

BILL ANALYSIS

Senate Research Center

C.S.S.B. 55
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Health & Human Services
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Committee Report (Substituted)

DIGEST

Currently, Texas law prohibits the sale of cigarettes or tobacco products to minors. In an attempt to restrict minors' access to tobacco this bill increases fees for permits to sell cigarettes and tobacco products and dedicates those funds to enforcement and education. In addition, C.S.S.B. 55 requires sales clerks to verify age through a photo ID; prohibits minors from possessing or using tobacco; requires all tobacco sales to be vendor assisted, except in areas not open to minors at any time; and prohibits the distribution of free tobacco samples.

PURPOSE

As proposed, C.S.S.B. 55 places additional restrictions on the sale and distribution of cigarettes in order to make it more difficult for minors to smoke cigarettes and use tobacco products. The bill also places penalties on those who violate the provisions of this bill and encourages the prevention of use of tobacco among minors.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the comptroller under SECTION 1.01 (Section 161.084, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. New heading: DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS

SECTION 1.01. Amends Chapter 161H, Health and Safety Code, as follows:

SUBCHAPTER H. New heading: DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS

Sec. 161.081. New heading: DEFINITIONS. Defines "cigarette," "permit holder," "retail sale," "retailer," "tobacco product," and "wholesaler."

Sec. 161.082. New heading: SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSON YOUNGER THAN 18 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED. (a) Provides that a person commits an offense if the person with criminal negligence sells, gives, or causes to be sold or given a cigarette or tobacco product to certain persons; or sells, gives, or causes to be sold or given a cigarette or tobacco product to another person who intends to deliver it to someone who is younger than 18 years age, rather than to another person knowing that the person receiving the cigarette or other tobacco product intends to deliver it to someone who is younger than 18 years or age. Provides that a retailer commits an offense under certain conditions. Provides that an offense under this section is a Class C misdemeanor. Provides that it is a defense to prosecution under Subsection (a)(1), rather than under this section, that the person to whom the cigarette or tobacco product was sold or given presented to the defendant apparently valid proof of identification, rather than a valid Texas driver's license or an identification. Establishes requirements regarding identification. Provides that it is not a defense to prosecution under this section that the retailer complied with the provisions of Section 161.085. Makes conforming changes.

Sec. 161.083. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSON YOUNGER THAN 27 YEARS OF AGE. Prohibits a person from selling, giving, or causing to be sold or given a cigarette or tobacco product to someone younger than 27 years of age unless the person to whom the cigarette or tobacco product was sold or given presents an apparently valid proof of identification. Requires a retailer to adequately supervise and train the retailer's agents and employees to prevent a violation of Subsection (a). Provides that a person commits an offense if the person violates this section and that a fine for this offense may be up to \$100 per violation. Makes conforming changes.

Sec. 161.084. WARNING NOTICE. Requires the sign required to be posted at retail of cigarettes or tobacco products or by vending machines to include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500 MAY BE IMPOSED.

Requires the comptroller, rather than the board, to determine, by rule, the design and size of the sign. Requires the comptroller on request to provide the sign without charge to certain persons. Makes conforming changes.

Sec. 161.085. NOTIFICATION OF EMPLOYEES AND AGENTS. Requires each permit holder to make certain notifications to each individual employed by that permit holder who is to be engaged in retail sales of cigarettes or tobacco products regarding state law. Sets forth requirements regarding notice as required by Subsection (a). Provides that an offense under this section is a Class C misdemeanor. Provides that it is a defense to Subsection (d) to show proof that the employee did complete, sign, and date, the notice required by Subsection (a). Requires the proof to be shown to the comptroller or an agent of the comptroller within 72 hours of the offense.

Sec. 161.086. VENDOR ASSISTED SALES REQUIRED; VENDING MACHINES. (a) Prohibits a retailer or other person from offering cigarettes or tobacco products, or installing or maintaining a vending machine containing cigarettes or tobacco products, except as provided by Subsection (b). Provides that Subsection (a) does not apply to a facility that is not open to persons younger than 18 years of age at any time. Authorizes the comptroller or a peace officer, with or without warrant, to seize, seal, or disable a vending machine installed or maintained in violation of this section. Requires property seized under this subsection to be seized in accordance with, and is subject to forfeiture to the state in accordance with Chapter 154H, Tax Code and Chapter 155E, Tax Code. Provides that a person commits a Class C misdemeanor offense if the person violates Subsection (a).

