

SUBJECT: Raising the legal age to 21 for cigarettes, e-cigarettes and tobacco

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — Price, Sheffield, Arévalo, Coleman, Guerra, Oliverson, Zedler

4 nays — Burkett, Collier, Cortez, Klick

WITNESSES: For — Anandhi Ganesh, American Heart Association; William Wilson, Integral Care; Charleta Guillory, March of Dimes, Texas Medical Association, Texas Pediatric Society, Texas Public Health Coalition; Texas Children's Hospital; Gaylene Lee, Texas Society for Respiratory Care; Nathaniel Hickman and Carlos Vela, Texas T21 Coalition; *(Registered, but did not testify: Stephanie Chesson, Martha Silva, Manuel Negron II, Cam Scott and Bradley Wisdom, American Cancer Society Cancer Action Network; April Chapa, Stacie Ellis, and Catherine Weaver, American Cancer Society; Kaitlyn Murphy, American Heart Association; Cynthia Humphrey, Association of Substance Abuse Programs; Marisa Finley, Baylor Scott & White Health; Mary Nava, Bexar County Medical Society; Patricia Kolodzey, Blue Cross Blue Shield of Texas; Claudia Rodas, Campaign for Tobacco-Free Kids; Marsha Jones, Central Health; Marshall Kenderdine, Christian Life Commission; Crystal Ford, Houston Methodist; Vilma Luna, John Peter Smith Health Network; Jesse Ozuna, City of Houston Mayor's Office; Gyl Switzer, Mental Health America of Texas; Christine Yanas, Methodist Healthcare Ministries; Joseph McMahan, Mission: Readiness; Marilyn Hartman, NAMI Austin; Andrew Cates, Nursing Legislative Agenda Coalition; Jessica Schleifer, Teaching Hospitals of Texas; Dan Hinkle, Texas Academy of Family Physicians; Matt Boutte and Lisa Jackson, Texas Academy of Physician Assistants; Jamie Dudensing, Texas Association of Health Plans; Jaime Capelo, Texas Chapter American College of Cardiology; Johnna Carlson, Texas Children's Hospital; Jess Calvert, Texas Dental Association; Joel Ballew, Texas Health Resources; Sara Gonzalez, Texas Hospital Association; Troy Alexander, Texas Medical Association; David Reynolds, Texas Osteopathic Medical Association; Joel Romo, The Cooper Institute; Andrew Smith, University Health System; and 32 individuals)*

Against —Phil Metzinger, Brookshire Brothers Grocery; Schell Hammel, Sfata Smoke Free Alternatives Trade Association; Faith Kaminky, Valkarie Vape Shop; and 10 individuals; (*Registered, but did not testify*: Eric Donaldson, Altria Client Services; Andrea Taurins, American Cancer Society Cancer Action Network; Kevin Haynie, Craving Vapor; Don Weckler, SFATA; Wade Jordan, SFATA Texas; Charlie Hodge, Texas E-Cigarette & Vaping Association; Matt Burgin, Texas Food & Fuel Association; Jim Sheer, Texas Retailers Association; Ron Hinkle, Tiring Point Brands; and seven individuals)

On — Ursula Parks, Legislative Budget Board; Steve Ross, Texans Standing Tall; Ernest Hawk, UT M.D. Anderson Cancer Center; (*Registered, but did not testify*: Janna Zumbrun, Texas Department of State Health Services)

DIGEST:

CSHB 1908 would raise the minimum age requirement in applicable Texas law to 21 years old from 18 years old for buying, attempting to buy, possessing, consuming, or accepting cigarettes, e-cigarettes, or tobacco products.

The bill also would prohibit a person from selling, giving, or causing to be sold or given a cigarette, e-cigarette, or tobacco product to someone under 30 years old, rather than 27 years old, unless the purchaser presented an apparently valid proof of identification. The bill would make conforming changes related to shipping, delivery, and certain other laws related to an age requirement for cigarettes, e-cigarettes, or tobacco products. The offenses that currently apply to underage smoking also would apply to those younger than 21.

The bill would not apply to a person who was born on or before August 31, 1999. The bill would require statute-mandated signage related to cigarettes, e-cigarettes, or tobacco products to reflect the increased age requirement and to include until September 1, 2020, the following statement: "The prohibitions described above do not apply to a person who was born on or before August 31, 1999."

