

## **BILL ANALYSIS**

Senate Research Center  
77R4712 JRD-D

S.B. 1045  
By: Moncrief  
Business & Commerce  
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### **DIGEST AND PURPOSE**

Currently, the Texas Department of Health (TDH) is required to refer an alleged violation of federal law to the United States Consumer Product Safety Commission, creating delay in corrective action. As proposed, S.B. 1045 clarifies the registration process for manufacturers and other non-chemical consumer products, and provides TDH with detention authority for a violation of the statute or rules.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Board of Health in SECTION 2 (Section 501.002, Health and Safety Code); SECTION 3 (Section 501.021, Health and Safety Code); SECTION 6 (Section 501.0231, Section 501.0232, and Section 501.0233, Health and Safety Code); and SECTION 9 (Section 501.026, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 501.001, Health and Safety Code, to define “commissioner,” and to redefine “misbranded hazardous substance.”

SECTION 2. Amends Sections 501.002(a) and (d), Health and Safety Code, to redefine “hazardous substance.” Provides that a substance or article is extremely flammable, flammable, or combustible if it is defined as extremely flammable, flammable, or combustible by rule of the Texas Board of Health (board). Requires the board, unless the board determines that the health, safety, and welfare of persons in this state requires a different definition, to define the terms as they are defined by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and by federal regulations adopted under this Act. Provides that until the board adopts a different definition, the terms each have the meaning assigned by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) and by federal regulations adopted under that Act, as of September 1, 2001. Deletes text regarding a substance being flammable if it has a flash point of 80 degrees.

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

Sec. 501.021. New heading: FLAMMABILITY STANDARDS; DETERMINATION OF FLAMMABILITY. Requires the board by rule to establish flammability standards for articles described by Subsection (a). Requires the standards, unless the board determines that the health, safety, and welfare of persons in this state requires a different standard, to conform to standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended. Provides that until the board adopts different standards, the flammability standards for articles described by Subsection (a) are the standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as of September 1, 2001. Authorizes the Texas Department of Health (department) to obtain

samples of articles described by Subsection (a) and, rather than shall, determine the flammability of the, rather than those, articles for compliance with applicable standards established under this section.

SECTION 4. Amends Section 501.022(a), Health and Safety Code, to require the board by rule to designate as a banned hazardous substance any article, including, rather than of, clothing intended for the use of children, that is not properly packaged or that does not comply with applicable flammability standards established by the board.

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

Sec. 501.023. GENERAL LABELING AND PACKAGING REQUIREMENTS.

SECTION 6. Amends Chapter 501B, Health and Safety Code, by adding Sections 501.0231, 501.0232, and 501.0233, as follows:

Sec. 501.0231. LABELING OF CERTAIN TOYS AND GAMES. Requires toys or games intended for use by children, including the parts of those toys or games, to be labeled in the manner required by rule of the board. Requires the board's rules under this subsection, unless the board determines that the health, safety, and welfare of persons in this state requires a deviation from federal standards, to be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Requires the toys, games, and parts, until the board adopts rules under this subsection, to be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001. Requires certain items and games and toys that contain those items to be labeled in the manner required by rule of the board. Requires the board's rules under this subsection, unless the board determines that the health, safety, and welfare of persons in this state requires a deviation from federal standards, to be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Provides that until the board adopts rules under this subsection, certain items that contain certain items are required to be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

Sec. 501.0232. REVIEW AND LABELING OF HAZARDOUS ART MATERIALS. Requires art materials to be reviewed by a toxicologist. Requires art materials to be labeled in the manner required by rule of the board. Requires the board's rules under this subsection, unless the board determines that the health, safety, and welfare of persons in this state requires a deviation from federal standards, to be consistent with the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and federal regulations adopted under that Act. Requires art materials, until the board adopts rules under this subsection, to be labeled in the manner required by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and federal regulations adopted under that Act, as of September 1, 2001.

Sec. 501.0233. PACKAGING OF HAZARDOUS SUBSTANCES. Requires hazardous substances to be packaged in the manner required by special packaging ruling adopted by the board. Requires the board's rules under this section, unless the board determines that the health, safety, and welfare of persons in this state requires a deviation from federal standards, to be consistent with federal special packaging regulations adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as amended. Requires hazardous substances, until the board adopts rules under this section, to be packaged in the manner required by federal special packaging regulations adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as of September 1, 2001.

