacco taxation method, shifting from an ad valorem method to a weight-based method. This change in the basis for taxation would bring the taxation of smokeless tobacco in line with taxation methods for other tobacco products.

This bill creates a new health care access fund and a consolidated program for loan repayment to expand access to health care by increasing the provider workforce and expanding the Federally Qualified Healthcare Centers' infrastructure in underserved areas. Revenue derived from closing the loophole in the law relating to tax on tobacco products will be appropriated for the fund's purposes.

C.S.H.B. 2154 amends current law relating to the physician education loan repayment program.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Higher Education Coordinating Board is modified in SECTION 5 (Section 61.537, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 61.532(a), Education Code, as follows:

(a) Requires a physician, to be eligible to receive repayment assistance, to apply to the Texas Higher Education Coordinating Board (THECB); at the time of application, be licensed to practice medicine under Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code; have completed one, two, three, or four consecutive years of practice in a health professional shortage area designated by the Department of State Health Services (DSHS); and provide health care services to recipients under the medical assistance program authorized by Chapter 32 (Medical Assistance Program), Human Resources Code, or enrollees under the child health plan program authorized by Chapter 62 (Child Health Plan for Certain Low-Income Children), Health and Safety Code. Deletes existing text requiring a physician, to be eligible to receive repayment assistance, to apply to THECB and have completed at least one year of medical practice in private practice in an economically depressed or rural medically underserved area of the state, for certain state agencies, including the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Corrections, or the Texas Youth Commission, or for an approved family practice residency training program established under Subchapter I (Contracts for Medical Residency Programs) as a clinical faculty member and have completed training in an approved family practice residency training program on or after July 1, 1994.

SECTION 2. Amends Section 61.533, Education Code, as follows:

Sec. 61.533. LIMITATION. Authorizes a physician to receive repayment assistance grants for not more than four years, rather than receive repayment assistance grants for each of not more than five years.

SECTION 3. Amends Section 61.535(a), Education Code, to require THECB to deliver any repayment made under this subchapter in a lump sum payable to both the physician and the lender or other holder of the affected loan, or directly to the lender or other holder of the loan on the physician's behalf, rather than requiring THECB to deliver any repayment made under this subchapter in a lump sum payable to the lender and the physician in accordance with federal law. Makes a nonsubstantive change.

SECTION 4. Amends Section 61.536, Education Code, as follows:

Sec. 61.536. **ADVISORY COMMITTEES.** Authorizes THECB to appoint advisory committees from outside THECB's membership to assist THECB in performing its duties under this subchapter, rather than appoint advisory committees from outside THECB's membership to assist THECB in performing its duties under this subchapter and request the assistance of the Family Practice Residence Advisory Committee (committee) in performing those duties. Makes nonsubstantive changes.

SECTION 5. Amends Section 61.537, Education Code, as follows:

Sec. 61.537. **RULES.** (a) Requires THECB to adopt rules necessary for the administration of this subchapter. Deletes existing text requiring THECB to adopt rules necessary for the administration of this subchapter, including a rule that sets a maximum amount of repayment assistance that is authorized to be received by a physician in one year and a rule that authorizes the committee to establish priorities among eligible physicians for repayment assistance, by taking into account the degree of physician shortage, geographic locations, whether the physician is or will be providing service in a medically underserved area, and other criteria the committee considers appropriate.

(b) Requires THECB to distribute each medical unit, rather than each medical unit and appropriate state agency, and professional association copies of the rules adopted under this section and pertinent information in this subchapter.

SECTION 6. Amends Section 61.538, Education Code, as follows:

Sec. 61.538. New heading: **AMOUNT OF REPAYMENT ASSISTANCE.** (a) Authorizes a physician to receive repayment assistance under this subchapter in the amount determined by THECB rule, not to exceed certain amounts for each year in which the physician establishes eligibility for the assistance. Sets forth the amounts of repayment assistance.

(b) Prohibits the total amount of repayment assistance distributed by THECB from exceeding the total amount of money available in the physician education loan repayment program account, rather than the total amount of gifts and grants accepted by THECB for repayment assistance, medical school tuition set aside under Section 61.539 (Medical School Tuition Set Aside for Certain Loan Repayments) of this code, and legislative appropriations for repayment assistance.

(c) Prohibits the total amount of repayment assistance made under this subchapter to an individual physician from exceeding \$160,000.

SECTION 7. Amends Sections 61.539(b) and (c), Education Code, as follows:

(b) Requires that the amount set aside be transferred to the comptroller of public accounts (comptroller) to be deposited in the physician education loan repayment program account established under Section 61.5391, rather than maintained in the state treasury for the sole purpose of repayment of student loans of a physician serving in a designated state agency or in an area of this state that is economically depressed or that is a medically underserved area or health professional shortage area, as designated by the United States Department of Health and Human Services, that has a current shortage of physicians.