The bill would prohibit the distribution, acceptance, or redemption of a free sample of a cigarette, e-cigarette, or tobacco product or a coupon or other item that the recipient could use to receive a free or sample cigarette, e-cigarette, or tobacco product. The bill would prohibit the distribution to, or acceptance or redemption of coupons for these products by people younger than 21.

The bill would not apply to a product that had been approved by the U.S. Food and Drug Administration (FDA) for treatment of a nicotine or smoking addiction and was required to be labeled with a "Drug Facts" panel in accordance with FDA regulations. The bill also would remove the requirement that shipped cigarettes carry a warning stating, "Cigarettes: Texas law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."

If a facility or business was open to people younger than 21 years old, that facility or business could not offer cigarettes, e-cigarettes or tobacco products for sale in a manner that allowed a customer direct access to them, and could not install or maintain a vending machine with these products.

The bill would make it an offense for a person younger than 21 years old to possess, purchase, consume, or accept a cigarette, e-cigarette, or tobacco product or to make a false representation of their age, punishable by a fine of \$250. It would be an exception to the offense that the individual younger than 21 years old possessed the cigarette, e-cigarette, or tobacco product in the presence of an employer, if possession or receipt of the cigarette, e-cigarette, or tobacco product was required in the performance of the employee's duties as an employee. It also would be an exception if the individual under 21 was participating in an inspection or test of compliance with the law.

The bill also would change the age to 21 from 18 for a class C misdemeanor (maximum fine of \$500) related to sale of cigarettes, e-cigarettes or tobacco products. The bill would apply to offenses

committed on or after the effective date of the bill.

The bill would take effect September 1, 2017.

**SUPPORTERS  
SAY:**

CSHB 1908 would improve public health and help prevent tobacco-related deaths by limiting access to cigarettes, tobacco products, and e-cigarettes for adolescents and those under 21 years old. Tobacco-related deaths are the top preventable cause of death in Texas and in the United States. Hundreds of thousands of Texas children could die prematurely if current trends continue.

The bill would limit the public health, Medicaid, and economic costs of tobacco use in Texas. The goal is not to regulate choices of citizens but to widen the age gap for availability of tobacco products for high school-aged children. Almost all tobacco users begin before age 21, and adolescents are vulnerable to marketing for tobacco products. Peers between ages 18 and 21 are likely to introduce younger children to their first tobacco product.

E-cigarettes should not be excluded from the bill because they are tobacco delivery devices and contain nicotine, which is highly addictive. E-cigarettes have not been around long enough to have robust studies on the link between their use and premature death, but the risks of nicotine and tobacco are known.

The bill represents a chance to put a dent in the number of children who would otherwise become smokers and the number of infants affected by young mothers who smoked. Other states and municipalities have made this change, which would make the age to purchase tobacco products the same as the age required to buy alcohol.

Lost tax revenue related to reduced tobacco sales would be offset by decreased health care costs in the state as well as reduced Texas Medicaid costs. Many Medicaid patients have expensive health care costs for tobacco-related illnesses.

OPPONENTS  
SAY:

Individuals who are 18 years old are adults and should be able to make their own decisions regarding use of cigarettes, e-cigarettes, and tobacco products. This is especially so for members of the military and veterans who are at least 18 years old and considered mature enough to serve.

E-cigarettes are not as dangerous as cigarettes and should not be included in this bill. In some cases, doctors may recommend that a patient use an e-cigarette as an alternative to a more potentially harmful tobacco product. The bill also could prohibit adults younger than 21 from working in vaping shops, and those who already work there could lose their jobs.

CSHB 1908 also could lead to criminal records for people whose only crime was using tobacco. The bill also would not necessarily limit the use of tobacco products because Texans could travel out of state to buy them.

The bill also would cost the state millions of dollars in the form of lost tax revenue from tobacco-related sales without making up that difference elsewhere.

OTHER  
OPPONENTS  
SAY:

CSHB 1908 should include a cessation program to help adults ages 18 to 21 who are already using tobacco break their addiction.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of \$3.5 million in general revenue related funds through fiscal 2018-19. Additionally, the bill would have a direct impact of a revenue loss to the Property Tax Relief Fund of \$3.7 million during the same period. Any loss to the Property Tax Relief Fund must be compensated with an equal amount of general revenue to fund the Foundation School Program.

A companion bill, SB 910 by Huffman, was referred to the Senate State Affairs Committee on March 1.