

SUBJECT: Sale and distribution of tobacco products

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Wolens, Brimer, Carter, Counts, Danburg, Hilbert, Hunter, D. Jones, Longoria, McCall, Ramsay

0 nays

4 absent — S. Turner, Alvarado, Craddick, Stiles

SENATE VOTE: On final passage, April 24 — 29-1 (Bivins)

WITNESSES: For — Cindy Antolik, Smokeless Texas, American Cancer Society

Against — None

BACKGROUND : The Health and Safety Code prohibits commercial enterprises from selling, giving or causing to be sold or given cigarettes or tobacco products to a person younger than 18 years of age. An offense is a Class C misdemeanor punishable by a maximum penalty of a \$500 fine. The Health and Safety Code also requires that a specific sign outlining the prohibition be posted near the location where tobacco products are being sold or near a tobacco product vending machine.

DIGEST: CSSB 55 would amend the Health and Safety Code to add new provisions regarding distribution of tobacco products, placement of vending machines, signage requirements, and enforcement measures.

CSSB 55 would also increase permit fees for tobacco distributors and wholesalers, impose a new permit fee on retailers, and impose a fee on the gross sales price of outdoor advertising of cigarettes and tobacco products.

The bill would specifically allow cities to pass more restrictive local ordinances regulating the sale and use of tobacco.

Possession, sale and distribution. People under the age of 18 who possessed, purchased, consumed or accepted a cigarette or tobacco product, or who used false identification to buy cigarettes or tobacco products, would be subject to a fine of up to \$500. A court could require offenders and their parents to attend a tobacco awareness course instead of paying the full fine. Offenders in rural areas who did not have access to a tobacco awareness course could instead be ordered to perform 12 hours of tobacco-related community service. Offenders who do not provide proof of attending the tobacco awareness course could have their driver's licenses suspended for up to 180 days.

Anyone selling cigarettes or tobacco-related products would have to require proof of identification from anyone under 27 years old. Employees who did not request identification or who sold or gave cigarettes or cigarette coupons to minors would be subject to a fine of up to \$500. It would be a defense to prosecution if the required proof of age was presented and the defendant reasonably relied on that proof of age. Owners of retail stores in which tobacco products are sold would be required to notify employees of their legal responsibilities by January 1, 1998. Employees would have to be notified of their responsibilities within 72 hours of beginning to sell tobacco products. Employers who did not notify employees would be subject to a fine of up to \$500.

Free samples of cigarettes or tobacco products or coupons for free or discounted cigarettes could not be distributed to persons under 18 years of age. Retailers could not accept or redeem coupons from persons under 18 years of age.

Distribution of a tobacco product would not be prohibited to a family member or to an employee in the performance of the employee's duties.

Enforcement. The comptroller, working with county sheriffs and municipal police chiefs, would conduct random inspections at least annually of various locations where cigarettes and tobacco are sold. These inspections could include the use of minors younger than 17 years of age to act as decoys to test compliance. Written parental consent would be required for a minor to act as a decoy. The minor would be required to have an appearance that would cause a reasonably prudent seller to request proof

of age, and the minor would be required to answer truthfully any questions about age.

The comptroller could impose an administrative penalty against retailers or other permit holders who violated the provisions of CSSB 55. An administrative penalty could not exceed \$500 for the first violation in a 12-month period, \$750 for the second violation in a 12-month period, and \$1,000 for more than two violations in a 12-month period. If the retailer or permit holder was found to have sold cigarettes to minors more than four times in a 12 month period, the retailer's license would be revoked. The comptroller could suspend the retailer's license if the employer had not been found to have sold cigarettes to minors more than seven times in a 24-month period, the employer and employees attended a comptroller-approved seller-training program, and the employer had not directly or indirectly encouraged employees to violate the law. Local or state law enforcement agencies would have to report to the comptroller any violations the agency has detected, investigated or prosecuted in the previous month.

No preemption of local law. CSSB 55 would not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce ordinances or requirements that are compatible with and equal to or more stringent than the provisions of the bill.

Vending machines. CSSB 55 would prohibit the placement of vending machines containing tobacco products in places accessible to persons younger than 18 years of age. Prohibitions would not apply to places where persons under age 18 are not permitted.

Signage. Signs containing advertisements for cigarettes or tobacco products could not be located closer than 1,000 feet to a church or school, unless the sign was located more than 500 feet away from the church or school before September 1, 1997.

