

## **BILL ANALYSIS**

Senate Research Center

S.B. 1533  
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State Affairs  
4/9/1999  
Committee Report (Amended)

### **DIGEST**

Since its enactment in 1972, the Texas Hazardous Substances Act has not been updated. When the Texas Department of Health (TDH) discovers hazardous consumer products on the market, it cannot stop distribution, or proceed with corrective measures from the products' manufacturers. Rather, in TDH's effort to prevent distribution of hazardous materials, it is required to refer violations to the U.S. Consumer Product Safety Commission for investigation. However, delays in federal enforcement allow hazardous products to remain on the market. S.B. 1533 authorizes the Texas Board of Health to adopt rules, provide penalties, and enforce various standards regarding hazardous and flammable substances.

### **PURPOSE**

As proposed, S.B. 1533 clarifies and expands the Texas Department of Health and the Texas Board of Health's authority to regulate hazardous substances.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Board of Health in SECTIONS 2, 3, 6, 8, and 9 (Sections 501.002(d), 501.021(b), 501.0233, 501.025, and 501.026(a), Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 501.001, Health and Safety Code, to define "commissioner" and redefine "misbranded hazardous substance." Makes conforming changes.

SECTION 2. Amends Sections 501.002(a) and (b), Health and Safety Code, to provide that a hazardous substance is extremely flammable and combustible. Authorizes the Texas Board of Health (TBH), by rule, to determine a substance or article's flammability, and requires TBH to use a certain flammability definition until TBH adopts a different definition. Deletes an existing flammability definition.

SECTION 3. Amends Section 501.021, Health and Safety Code, as follows:

Sec. 501.021. New heading: FLAMMABILITY STANDARDS; DETERMINATION OF FLAMMABILITY. Requires TBH, by rule, to establish flammability standards which conform to certain federal regulations as of September 1, 1999, until TBH adopts different standards. Authorizes the Texas Department of Health (TDH) to obtain certain samples to determine their flammability and applicability to established standards. Makes conforming changes.

SECTION 4. Amends Section 501.022(a), Health and Safety Code, to specify that TBH is required to ban improperly packaged children's clothing.

SECTION 5. Amends the heading for Section 501.023, Health and Safety Code, as follows:

Sec. 501.023. New heading: GENERAL LABELING AND PACKAGING REQUIREMENTS.

SECTION 6. Amends Chapter 501B, Health and Safety Code, by adding Sections 501.0231-501.0233, as follows:

Sec. 501.0231. LABELING OF CERTAIN TOYS AND GAMES. Requires children's toys and game, latex balloons, small balls, marbles and any toy that contains these components, to be labeled

according to TBH rule, and requires rule consistency with certain federal guidelines until TBH adopts rules, as of September 1, 1999.

Sec. 501.0232. REVIEW AND LABELING OF HAZARDOUS ART MATERIALS. Requires a toxicologist to review art materials. Makes conforming changes.

Sec. 501.0233. PACKAGING OF HAZARDOUS SUBSTANCES. Authorizes TBH to adopt special packaging rules. Makes conforming changes.

SECTION 7. Amends Section 501.024, Health and Safety Code, to require a person who imports, or conducts other business with a hazardous substance under the person's private brand name, to file a registration statement with TDH. Requires TBH to detail the registration requirements. Requires the person to file the registration annually, by the anniversary of the initial filing. Provides that TBH prescribes registration fees. Authorizes TDH to refuse registration for a person who fails to comply with requirements, rather than a person who fails to make timely payment of the fee. Subjects a hazardous substance to seizure if the person responsible for the substance fails to register and pay a fee, after being notified by TDH. Makes conforming changes.

SECTION 8. Amends Section 501.025, Health and Safety Code, to authorize TBH to adopt rules for administration of this chapter. Requires the rules to conform with federal regulations, and provides an exception.

SECTION 9. Amends Chapter 501B, Health and Safety Code, by adding Section 501.026, as follows:

Sec. 501.026. FEES. Authorizes TBH, by rule, to set reasonable registration fees.

SECTION 10. Amends Section 501.031(b), Health and Safety Code, to authorizes certain TDH authorities to obtain samples of any finished product. Deletes a provision requiring payment for a sample.