(c) Requires the comptroller, as soon as practicable after each state fiscal year, to prepare a report for that fiscal year of the number of students registered in a medical branch, school, or college, the total amount of tuition charges collected by each institution, the total amount transferred to the comptroller, rather than the treasury, under this section, and the total amount available in the physician education loan repayment program account, rather than under Subsection (b), for the repayment of student loans of physicians under this subchapter.

SECTION 8. Amends Subchapter J, Chapter 61, Education Code, by adding Section 61.5391, as follows:

Sec. 61.5391. PHYSICIAN EDUCATION LOAN REPAYMENT PROGRAM ACCOUNT. (a) Provides that the physician education loan repayment program account is an account in the general revenue fund. Provides that the account is composed of gifts and grants contributed to the account, earnings on the principal of the account, and other amounts deposited to the credit of the account, including money deposited under Section 61.539(b), legislative appropriations, and money deposited under Section 155.2415, Tax Code.

(b) Prohibits the money in the account from being appropriated for any purpose except to provide loan repayment assistance to eligible physicians under this subchapter.

SECTION 9. Amends Section 61.540, Education Code, as follows:

Sec. 61.540. New heading: LOAN REPAYMENT ASSISTANCE UNDER FORMER LAW; SAVING PROVISION. (a) Provides that this subsection, rather than section, applies only to a person who entered into a written agreement to perform service as a physician in exchange for loan repayment assistance under this subchapter before September 1, 2003. Provides that the agreement continues in effect and this subchapter, as it existed when the person entered into the agreement, is continued in effect for purposes of that agreement until the person satisfies all the conditions of the agreement or repays all amounts due under the agreement if the person does not satisfy the conditions of the agreement. Deletes existing Subsection (b) designation.

(b) Authorizes a person receiving loan repayment assistance under this subchapter immediately before the effective date of the amendments made to this subchapter by the 81st Legislature, Regular Session, 2009, to continue to receive loan repayment assistance under this subchapter, as this subchapter applied to the person immediately before the effective date of those amendments, until the person is no longer eligible for loan repayment assistance under this subchapter, as this subchapter existed on that date, and the former law is continued in effect for that purpose.

(c) Provides that a person to whom this section applies is not eligible to receive repayment assistance under another provision of this subchapter.

SECTION 10. Amends Section 155.0211, Tax Code, by amending Subsection (b) and adding Subsections (b-1), (b-2), (b-3), (b-4), (c), (d), and (e), as follows:

(b) Provides that except as provided by Subsection (c), the tax rate for each can or package of a tobacco product other than cigars is \$1.22 per ounce and a proportionate rate on all fractional parts of an ounce, rather than providing that the tax rate for tobacco products other than cigars is 40 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal.

(b-1) Provides that notwithstanding Subsection (b) and except as provided by Subsection (c), for the state fiscal year beginning September 1, 2012, the tax rate for each can or package of a tobacco product other than cigars is \$1.19 per ounce and a proportionate rate on all fractional parts of an ounce. Provides that this subsection expires December 1, 2013.

(b-2) Provides that notwithstanding Subsection (b) and except as provided by Subsection (c), for the state fiscal year beginning September 1, 2011, the tax rate for each can or package of a tobacco product other than cigars is \$1.16 per ounce and a proportionate rate on all fractional parts of an ounce. Provides that this subsection expires December 1, 2012.

(b-3) Provides that notwithstanding Subsection (b) and except as provided by Subsection (c), for the state fiscal year beginning September 1, 2010, the tax rate for each can or package of a tobacco product other than cigars is \$1.13 per ounce and a proportionate rate on all fractional parts of an ounce. Provides that this subsection expires December 1, 2011.

(b-4) Provides that notwithstanding Subsection (b) and except as provided by Subsection (c), for the state fiscal year beginning September 1, 2009, the tax rate for each can or package of a tobacco product other than cigars is \$1.10 per ounce and a proportionate rate on all fractional parts of an ounce. Provides that this subsection expires December 1, 2010.

(c) Provides that the tax imposed on a can or package of a tobacco product other than cigars that weighs less than 1.2 ounces is equal to the amount of the tax imposed on a can or package of a tobacco product that weighs 1.2 ounces.

(d) Requires that the computation of the tax under this section and the applicability of Subsection (c) be based on the net weight as listed by the manufacturer. Provides that the total tax to be imposed on a unit that contains multiple individual cans or packages is the sum of the taxes imposed by this section on each individual can or package intended for sale or distribution at retail.

(e) Provides that a change in the tax rate in effect for a state fiscal year that occurs in accordance with this section does not affect taxes imposed before that fiscal year, and the rate in effect when those taxes were imposed continues in effect for purposes of the liability for and collection of those taxes.

