

BILL ANALYSIS

Senate Research Center
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S.B. 1240
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Health Services
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As Filed

DIGEST

In 1989, the 71st Legislature enacted Chapter 485 (Abusable Glues and Aerosol Paints) and Chapter 484 (Volatile Chemicals), Health and Safety Code. Currently, Chapters 485 and 484, Health and Safety Code, prohibit the sale of abusable glues and aerosol paints to minors; however, only Chapter 485 authorizes the Texas Department of Health to permit and inspect abusable glue and aerosol paint retailers. S.B. 1240 would regulate certain abusable volatile chemicals and provide injunctive relief and administrative penalties.

PURPOSE

As proposed, S.B. 1240 regulate certain abusable volatile chemicals and provides injunctive relief and administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Health in SECTION 1 (Section 485.014, Chapter 485B, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 485, Health and Safety Code, as follows:

CHAPTER 485. New heading: ABUSABLE VOLATILE CHEMICALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 485.001. DEFINITIONS. Defines "abusable volatile chemical," "board," and "sell." Deletes the definition of "glue." Makes conforming changes.

SUBCHAPTER B. ADDITIVES, SALES PERMITS, AND SIGNS

Sec. 485.001. ADDITIVES. Provides that the Texas Board of Health (board), rather than commissioner of health, by rule, shall approve and designate materials to be included in abusable volatile chemicals, rather than glue or aerosol paint. Makes conforming changes.

Sec. 485.012. PERMIT REQUIRED. Makes conforming changes and a nonsubstantive change.

Sec. 485.013. ISSUANCE AND RENEWAL OF PERMIT. Requires a person to pay the Texas Department of Health (department) the, rather than a \$25, application fee established under Section 485.014 for each location at which an abusable volatile chemical may be sold by the person holding, rather than obtaining, a volatile chemical sales permit. Requires the board, rather than department, to adopt rules as necessary to administer this chapter, including application procedures and procedures by which the department shall give each permit holder, rather than permittee, reasonable notice of permit expiration and renewal requirements. Deletes text regarding Section 484.005(a). Makes conforming and nonsubstantive changes.

Sec. 485.014. FEE. Authorizes the board, by rule, to establish fees in amounts not to exceed \$50 for the issuance of a permit under this chapter.

Sec. 485.015. PERMIT AVAILABLE FOR INSPECTION. Requires a permit holder to have the volatile chemical sales permit or a copy of the permit available for inspection by the public at

each location, rather than the place, where the permit holder sells an abusable volatile chemical. Redesignated from existing Section 485.014.

Sec. 485.016. REFUSAL TO ISSUE OR RENEW PERMIT. Redesignated from existing Section 485.014. Makes a conforming change.

Sec. 485.017. DISPOSITION OF FUNDS; EDUCATION AND PREVENTION PROGRAMS. Requires the department to account for all amounts received under Section 485.014 and send those amounts to the comptroller. Requires the comptroller of public accounts to deposit the amounts received under Subsection (a) in the state treasury, rather than those funds, to the credit of a separate account in the general revenue fund to be known as the inhalant abuse prevention account. Authorizes the money in the inhalant abuse prevention account to administer, monitor, and enforce this chapter; and be used only to finance statewide education projects concerning the hazards of abusable volatile chemicals and the prevention of inhalant abuse. Deletes text requiring the department to receive funds and send them to the comptroller as they are received. Redesignated from existing Section 485.016.

Sec. 485.018. SIGNS. Provides that except in limited situations, such an offense is a state jail, rather than third degree, felony. Makes conforming changes.

Sec. 485.019. PROHIBITED ORDINANCE AND RULE. Redesignated from existing Section 485.018. Makes conforming changes.

Sec. 485.020. RESTRICTION OF ACCESS TO AEROSOL PAINT. Redesignated from existing Section 485.019.

SUBCHAPTER C. CRIMINAL PENALTIES

Sec. 485.031. POSSESSION AND USE. Makes conforming changes.

Sec. 485.032. MANUFACTURE AND DELIVERY. Makes conforming changes.

Sec. 485.033. DELIVERY TO A MINOR. Provides that a person commits an offense if the person recklessly, rather than intentionally or knowingly, delivers an abusable volatile chemical to a person who is younger than 18 years of age. Provides that it is a defense to prosecution under this section that the person making the delivery is not the manufacturer of the chemical and the manufacturer of the chemical failed to label the chemical in a manner that provided notice that the chemical was vapor harmful. Makes conforming and nonsubstantive changes.

Sec. 485.034. INHALANT PARAPHERNALIA. Provides that a person commits an offense if the person knowingly uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, or otherwise introduce into the human body an abusable volatile chemical in violation of Section 485.031 and if the person, at the time of the act described by Subdivision (1), knows that the person who receives or is intended to receive the paraphernalia intends that it be used to inhale, ingest, apply, use, or otherwise introduce into the human body a volatile chemical, rather than a substance containing the chemical, in violation of Section 485.031. Makes conforming changes.

