

## **BILL ANALYSIS**

Senate Research Center

H.B. 2154  
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Finance  
5/20/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas has a shortage of health care providers, effectively denying access to health care for Texans living in rural, border, and inner-city communities. For several years, the Office of the Comptroller of Public Accounts has had to set aside millions of dollars for refunds because of the ambiguity created by an ad valorem tax method on smokeless tobacco. This bill addresses this loophole in the state's smokeless tobacco taxation method, shifting from an ad valorem method to a weight-based method. This change in the basis for taxation would bring the taxation of smokeless tobacco in line with taxation methods for other tobacco products.

This bill creates a new health care access fund and a consolidated program for loan repayment to expand access to health care by increasing the provider workforce and expanding the Federally Qualified Healthcare Centers' infrastructure in underserved areas. Revenue derived from closing the loophole in the law relating to tax on tobacco products will be appropriated for the fund's purposes.

H.B. 2154 amends current law relating to the physician education loan repayment program.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 4 (Section 61.5391, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 155.0211, Tax Code, by amending Subsection (b) and adding Subsections (b-1), (b-2), (b-3), (b-4), (c), (d), and (e), as follows:

(b) Provides that except as provided by Subsection (c), the tax rate for each can or package of a tobacco product other than cigars is \$1.22 per ounce and a proportionate rate on all fractional parts of an ounce, rather than providing that the tax rate for tobacco products other than cigars is 40 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal.

(b-1) Provides that notwithstanding Subsection (b) and except as provided by Subsection (c), for the state fiscal year beginning September 1, 2012, the tax rate for each can or package of a tobacco product other than cigars is \$1.19 per ounce and a proportionate rate on all fractional parts of an ounce. Provides that this subsection expires December 1, 2013.

(b-2) Provides that notwithstanding Subsection (b) and except as provided by Subsection (c), for the state fiscal year beginning September 1, 2011, the tax rate for each can or package of a tobacco product other than cigars is \$1.16 per ounce and a proportionate rate on all fractional parts of an ounce. Provides that this subsection expires December 1, 2012.

(b-3) Provides that notwithstanding Subsection (b) and except as provided by Subsection (c), for the state fiscal year beginning September 1, 2010, the tax rate for each can or package of a tobacco product other than cigars is \$1.13 per ounce and a proportionate rate on all fractional parts of an ounce. Provides that this subsection expires December 1, 2011.

(b-4) Provides that notwithstanding Subsection (b) and except as provided by Subsection (c), for the state fiscal year beginning September 1, 2009, the tax rate for each can or package of a tobacco product other than cigars is \$1.10 per ounce and a proportionate rate on all fractional parts of an ounce. Provides that this subsection expires December 1, 2010.

(c) Provides that the tax imposed on a can or package of a tobacco product other than cigars that weighs less than 1.2 ounces is equal to the amount of the tax imposed on a can or package of a tobacco product that weighs 1.2 ounces.

(d) Requires that the computation of the tax under this section and the applicability of Subsection (c) be based on the net weight as listed by the manufacturer. Provides that the total tax to be imposed on a unit that contains multiple individual cans or packages is the sum of the taxes imposed by this section on each individual can or package intended for sale or distribution at retail.

(e) Provides that a change in the tax rate in effect for a state fiscal year that occurs in accordance with this section does not affect taxes imposed before that fiscal year, and the rate in effect when those taxes were imposed continues in effect for purposes of the liability for and collection of those taxes. Provides that this subsection expires December 1, 2013.

SECTION 2. Amends Section 155.2415, Tax Code, as follows:

Sec. 155.2415. New heading: ALLOCATION OF CERTAIN REVENUE TO PROPERTY TAX RELIEF FUND AND CERTAIN OTHER FUNDS. Requires that the proceeds from the collection of taxes imposed by Section 155.0211, notwithstanding Section 155.241 (Allocation of Tax), be allocated as follows:

(1) requires that the amount of the proceeds that is equal to the amount that, if the taxes imposed by Section 155.0211 were imposed at a rate of 40 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal, would be attributable to the portion of that tax rate in excess of 35.123 percent, be deposited to the credit of the property tax relief fund under Section 403.109 (Property Tax Relief Fund), Government Code;

(2) requires that the amount of the proceeds that is equal to the amount that would be attributable to a tax rate of 35.123 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal, if the taxes were imposed by Section 155.0211 at that rate, be deposited to the credit of the general revenue fund; and

(3) requires that 100 percent of the remaining proceeds be deposited to the credit of the physician education loan repayment program account under Chapter 61 (Texas Higher Education Coordinating Board), Education Code. Deletes existing text requiring that all proceeds from the collection of taxes imposed by Section 155.0211 attributable to the portion of the tax rate in excess of 35.213 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal, notwithstanding Section 155.241, be deposited to the credit of the property tax relief fund under Section 403.109, Government Code.

SECTION 3. Amends Section 61.535(a), Education Code, to require the Texas Higher Education Coordinating Board (THECB) to deliver any repayment made under this subchapter in a lump sum payable to both the lender and the physician, in accordance with federal law, or delivered directly to the lender on behalf of the physician in electronic form.

SECTION 4. Amends Subchapter J, Chapter 61, Education Code, by adding Section 61.5391, as follows:

Sec. 61.5391. PHYSICIAN EDUCATION LOAN REPAYMENT PROGRAM ACCOUNT. (a) Provides that the physician education loan repayment program account is an account in the general revenue fund. Provides that the account is composed of gifts and grants contributed to the fund, earnings on the principal of the fund, and other amounts deposited to the credit of the fund, including legislative appropriations and money deposited under Section 155.2415, Tax Code.

(b) Prohibits the money in the fund from being appropriated for any purpose except as provided by this section. Requires that money in the fund be used to recruit and retain physicians in health professional shortage areas.

(c) Requires a physician, to be eligible to receive repayment assistance, to apply to THECB; be licensed in this state in the appropriate field of practice; have completed one, two, three, or four consecutive years of practice in a health professional shortage area designated by the department; and provide health care services to recipients under the medical assistance program authorized by Chapter 32 (Medical Assistance Program), Human Resources Code, or enrollees under the child health care program authorized by Chapter 62 (Child Health Plan for Certain Low-Income Children), Health and Safety Code.

(d) Authorizes a physician to receive repayment assistance under this subchapter in the amount determined by THECB rule, not to exceed certain amounts for each year for which the physician established eligibility for the assistance.

(e) Prohibits a physician from receiving repayment assistance under this subchapter for more than four consecutive years.

SECTION 5. Makes application of Chapter 155, Tax Code, as amended by this Act, prospective.

SECTION 6. Effective date: September 1, 2009.