

SUBJECT: Regulating glues, aerosol paints and other abusable volatile chemicals

COMMITTEE: Public Health — committee substitute recommended

VOTE: 5 ayes — Berlanga, Hirschi, Glaze, Janek, Maxey
0 nays
4 absent — Coleman, Davila, Delisi, Rodriguez

WITNESSES: For — Harvey Weiss, National Inhalant Prevention Coalition; Jesse Flores, Youth Advocacy, Inc.
Against — None
On — Charles Branton, Texas Department of Health

BACKGROUND : Chapter 484 of the Health and Safety Code establishes as criminal offenses inhaling, ingesting, applying, using or possessing a substance containing a volatile chemical, using or possessing inhalant paraphernalia and selling or delivering to minors substances with volatile chemicals. Volatile chemicals are listed, and consist of chemicals used in such products as solvents, fuel additives, carburetor cleaners and dyes.

Chapter 485 of the Health and Safety Code governs the sale and use of abusable glues and aerosol paints. Retail sellers must hold a valid permit to sell abusable glue and aerosol paints. A person commits a criminal offense if the person inhales, ingests, applies, uses, or possesses an abusable glue or aerosol paint; uses or possesses inhalant paraphernalia; intentionally manufactures or delivers glue or aerosol paints inconsistent with board of health rules; or delivers glue or aerosol paints to a minor.

DIGEST: CSHB 1786 would repeal chapter 484 of the Health and Safety Code and incorporate abusable glue and aerosol paint in chapter 485 into the more broadly defined “abusable volatile chemical.” The new term would be defined as a chemical packaged in a container subject to federal labeling requirements concerning precautions against inhalation that when inhaled or ingested may affect the person’s central nervous system, create or induce

intoxication or hallucination, or change, distort or disturb a person's eyesight, thinking process, balance or coordination.

An abusable volatile chemical would not include a pesticide subject to state or federal agriculture laws, a food, drug or cosmetic subject to the federal Food, Drug and Cosmetic Act, or a beverage subject to the federal Alcohol Administration Act.

Chapter 485 would be amended to replace "abusable glue and aerosol paint" with "abusable volatile chemical." The board of health could establish fees as necessary for the administration of the chapter, including a fee not to exceed \$50 for permits to sell volatile chemicals. The bill also would require that all fees to be deposited into a new inhalant abuse prevention account in the general revenue fund, to administer and enforce the chapter and to finance education projects concerning the hazards of abusable volatile chemicals.

The bill also would enact civil and administrative penalties in addition to current criminal penalties.

The bill would take effect September 1, 1997; changes in law related to permitting, and to offenses, administrative and civil penalties, would apply to permits and violations that occur on or after the effective date.

Criminal penalties. For the offense of delivering an abusable volatile chemical to a minor, the mental states of intentionally or knowingly would be eliminated, leaving only recklessly. A new defense to prosecution would be established for persons person who were not the manufacturer and were not aware that the manufacturer failed to label the chemical in accordance with the federal Hazardous Substances Act. For the offense of using or possessing inhalant paraphernalia, the mental state of intentionally would be eliminated, leaving only knowingly.

Civil penalties. The commissioner of health could request the attorney general, a district or county attorney, or city attorney to institute a civil suit for a permanent or temporary injunction and the assessment of a civil penalty for violations involving abusable volatile chemicals. The civil penalty could not exceed \$25,000 for each violation; each day a violation

continues would be a separate violation.

The venue for civil suits could be in the municipality or county where the violation occurred or in Travis County. Recovered civil penalties by a county or municipality would be paid to the county or municipality. Civil penalties recovered by the attorney general or district attorney would be deposited in the state inhalant abuse prevention account.

Administrative penalties. The department could impose an administrative penalty against a person who holds a permit and who violates the chapter or rule. The amount of the penalty could not exceed \$25,000 for each violation. Each day a violation continued would be a separate violation.

Departmental duties of notification would be specified. Persons would have the right to a hearing and judicial review.

SUPPORTERS
SAY:

CSHB 1786 would help retailers and their employees correctly identify products that should not be sold to minors and would help limit retailer liability. It also would help restrict the access of volatile chemicals and abusable products to children and improve the enforcement of prohibitions against the sale, delivery or possession of such products.

Current law makes it hard for even department of health experts to correctly identify whether a product is subject to the Health and Safety Code prohibitions, because it makes reference to a list of chemicals and products packaged by specified volumes and weights. CSHB 1786 would simplify identification by including those products that must conform to federal requirements and have labels that say “Vapor Harmful,” and would include all chemicals and products now prohibited to minors under current law.

CSHB 1786 would authorize the department to raise fees only to the extent necessary to cover enforcement and administration costs. The \$50 fee authorization would be a ceiling rate, not necessarily the targeted rate.

OPPONENTS
SAY:

CSHB 1786 should be modified to more explicitly refer to federally required “vapor harmful” warnings as the means to identify abusable volatile chemicals. This would further clarify retailers’ duties and liabilities.

The department should not be authorized to raise permit fees to up to \$50. This would be twice the permit rate now authorized and would be too expensive relative to the volume of sales some small businesses and hardware stores experience in these product lines.

NOTES:

Changes made by the committee substitute to the original version of the bill include limiting the permit fees not to exceed \$50 and creating a defense to prosecution for an offense of delivering an abusable volatile chemical to a minor that the person making the delivery is not the manufacturer of the chemical and is not aware that the manufacturer failed to label the chemical in accordance with the federal Hazardous Substances Act.