Sec. 485.035. FAILURE TO POST SIGN. Provides that a person commits an offense if the person sells an abusable volatile chemical in a business establishment and the person does not display the sign required by Section 485.018. Makes conforming changes.

Sec. 485.036. SALE WITHOUT PERMIT. Makes conforming changes.

Sec. 485.037. PROOF OF OFFER TO SELL. Makes a conforming change.

Sec. 485.038. SUMMARY FORFEITURE. Makes a conforming change.

SUBCHAPTER D. INJUNCTIVE AND OTHER RELIEF AND ADMINISTRATIVE PENALTIES

Sec. 485.051. INJUNCTION OR OTHER COURT ORDER. Authorizes the commissioner to

request the attorney general, a district or county attorney, or the city attorney of the municipality in which a violation has occurred, is occurring, or may occur to bring an action for certain court orders. Provides that venue for a suit brought under this section is in the municipality or county in which the violation has occurred, is occurring, or is threatened to occur, or in Travis County. Authorizes the commissioner, the attorney general, a county, or a municipality to recover reasonable expenses incurred in obtaining injunctive relief under this section.

Sec. 485.052. ADMINISTRATIVE PENALTY. Authorizes the department to impose an administrative penalty against a person who is required to hold a permit issued under this chapter and who violates this chapter, other than Section 485.020, or a rule adopted or order issued under this chapter. Prohibits the amount of a penalty from exceeding \$5,000 for each violation. Provides that each day a violation continues is a separate violation. Sets forth the department's required factors in determining an amount of a penalty.

Sec. 485.053. NOTICE OF ADMINISTRATIVE PENALTY; ACCEPTANCE OR REQUEST FOR HEARING. Requires the department to give written notice of any determination to a person, if the department determines that a violation has occurred. Sets forth the required information to be included in a notice. Authorizes a person, not later than the 20th day after the date a person receives notice, to accept the determination of the department under this section, including the amount of the proposed penalty, or to make a written request for a hearing on that determination. Requires the department to issue an order affirming a determination and imposing a penalty, if a person accepts the determination and proposed penalty or if a person fails to respond timely to the notice.

Sec. 485.054. HEARING; ORDER. Sets forth the department's required actions if a person requests a hearing. Requires the hearings examiner to make findings of fact and conclusions of law and promptly issue a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty to the department. Provides that based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred. Requires the notice of the order given to the person under Chapter 2001, Government Code, to include a statement of the person's right to judicial review of the order.

Sec. 485.055. COMPLIANCE WITH ORDER; RIGHT TO JUDICIAL REVIEW. Sets forth the required actions to be taken by a person not later than the 30th day after the date the order is final as provided by Section 2001.144, Government Code. Sets forth the ways, within the 30-day period, in which a person who acts under Subsection (a)(3) is authorized to stay enforcement of a penalty. Authorizes the department to file with the court, not later than the fifth day after the date that a copy is received, a contest to the affidavit, if the department receives a copy of an affidavit under Subsection (b)(2). Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and stay the enforcement of the penalty on finding that the facts alleged in the affidavit are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond. Authorizes the department to refer the matter to the attorney general for collection of the amount of the penalty, if a person does not pay the amount of the penalty and the enforcement of the penalty is not stayed.

Sec. 485.056. JUDICIAL REVIEW; FINAL DISPOSITION. Provides that the judicial review of the order is instituted by filing a petition as provided by Chapter 2001G, Government Code; and is under the substantial evidence rule. Authorizes the court to uphold or reduce the amount of a penalty, if the court sustains the occurrence of the violation. Requires the court to order that no penalty is owed, if the court does not sustain the occurrence of the violation. Requires the court to proceed under this subsection when the judgment of the court becomes final. Requires the court to order the department to remit the appropriate amount plus accrued interest to a person, if the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court. Provides that the rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the interest to be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. Requires the court to order the release of a bond, if a person gave a supersedeas bond and if the amount of the penalty is not upheld by the court. Requires the court to order the release of a bond after a person pays the amount, if a person gave a supersedeas bond and if the amount of the penalty is reduced.

Sec. 485.057. RECOVERY OF COSTS. Authorizes the department to order a person to make a payment to the department in an amount necessary to recover reasonable costs and expenses incurred by the department in investigating a matter or conducting a hearing regarding the matter if as a result of the hearing an administrative penalty is assessed against a person or a person's permit is denied, suspended, or revoked. Requires a person to make a payment not later than the 30th day after the date of the order, if a payment is ordered under this subsection. Authorizes the department to refer the matter to the attorney general for collection. Authorizes the attorney general to recover from a person an amount representing reasonable costs and expenses incurred by the attorney general in an action brought under this subsection, if the attorney general brings an action against a person to enforce an administrative penalty or collect payment ordered under this subchapter and the person is found liable for the penalty or payment.

SECTION 2. Repeals Chapter 484(Volatile Chemicals), Health and Safety Code.

SECTION 3. (a) Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 1999.

SECTION 5. Emergency clause.