

BILL ANALYSIS

Senate Research Center

S.B. 55
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Health & Human Services
3-7-97
As Filed

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 licenses retailers that sell tobacco and dedicates those funds to enforcement and education. In addition, S.B. 55 bans outdoor billboard tobacco advertisements; requires sales clerks to verify age through a photo ID; prohibits minors from possessing tobacco and mandates education and awareness programs for violators; requires all tobacco sales to be vendor assisted, except in areas not frequented by minors; and prohibits the distribution of free tobacco samples.

PURPOSE

As proposed, 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 Texas Board of Health under SECTION 1.01. (Sec. 161.255(a), 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. ADMINISTRATION AND ENFORCEMENT. Requires the Texas Department of Health (department) to conduct random unannounced inspection of locations where cigarettes or tobacco are sold or delivered; establish a system to allow person to report the sale or delivery of cigarettes or tobacco products to a person younger than 18; maintain statistics relating to violation of this subchapter and related laws, the activities carried out by this state to enforce this subchapter and related laws, and the extent to which the state has succeeded in reducing the availability of cigarettes and tobacco products to person younger than 18; develop strategies to increase compliance with this subchapter and related laws; and submit to the federal government any reports necessary to comply with federal law.

Sec. 161.083. 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 retailer commits a misdemeanor punishable by a fine of between \$100 and \$1000 under certain conditions. Provides that if the person previously has

been convicted of an offense under this section, the offense is increased to between \$500 and \$2000. Establishes the requirements regarding identification. Makes conforming changes.

Sec. 161.084. 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 the retailer's agents and employees to prevent a violation of Subsection (a). Makes conforming changes.

Sec. 161.085. WARNING NOTICE. Makes conforming changes.

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 bar, lounge, or other similar place, nor to a facility that is not open to person younger than 18 years of age. 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 an offense if the person violates Subsection (a). Sets forth the monetary penalties for violating this section.

Sec. 161.087. DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS. Prohibits a person from distributing 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, except as provided by Subsection (c). 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 an offense if the person violates this section. Sets forth the fines or violating this section.

Sec. 161.088. JURISDICTION OF CRIMINAL PROCEEDING. Provides that a municipal court, including a municipal court of record, has jurisdiction in all criminal cases arising under this subchapter that arise within the territorial limits of the municipality and are punishable only by a fine not to exceed \$2000. Provides that this section prevails over any other law, ordinance, or charter.

Sec. 161.089. MUNICIPAL ENFORCEMENT. Authorizes the governing body of a municipality to grant authority under this section to a municipal employee who is not a peace officer if certain conditions are met. Authorizes the governing body to grant the employee the power to conduct random unannounced inspections of locations where cigarettes or tobacco products are sold or delivered. Authorizes the governing body to grant to the employee the authority to issue a citation to enforce a provision of this subchapter. Sets forth the required contents of the citation. Authorizes the court, in which the person who receives a citation under Subsection (c) is to appear, to issue an arrest warrant for the person if the person fails to appear on or before the return date stated in the citation.

Sec. 161.090. CIVIL PENALTY. Sets forth the minimum and maximum penalties for violation of Sections 161.083, 161.086-7, and criteria for assessing the penalty. Requires the appropriate district or county attorney or the attorney general, at the request of the department or on the initiative of the attorney general or district or county attorney, to institute and conduct the suit authorized by this section in the name of the state. Authorizes the department and the attorney bring the suit to recover reasonable expenses incurred in obtaining civil penalties. Sets forth the requirements in regard to depositing penalties

collected under this section. Provides that the civil penalty authorized by this section is in addition to any other civil, administrative, or criminal penalty provided by law.

Sec. 161.0901. 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. 161.0902. REPORTS OF VIOLATION. Requires a local or state law enforcement agency or other governmental unit to notify the department of any violation of this subchapter 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 conforming changes.

Sec. 161.122. GENERAL PROHIBITION. Prohibits a person from using a sign to advertise a cigarette or tobacco product. Provides that this section does not apply to a contract for an advertisement for a cigarette or tobacco product entered into before September 1, 1997.

Sec. 161.123. PROHIBITION RELATING TO CERTAIN SIGNS; EXCEPTIONS. Makes nonsubstantive and conforming changes.

ARTICLE 3. YOUTH TOBACCO USE

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

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

Sec. 161.252. PROHIBITION. Prohibits a person younger than 18 years of age from using or possessing a cigarette or tobacco product.

Sec. 161.253. CIVIL FINE; CITATION. Authorizes a peace officer to issue a citation for violation of Section 161.252. Provides language requirements for citation. Requires peace officer to mail a copy of the citation to the department, upon issuance of a citation.

Sec. 161.254. PARTICIPATION REQUIREMENTS. Requires a person to whom a citation is issued to mail or deliver to the department a certificate that indicates the person has completed an approved program not later than the 90th day after the date the citation is issued. Authorizes the department to dismiss or waive participation, or extend the period for completion, if good cause is shown. Provides that a person who violates this section is subject to a civil fine of not more than \$100.

Sec. 161.255. PROGRAM REQUIREMENTS. Requires the department, by rule, to establish criteria, application and renewal procedures, and other rules, necessary for approval of tobacco use prevention programs.

Sec. 161.256. DEPARTMENT ADMINISTRATION OF CIVIL FINE. Requires the department to establish an administrative adjudication hearing procedure under which a civil fine may be imposed, and to adopt and distribute forms to be used by peace officer in issuing a citation. Requires the procedure adopted under Subsection (a)(1) to allow a charged person to appear by telephone or in written.

Sec. 161.257. ORDER. Requires the hearing officer at an administrative adjudication hearing under this subchapter to issue an order stating whether the person charged with the violation of Section 161.254 is liable for the violation, and the amount of the fine.

Sec. 161.258. APPEAL. Authorizes a person whom the hearing officer determines to be in violation of Section 161.254 to appeal the determination. Sets forth conditions under which and provisions by which the person may file the appeal. Provides that an appeal does not stay enforcement and collection of the order unless the person, before appealing, posts bond with the court. Authorizes the court to stay the enforcement and collection of the order on the filing of a sworn affidavit of the person stating that the person is financially unable to post the bond.

SUBCHAPTER O. PREVENTION OF TOBACCO USE BY MINORS

Sec. 161.301. TOBACCO USE PUBLIC AWARENESS CAMPAIGN. Requires the department 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 department to contract with another person to develop and implement the public awareness campaign.

ARTICLE 4. RELATED TAX CODE PROVISIONS

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 \$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 \$200 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 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.

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

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, 161.086, 161.087 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.