Fees. A purchaser of any outdoor advertising of cigarettes and tobacco products would have to pay the comptroller a fee of 10 percent of the gross sales price of the advertisement. This fee would be deposited in a special account in the state treasury dedicated to tobacco education and

enforcement. Advertisers who did not pay the fee would be subject to a fine of up to \$5,000. This fine could be imposed each day a violation occurred.

Tax Code changes. CSSB 55 would increase permit fees for wholesalers and distributors of tobacco products and impose a new permit fee for retailers who sold tobacco products. Retailer permits issued before September 1, 1999, would be subject to a fee of \$125; permits issued after that date would have a fee of \$180. Revenue from the sale of permits would go first to the comptroller for the administration of licensing of retailers. Any remaining money could be used to enforce provisions of CSSB 55. Remaining funds could then be used to fund a tobacco use public awareness fund administered by the comptroller's office.

CSSB 55 would take effect September 1, 1997. Vending machine restrictions and provisions regarding notification of employees about the sale and distribution of cigarettes would take effect January 1, 1998. Tax Code changes would take effect March 1, 1998, and June 1, 1998, as applicable.

**SUPPORTERS
SAY:**

CSSB 55 offers a reasonable and uniform approach to preventing children's access to cigarettes and other tobacco products. It would place responsibility for restricting cigarette sales on cigarette distributors, retailers, and the young people themselves. It would impose penalties but offer alternatives to fines that would help stop the flow of tobacco sales to minors and educate young people about the hazards of smoking. While its provisions are reasonable and fair, it would set an example by instituting one of the toughest and most comprehensive efforts against smoking by minors in the nation.

Children are more vulnerable to the hazards and addictions of smoking and tobacco use than adults because their bodies are still developing. They do not have mature reasoning abilities and are more influenced by peer pressure. The Texas Commission on Alcohol and Drug Abuse (TCADA) reports that more than 410,000 school-aged Texas children smoke, and tobacco use is on the rise — up 35 percent among tenth graders between 1992-96. Most lifelong smokers begin as minors. Strict measures that limit access to tobacco products would help break the cycle of smoking that

begins in childhood and ultimately could reduce state health expenditures for smoking-related illnesses.

Current tobacco sale and distribution restrictions are not well enforced. A TCADA study found that 98 percent of minors attempting to buy cigarettes in vending machines were successful. In cities where enforcement has been tightened, sales rates to minors have fallen, and smoking rates of students have been cut in half.

The \$180 fee on retailers would not be excessive considering the overall income and traffic cigarette sales to adults generate for retailers. Since retailers and distributors profit from the sale of tobacco products, they should pay a minimal cost to help prevent cigarettes from ending up in the hands of children. The penalties on retailers and employees would be strict enough to ensure that they would be taken seriously.

**OPPONENTS
SAY:**

The punishments imposed in CSSB 55 would be excessively harsh on young people who buy cigarettes and on retailers and employees who sell them. Young people who choose to smoke should not be treated as criminals and subject to fines of up to \$500.

Similarly, retailers could be subject to large fines, and even lose their licenses, for selling cigarettes to minors. Young people who want to buy cigarettes will often go to great lengths to do so. Retailers should not be held responsible for young people who succeed in purchasing cigarettes. In convenience stores and other heavy traffic retail outlets, a busy clerk could easily unintentionally sell cigarettes to minors more than a few times each year.

**OTHER
OPPONENTS
SAY:**

The bill is unnecessary and would be too costly. Devoting scarce law enforcement to offenses like tobacco sales and purchases of tobacco by minors would be a poor use of enforcement resources that could be better applied to other situations. The bill would do little to deter smoking among the young. Kids will be kids and try to buy or smoke cigarettes regardless of the consequences. Businesses should not be forced to regulate social behavior.

NOTES:

The committee substitute reduced the fee for a retailer's permit from \$260 to

to \$125 until September 1, 1997, and \$180 thereafter. It also added fees and penalties on cigarette and tobacco advertisers. The substitute dropped a Senate-passed provision that would have imposed a \$100 per violation fine on employees for selling cigarettes to minors and added provisions regarding employee and seller training programs for retailers and employees who violate the law.

During the 74th regular session in 1995, HB 2460 by Seidlits, which contained many provisions similar those in SB 55, passed both houses but was vetoed by Gov. Bush because it would have preempted local regulation of cigarettes and tobacco products.