Sec. 161.087. DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS. Prohibits a person from distributing to persons younger than 18 years of age a free sample of a cigarette or tobacco product or a coupon that may be used to receive a free or discounted cigarette or tobacco product. Prohibits a permit holder from accepting or redeeming, offering to accept or redeem, or hiring a person to accept or redeem a coupon or other item that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product if such recipient is younger than 18 years of age, except as provided by Subsection (c). Prohibits coupons or other items that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product from being redeemable through mail or courier delivery. Provides that Subsections (a)(2) and (b) do not apply to a transaction between permit holders unless the transaction is a retail trade. Provides that a person commits a Class C misdemeanor if the person violates this section.

Sec. 161.088. ENFORCEMENT: UNANNOUNCED INSPECTIONS. Sets forth provisions regarding enforcement and unannounced inspections, the use of a minor decoy, and the preparation and submission by the comptroller of the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26).

Sec. 161.089. PREEMPTION OF LOCAL LAW. Provides that this subchapter does 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 an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products, provided that the regulation, ordinance or requirement meet certain specified requirements.

Sec. 161.090. REPORTS OF VIOLATION. Requires a local or state law enforcement agency or other governmental unit to notify the comptroller, on the 10th day of every month, or the first working day thereafter, of any violation of this subchapter that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

ARTICLE 2. ADVERTISING OF CIGARETTES OR TOBACCO PRODUCTS

SECTION 2.01. Amends Chapter 161K, Health and Safety Code, as follows:

SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE OR TOBACCO PRODUCT ADVERTISING

Sec. 161.121. DEFINITIONS. Defines "cigarette" and makes a nonsubstantive change.

Sec. 161.122. ADVERTISING. Requires the comptroller to collect and the advertiser to remit a fee that shall be 10 percent of the gross purchase price of any outdoor advertising of cigarettes and tobacco products in Texas.

Sec. 161.123. New heading: PROHIBITION RELATING TO CERTAIN SIGNS; EXCEPTIONS. Prohibits a sign containing an advertisement for cigarettes or tobacco products from being located closer than 1,000, rather than 500, feet to a church or school. Makes a nonsubstantive change.

ARTICLE 3. YOUTH TOBACCO USE

SECTION 3.01. Amends Chapter 161, Health and Safety Code, by adding Subchapters N and O, as follows:

SUBCHAPTER N. TOBACCO USE BY MINORS

Sec. 161.251. DEFINITIONS. Defines "cigarette" and "tobacco product."

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES OR TOBACCO PRODUCTS BY MINORS PROHIBITED. Provides that an individual who is younger than 18 years of age commits an offense under certain conditions. Provides that it is an exception to the application of this section that the individual younger than 18 years of age possessed the cigarette or tobacco product in the presence of certain persons. Provides that it is an exception to the application of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088. Provides that an offense under this section is a Class C misdemeanor.

Sec. 161.253. TOBACCO AWARENESS PROGRAM. Requires the court, upon conviction of an individual for an offense under Section 161.252, to suspend execution of sentence and to require the defendant to attend a tobacco awareness program approved by the comptroller. Authorizes the court to require the parent or guardian of the defendant to attend the tobacco awareness program with the defendant. Sets forth provisions regarding the tobacco awareness program and tobacco-related community service. Requires the court, upon receipt of certain evidence, to execute the sentence, but authorizes the court to reduce the fine imposed to not less than half the fine previously imposed by the court.

Sec. 161.254. DRIVER'S LICENSE SUSPENSION OR DENIAL. Sets forth provisions

applicable if the defendant does not provide the evidence required under Section 161.253(e) within the period specified by that subsection. Sets forth certain requirements regarding notice of court action by the Department of Public Safety.

Sec. 161.255. **EXPUNGEMENT OF CONVICTION.** Authorizes an individual convicted of an offense under Section 161.252 to apply to the court to have the conviction expunged. Sets forth provisions applicable if the court finds that the individual satisfactorily completed the tobacco awareness program or tobacco-related community service ordered by the court.