SECTION 11. Amends Section 155.101, Tax Code, as follows:

Sec. 155.101. RECORD OF PURCHASE OR RECEIPT. Requires each distributor, wholesaler, bonded agent, and export warehouse to keep records at each place of business of all tobacco products purchased or received. Requires each retailer to keep records at a single location, which the retailer is required to designate as its principal place of business in the state, of all tobacco products purchased and received. Requires that these records include certain information, including the manufacturer's list price for the tobacco products, the net weight as listed by the manufacturer for each unit, and any other information required by rules of the comptroller, except that Subdivision (7) applies to distributors only and Subdivision (8) applies only to the purchase or receipt of tobacco products other than cigars.

SECTION 12. Amends Section 155.102, Tax Code, by adding Subsection (c), to require that the records of each sale, distribution, exchange, or use of tobacco products other than cigars, in addition to the information required under Subsection (b) (relating to the requirement that the records for each sale, distribution, exchange, or use of tobacco product show certain information), show the net weight as listed by the manufacturer for each unit.

SECTION 13. Amends Section 155.103, Tax Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Requires that the records for each sale of tobacco products other than cigars, in addition to the information required under Subsection (a) (relating to the requirement that a manufacturer who sells tobacco products to a permit holder in this state keep records showing certain information), show the net weight as listed by the manufacturer for each unit.

(b) Requires a manufacturer who sells tobacco products to a permit holder in this state to file with the comptroller, on or before the last day of each month, a report showing the information required to be listed by Subsections (a) and (a-1), rather than in Subsection (a), for the previous month.

SECTION 14. Amends Section 155.105(b), Tax Code, to require that the report contain certain information for the preceding calendar month's sales in relation to each retailer, including the monthly net sales made to the retailer by the wholesaler or distributor, including the quantity and units of cigars and tobacco products sold to the retailer, and for each unit of tobacco products other than cigars, the net weight as listed by the manufacturer. Makes nonsubstantive changes.

SECTION 15. Amends Section 155.111, Tax Code, by adding Subsection (b-1), to require that the report, in addition to the information required under Subsection (b) (relating to the requirement that a distributor file with the comptroller on or before the last day of each month a report of the preceding month showing certain information), to show the net weight as listed by the manufacturer for each unit of tobacco products other than cigars that is purchased, received, or acquired.

SECTION 16. Amends Section 155.2415, Tax Code, as follows:

Sec. 155.2415. New heading: ALLOCATION OF CERTAIN REVENUE TO PROPERTY TAX RELIEF FUND AND CERTAIN OTHER FUNDS. Requires that the proceeds from the collection of taxes imposed by Section 155.0211, notwithstanding Section 155.241 (Allocation of Tax), be allocated as follows:

(1) requires that the amount of the proceeds that is equal to the amount that, if the taxes imposed by Section 155.0211 were imposed at a rate of 40 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal, would be attributable to the portion of that tax rate in excess of 35.123 percent, be deposited to the credit of the property tax relief fund under Section 403.109 (Property Tax Relief Fund), Government Code;

(2) requires that the amount of the proceeds that is equal to the amount that would be attributable to a tax rate of 35.123 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal, if the taxes were imposed by Section 155.0211 at that rate, be deposited to the credit of the general revenue fund; and

(3) requires that 100 percent of the remaining proceeds be deposited to the credit of the physician education loan repayment program account established under Subchapter J, Chapter 61 (Texas Higher Education Coordinating Board), Education Code. Deletes existing text requiring that all proceeds from the collection of taxes imposed by Section 155.0211 attributable to the portion of the tax rate in excess of 35.213 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal, notwithstanding Section 155.241, be deposited to the credit of the property tax relief fund under Section 403.109, Government Code.

SECTION 17. Repealer: Sections 61.531(b) (relating to the authorization that not more than 20 percent of physicians receiving repayment assistance be employed by certain state agencies) and (c) (relating to the prohibition of a physician receiving repayment assistance from receiving assistance under Subchapter E, Chapter 106 [*repealed*], Health and Safety Code), Education Code.

Repealer: Section 61.532(b) (relating to the prohibition of THECB from providing for repayment assistance on a pro rata basis for physicians practicing part-time for an approved family practice residency training program or for certain state agencies), Education Code.

SECTION 18. Requires THECB, as soon as practicable after the effective date of this Act, to adopt rules necessary to administer Subchapter J, Chapter 61, Education Code, as amended by this Act. Authorizes THECB, for that purpose, to adopt the initial rules in the manner provided by law for emergency rules.

SECTION 19. Makes application of Chapter 155, Tax Code, as amended by this Act, prospective.

SECTION 20. Effective date: September 1, 2009.