SECTION 11. Amends Section 501.033(b), Health and Safety Code, to require TDH to petition a district court of Travis County to authorize destruction of an article. Makes conforming changes.

SECTION 12. Amends Section 501.034, Health and Safety Code, by adding Subsections (g) and (h), to prohibit a person from manufacturing, importing, or repacking a hazardous substance without complying with Section 501.024. Prohibits a person from packaging a hazardous substance in a food, drug, or cosmetic container, that is identified as such a product.

SECTION 13. Amends Sections 501.035(a) and (b), Health and Safety Code, to delete text regarding violations, effectively clarifying that any offense under this section a Class A misdemeanor.

SECTION 14. Amends Chapter 501C, Health and Safety Code, by adding Sections 501.036-501.042, as follows:

Sec. 501.036. INJUNCTION. Authorizes the commissioner of public health (commissioner) to request certain authorities to institute a civil suit for certain orders including directing compliance, temporary injunction, and a restraining order. Prescribes the venue for a suit under this section. Authorizes certain authorities to recover certain expenses from the violator, and sets forth appropriation requirements for the recovered expenses.

Sec. 501.037. RECALL ORDERS. Authorizes the commissioner to order a recall of a hazardous substance, and sets forth requirements of the recall order. Authorizes the recall order's issuance prior to affixing certain markings as provided by Section 501.033. Provides that the recall order is effective until it expires, is withdrawn, or reversed. Requires the hazardous substance claimant to pay certain costs. Authorizes the commissioner to recall articles and assess costs to the claimant of a hazardous substance who fails to implement a recall order. Authorizes the commissioner to request the attorney general to bring an action to recover recall costs, and specifies the award.

Sec. 501.038. ADMINISTRATIVE PENALTY. Authorizes TDH to assess a penalty against a violator of this chapter. Sets forth required considerations for TDH in determining the penalty amount. Prohibits the penalty from exceeding \$25,000 per day. Provides that a penalty

proceeding is a contested case under Chapter 2001, Government Code.

Sec. 501.039. ADMINISTRATIVE PENALTY; NOTICE; REQUEST FOR HEARING. Requires TDH to give written notice to an alleged violator, and sets forth notification requirements. Authorizes the alleged violator to accept TDH's determination, or to make a written request for a hearing, by the 20th day after receipt of notification. Requires a person who accepts TDH's determination to pay the proposed penalty.

Sec. 501.040. ADMINISTRATIVE PENALTY: HEARING; ORDER. Sets forth TDH requirements if a person requests a hearing. Requires the hearings examiner to promptly issue a certain proposal and recommendation, if the hearings examiner determines that a penalty is warranted. Authorizes the commissioner or a designee to determine that a violation has, or has not occurred, based on the hearings examiner's facts, conclusions, and recommendations.

Sec. 501.041. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. Requires TDH to give notice to the person affected by the order, and sets forth notification requirements. Sets forth a deadline and requirements for a person who is served notification, and authorizes this person to take certain actions to stay enforcement of the penalty. Authorizes TDH to file a contest to an affidavit, sets forth requirements for the court regarding the affidavit, and provides that the affidavit filer is responsible for proving inability to pay a penalty. Authorizes TDH to refer to the attorney general for collection of the penalty. Sets forth provisions for a judicial review of an order issued under Section 501.040, Health and Safety Code. Sets forth court procedures concerning determination of a violation and order of a penalty payment. Sets forth proceedings following a final judgment of the court.

Sec. 501.042. RECOVERY OF COSTS. Authorizes TDH to assess reasonable fees against a person whose registration is denied, suspended, or revoked as a result of an administrative hearing, or if penalties are assessed against that person. Requires the person to pay the fees by a certain deadline. Authorizes the referral of the matter to the attorney general for the collection of fees. Authorizes the attorney general to recover reasonable expenses and costs from a person found liable for the administrative penalty. Describes "reasonable expenses and costs."

SECTION 15. Effective date: September 1, 1999.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 9.

Amends Section 501.026, Health and Safety Code, to delete text requiring certain fee depositing procedures, and fee appropriations. Makes a conforming change.

SECTION 14.

Amends Section 501.042, Health and Safety Code, to delete text regarding appropriation of recovered expenses.