

BILL ANALYSIS

S.B. 21
By: Huffman
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It has been noted that a recent report from the Health and Human Services Commission projects that raising the minimum age at which a person may legally access tobacco products could result in fewer smokers within five years, improve health, and reduce health care expenditures. S.B. 21 seeks to raise that minimum legal age to access tobacco products.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 21 amends the Health and Safety Code to exempt a product that is approved by the U.S. Food and Drug Administration (FDA) for use in the treatment of nicotine or smoking addiction and labeled with a "Drug Facts" panel in accordance with FDA regulations from the applicability of provisions relating to the distribution of cigarettes, e-cigarettes, and tobacco products. The bill raises from younger than 18 years of age to younger than 21 years of age the age of a person to whom the sale or giving of cigarettes, e-cigarettes, or tobacco products constitutes an offense and the age an actor must be to commit the offense of possession, purchase, consumption, or receipt of such a product. The bill creates an exception to the prosecution of those offenses that the person to whom the product was sold or who possesses, purchases, consumes, or receives the product is at least 18 years of age, is on active duty in the U.S. military forces or state military forces, and presented at the time of purchase a valid military identification card.

S.B. 21 decreases the cap on the fine for the offense of possession, purchase, consumption, or receipt of such a product by an individual who is younger than 21 years of age from \$250 to \$100 and requires the court on conviction of an individual for the offense to give notice to the individual that the individual may apply to have the conviction expunged on or after the individual's 21st birthday. The bill removes the condition that the court finds that the individual satisfactorily completed the e-cigarette and tobacco awareness program or e-cigarette-related and tobacco-related community service ordered by the court that triggers the requirement for the court to order the conviction and certain other documents relating to the offense to be expunged from the individual's record and prohibits the conviction from being shown or made known for any purpose.

S.B. 21 defines "minor" as a person under 21 years of age for purposes of provisions relating to

the distribution of cigarettes, e-cigarettes, and tobacco products and relating to e-cigarette and tobacco use by minors. The bill raises from younger than 27 years of age to younger than 30 years of age the age of a person to whom the sale or giving of a cigarette, e-cigarette, or tobacco product is prohibited unless the person to whom such a product is sold or given presents an apparently valid proof of identification. The bill conditions the eligibility of a premises to be exempt from the prohibition against permitting a customer direct access to cigarettes, e-cigarettes, or tobacco products or installing or maintaining a vending machine containing such products on the premises not being open to persons younger than 21 years of age at any time.

S.B. 21 revises a provision prohibiting the distribution of free cigarettes, e-cigarettes, or tobacco products or a coupon for a free sample of such products to a person younger than 18 years of age to prohibit such distribution to any person regardless of age of the recipient. The bill revises a provision prohibiting the distribution of coupons to receive discounted cigarettes, e-cigarettes or tobacco products to a person younger than 18 years of age to prohibit such distribution to a person younger than 21 years of age. The bill raises from younger than 18 years of age to younger than 21 years of age the age of a person who may act as a minor decoy to test compliance in certain unannounced enforcement measures by the comptroller or a local law enforcement agency.

S.B. 21 updates provisions relating to the prohibition on accepting or redeeming coupons providing for free or discounted products, as applicable. The bill removes the exception to the application of the offense of possession, purchase, consumption, or receipt of a cigarette, e-cigarette, or tobacco product for a minor who possessed the product in the presence of an adult parent, a guardian, or a spouse of the individual. The bill revises provisions relating to exceptions to that offense for an individual performing duties related to their employment and exceptions for an individual participating in an inspection or test of compliance. The bill revises provisions relating to age verification requirements for mailing or shipping cigarettes in connection with a delivery sale order. The bill repeals a provision that establishes certain shipping requirements for mailing or shipping cigarettes or e-cigarettes in connection with a delivery sale order.

S.B. 21 does not apply to a person who was born on or before August 31, 2001. The bill adds temporary provisions set to expire September 1, 2022, relating to specified information regarding the inapplicability of certain prohibitions to a person who was born on or before August 31, 2001, that is to be included on the warning sign posted by each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine.

S.B. 21 repeals the following provisions of the Health and Safety Code:

- Section 161.083(a-1)
- Section 161.254
- Section 161.455

EFFECTIVE DATE

September 1, 2019.