SECTION 7. Amends Section 501.024, Health and Safety Code, to require a person who manufactures, imports, or repacks a hazardous substance that is distributed in this state or who distributes a hazardous substance in this state under the person's private brand name to have on file with the department a registration statement as provided by this section. Requires the board by rule to detail the registration requirements and prescribe the contents of the registration statement. Requires the person to file the registration statement with the department before beginning business in this state as a manufacturer, importer, repacker, or distributor of a hazardous substance, and in each succeeding year that the person continues the business in this state, not later than the anniversary of the initial filing date, rather than September 1 of each year after. Requires the initial registration statement and each annual registration statement to be accompanied by a fee prescribed by the board. Deletes text setting the fee at \$150. Authorizes the department, after notice and hearing, to refuse to register or to cancel, revoke, or suspend the registration of a person who manufactures, imports, repacks, or distributes a hazardous substance of the person fails to comply with the requirements of this chapter, rather than make timely payment of the fee. Provides that a hazardous substance is subject to seizure and disposition under Section 501.033 if the person who manufactures, imports, repacks, or distributes the hazardous substance does not, after notice by the department, register with the department and make timely payment of the fee under this section. Makes a conforming change.

SECTION 8. Amends Section 501.025, Health and Safety Code, as follows:

Sec. 501.025. RULES. Authorizes the board to adopt reasonable rules necessary for the efficient administration and enforcement of this chapter. Requires the rules, unless the board determines that the health, safety, and welfare of persons in this state requires a deviation from federal regulations, to conform with regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended, the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, and the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.) as amended, as applicable.

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

Sec. 501.026. FEES. Requires the board by rule to set reasonable registration fees in an amount designed to recover not more than the costs to the department of administering, monitoring compliance with, enforcing, and conducting tests under this chapter.

SECTION 10. Amends Section 501.031(b), Health and Safety Code, to authorize an officer, employee, or agent of the department to obtain samples of any materials, packaging, labeling, or finished product. Deletes text regarding officer, employee, or agent paying for the sample. Makes a conforming change.

SECTION 11. Amends Section 501.033(b), Health and Safety Code, to require the department to petition a district court of Travis County or of the county in which the article is located to authorize the destruction of the article. Makes a conforming change.

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 that is to be distributed in this state or otherwise distributed in this state without complying with Section 501.024. Prohibits a person from packaging a hazardous substance in a new or reused food, drug, or cosmetic container that is identifiable as a food, drug, or cosmetic container by its labeling or other identification.

SECTION 13. Amends Sections 501.035(a) and (b), Health and Safety Code, to delete text regarding intentionally, knowingly, or recklessly violating this chapter. Deletes text regarding Class B misdemeanor.

SECTION 14. Amends Chapter 501C, Health and Safety Code, by adding Sections 501.036 and 501.037, as follows:

Sec. 501.036. INJUNCTION. Authorizes the commissioner of health (commissioner), if it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter, to request the attorney general or a district, county, or city attorney of the county or municipality in which the violation has occurred, is occurring, or may occur to institute a civil suit for certain conditions. Provides that venue for a suit brought under this section is in the county or municipality in which the violation occurred or in Travis County. Authorizes the commissioner and either the attorney general or the district, county, or city attorney, as appropriate, to each recover from the violator reasonable expenses incurred in obtaining injunctive relief under this section, including investigative costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses. Authorizes expenses recovered by the commissioner to be appropriated only to the department to administer and enforce this chapter. Authorizes expenses recovered by the attorney general to be appropriated only to the attorney general.

Sec. 501.037. RECALL ORDERS. Authorizes the commissioner, in conjunction with the detention of an article under Section 501.033, to order that a hazardous substance be recalled from commerce. Authorizes the commissioner's recall order to require the articles to be removed to one or more secure areas approved by the commissioner or an authorized agent of the commissioner. Requires the recall order to be in writing and signed by the commissioner. Authorizes the recall order to be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided by Section 501.033. Provides that the recall order is effective until the order meets certain conditions. Requires the claimant of the articles or the claimant's agent to pay the costs of the removal and storage of the articles removed. Authorizes the commissioner, if the claimant or the claimant's agent does not implement the recall order in a timely manner, to provide for the recall of the articles. Requires the costs of the recall to be assessed against the claimant of the articles or the claimant's agent. Authorizes the commissioner to request the attorney general to bring an action in a district court of Travis County to recover costs of the recall. Authorizes the court, in a judgement in favor of the state, to award costs, attorney's fees, and court costs related to the recall together with interest on those costs from the time an expense was incurred through the date the department is reimbursed.

SECTION 15. Effective date: September 1, 2001.

SECTION 16. Makes application of this Act prospective.