Sec. 161.256. **JURISDICTION OF COURTS.** Authorizes a justice court or municipal court to exercise jurisdiction over any matter in which a court under this subchapter may impose a specific requirement or order a certain suspension or denial.

Sec. 161.257. **APPLICATION OF OTHER LAW.** Provides that Title 3, Family Code, does not apply to a proceeding under this subchapter.

SUBCHAPTER O. PREVENTION OF TOBACCO USE BY MINORS

Sec. 161.301. **TOBACCO USE PUBLIC AWARENESS CAMPAIGN.** Requires the comptroller to develop and implement a public awareness campaign designed to reduce tobacco use by minors in this state. Authorizes the campaign to use advertisements or similar media to provide education information about tobacco use. Authorizes the comptroller to contract with another person to develop and implement the public awareness campaign.

ARTICLE 4. RELATED TAX CODE PROVISIONS

SECTION 4.01. (a) Amends Section 154.111(b), Tax Code, to require an application for a permit required by this chapter to be accompanied by a fee of \$300 for a bonded agent's permit, rather than \$100; \$300 for a distributor's permit rather than \$100; and \$200 for a wholesaler's permit, rather than \$50. Requires a \$15 application fee for a permit for a vehicle if the applicant is also applying for a permit as a bonded agent, distributor, or wholesaler or has received a current permit from the comptroller, rather than the treasurer, under Sections 154.101 and 154.110. Requires a \$260 fee for a retailer's permit.

(b) Repealer: Section 154.111(c), Tax Code (Cigarette Tax - Fee Required for Retailer's Permit).

SECTION 4.02. Amends Section 154.121, Tax Code, to set forth provisions regarding the deposit and appropriation of revenues received from the sale of permits under this section. Makes a conforming change.

SECTION 4.03. Amends Chapter 154D, Tax Code, by adding Section 154.1142, as follows:

Sec. 154.1142. **DISCIPLINARY ACTION FOR CERTAIN VIOLATIONS.** Sets forth the conditions and provisions by which the comptroller is authorized or required to revoke or suspend a permit.

SECTION 4.04. Amends Section 154.504, Tax Code, to provide that a person commits an offense if the person sells cigarettes in quantities less than an individual package containing at least 20 cigarettes and is subject to a \$100 fine.

SECTION 4.05. (a) Amends Section 155.049(b), Tax Code, to make conforming changes.

(b) Repealer: Section 155.049, Tax Code (Cigarette Tax - Meter Settings).

SECTION 4.06. Amends Section 155.058, Tax Code, to make conforming changes.

SECTION 4.07. Amends Chapter 155C, Tax Code, to make conforming changes.

ARTICLE 5. FEDERAL WAIVER; TRANSITION; EFFECTIVE DATE;
EMERGENCY CLAUSE

SECTION 5.01. (a) Sets forth the procedures to be used if the Texas Board of Health determines that an exemption from federal preemption from the Food and Drug Administration is necessary.

(b) Sets forth the required provisions regarding notice if a provision of law affected by a delay in implementation under Subsection (a) contains a criminal penalty and provides that the provision is effective on the 90th day after the date that notice of the grant of an exemption is published under Subdivision (1) (B) of this subsection.

SECTION 5.02. (a) Effective date: September 1, 1997, except as provided by Subsection (b).

(b) Effective date for Sections 161.084, 161.085, 161.086 and Chapter 161N, Health and Safety Code, as added by this Act: January 1, 1998.

(c) and (d) Makes application of this Act prospective.

(e) Provides that the increase in the amount of a fee as provided by Section 154.111(b) and 155.049(b), Tax Code, as amended by this Act, takes effect for and is applicable to the permit years beginning on or after March 1, 1998, and June 1, 1998, as applicable.

SECTION 5.03. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.01.

Replaces proposed Section 161.082, Health and Safety Code, with proposed Section 161.083, and renumbers existing sections accordingly. Deletes a portion of Subsection (c).

Redesignates proposed Section 161.084, Health and Safety Code, as Section 161.083. Requires a retailer to adequately train the retailer's agents and employees to prevent a violation of Subsection (a). Adds Subsection (d) regarding a \$100 fine for violation of this section.

Redesignates proposed Section 161.085, Health and Safety Code, as Section 161.084. Amends the language of the warning notice sign. Requires the board, rather than the comptroller, by rule, to determine the design and size of the sign. Makes conforming changes.

Sets forth a new Section 161.085, Health and Safety Code, regarding notification of employees and agents.

Amends proposed Section 161.086, Health and Safety Code, to remove Subsection (b)(1), regarding a bar, lounge, or other similar place. Makes conforming and nonsubstantive changes. Provides that an offense under this subsection is a Class C misdemeanor. Deletes a portion of proposed Subsection (d).

Amends proposed Section 161.087, Health and Safety Code, to prohibit a person from distributing certain products or coupons to person younger than 18 years of age. Sets forth provision regarding the use of coupons or other items to redeem a sample cigarette or tobacco product. Provides a person commits a Class C misdemeanor if the person violates this section. Deletes a portion of Subsection (d) regarding fines.

Replaces proposed Section 161.088, Health and Safety Code, to set forth forth new provisions regarding enforcement and unannounced inspections.

Replaces proposed Section 161.089, Health and Safety Code, with proposed Section

161.0901.

Redesignates proposed Section 161.0902, Health and Safety Code, as Section 161.090. Provides that a local or state law enforcement agency or other governmental unit shall make certain notifications to the comptroller, rather than to the department, at a certain time.

SECTION 2.01.

Deletes proposed Section 161.122, Health and Safety Code. Amends Section 161.122 to set forth new provisions regarding advertising.

Amends Section 161.123, Health and Safety Code, to remove proposed changes. Provides that a sign containing an advertisement for cigarettes or tobacco products may not be located closer than 1,000, rather than 500, feet from a church or school. Deletes Subdivision (2) regarding a contract for a cigarette or other tobacco product advertisement.

SECTION 3.01.

Replaces proposed Section 161.252, Health and Safety Code, to set forth provisions regarding possession, purchase, consumption, or receipt of tobacco products by minors.

Replaces proposed Section 161.253, Health and Safety Code, to set forth provisions regarding the tobacco awareness program.

Replaces proposed Section 161.254, Health and Safety Code, to set forth provisions regarding a driver's license suspension or denial.

Replaces proposed Section 161.255, Health and Safety Code, to set forth provisions regarding expungement of conviction.

Replaces proposed Section 161.256, Health and Safety Code, to set forth provisions jurisdiction of courts.

Replaces proposed Section 161.257, Health and Safety Code, to set forth provisions regarding application of other law. Deletes proposed Section 161.258 regarding appeal.

SECTION 4.01.

Amends Section 154.111(b), Tax Code, to require an application for a permit required by this chapter to be accompanied by a fee of \$260 for a retailer's permit, rather than by a fee of \$200 for a retailer's permit.

SECTION 4.02.

Makes conforming changes.

SECTION 4.03.

Amends proposed Section 154.1142, Health and Safety Code, to authorize the comptroller to suspend the permit or administratively fine the permit holder if: the permit holder has not been found to have violated Subchapter H or K, Chapter 161, Health and Safety Code, during the preceding 12 months, the comptroller may suspend the permit for not more than three days or fine the permit holder up to \$500; if the permit holder has been found to have violated those subchapters once before during the preceding 12 months, the comptroller may suspend the permit for not more than 10 days or fine the permit holder up to \$1,000; or if the permit holder has been found to have violated those subchapters, at least twice before during the preceding 12 months, the comptroller may suspend the permit for not more than two months and fine the permit holder up to \$2,000. Requires the comptroller to revoke the permit if, notwithstanding Subsection (a), the permit holder has been found to have violated Section

161.082(b), Health and Safety Code, on four previous occasions during the preceding 12 months. Makes formatting changes.

SECTION 4.05.

Amends Section 154.504, Tax Code, to amend the amount required for a retailer's permit.

SECTION 4.06.

Amends Section 151.058(c) and (d), Tax Code, to replace references to the "Texas Department of Health" to "comptroller."

SECTION 4.07.

Amends proposed Section 155.0592, Health and Safety Code, to make conforming changes.